DIARY FOR SEPTEMBER.

1. Fri.... Paper Day, Q.B. Last day for delivering appeal books in Court of Error and Appeal.
2. Sat.... Paper Day, C.P.
3. SUN.. 12*th Sunday after Trinity.*
4. Mon... Paper Day, Q.B.
5. Tues.. Paper Day, C.P.
9. Sat.... Trinity Term ends. Last day for notice for call.
10. SUN.. 13*th Sunday after Trinity.*
12. Tues.. Gen. Sess. and Co. Ct. sittings for York only. Last day for J.P.'s to ret. con. to Clerk P.
13. Wed.. Quebec taken by Wolfe, 1759.
15. Fri.... Court of Appeal sits.
17. SUN.. 14*th Sunday after Trinity.* First Upper Canada Parlt. met at Niagara, 1792.
18. Mon... Supreme Court constituted, 1875.
24. SUN.. 15*th Sunday after Trinity.*

CONTENTS.

THE
Canada Law Journal.

Toronto, September, 1876.

THE EIGHTH part of the new Digest is to hand, giving the cases under the titles included between "Executory Devise" and "Improvements on Land." From present appearances, the volume will exceed the size at first spoken of. Whilst hoping for a speedy conclusion, we can sympathise with the compilers in their most laborious task, and at the same time congratulate the profession that the work is being done for them in such a thorough and efficient manner.

IN consequence of the retirement of Mr. Leith, Q.C. and Mr. Lash from the positions which they lately held as lecturers and examiners in the Law School, it became necessary for the Benchers at their meeting before Trinity Term to elect two members of the profession as their successors. More than thirty applications from gentlemen desirous of ministering to the growth of legal education came up for consideration. The candidates on whom the choice of the Benchers fell were Mr. T. D. Delamere and Mr. J. S. Ewart, Barristers-at-Law, of this city. The department of Criminal Law and the Law of Torts has been assigned to Mr. Delamere, and that of the Law of Real Property to Mr. Ewart. The lecturers on Equity and General Jurisprudence have been re-appointed for a further term.

THE lately revived Term of Trinity has done good service this year in enabling the judges of the Court of Queen's Bench to dispose of the large arrears of business which had accumulated on their hands. This happy result is owing to the rule promulgated at the close of last Easter Term, by which the cases then remaining unargued in the Queen's Bench were to be taken up and disposed of in Trinity Term in the ordinary way by peremptory list. This rule has been so fully carried into effect, that out of sixty-four cases standing for argument at the beginning of the Term sixty-three have been argued or otherwise disposed of, and in twenty-one of them judgment has been already delivered. Some seven or eight new rules only have been added to the list, so that the Court may practically be said to be abreast of its work. This state of affairs must be peculiarly gratifying to those concerned when we remember that at the close of last Michaelmas Term, when the present Chief Justice of Ontario came on

the bench, nearly a hundred cases remained to be argued.

CONTEMPT OF COUPT.

The judgment of the Court of Queen's Bench in the case of The Queen v. Wilkinson has been the innocent cause of probably the most atrocious and uncalled for libel on the Bench that has ever disgraced Canadian journalism. Foul abuse has been heaped upon a most impartial, upright, and painstaking Judge, and that with a cowardice and reckless disregard of decency which would make even the most bitter partizan cry shame. And not only has this been done, but an attempt has been made to prejudice the public mind in reference to a cause still in litigation. On both grounds, the article in the *Globe* newspaper was utterly indefensible. Events follow each other so rapidly now-a-days, and are so fully and so immediately discussed, that it would be a waste of words to detail the legal bearings of a matter with which our readers are already familiar; but a Bar which, as well as the public, is justly proud of its Bench, cannot and ought not to overlook this wanton and shameful attack upon Mr. Justice Wilson. It is not likely that the libeller will be prosecuted. The punishment for his scandalous contempt of Court will be the unqualified contempt of the public, in lieu of fine or imprisonment. But if this sort of thing is to continue (and we have had too much of it lately on all sides, as we recently pointed out) it will become a serious question whether an example should not be made, and the dignity of the Bench, which means Law and Order, vindicated and upheld. If allowed to go on, people will get so used to it that they will think there is no harm in it, and irreparable injury will have been done to the due administration of justice in this country.

HUMOROUS PHASES OF THE LAW.

The dog-days are over, but something light in the way of legal literature may still be appreciated by the wearied practitioner whom adverse fate has chained to his desk during vacation. If so let him peruse "Humorous Phases of the Law,"* the first of a series of "Legal Observations" issued by an enterprising firm in the Golden State of the neighbouring Republic. It is a neatly bound little volume, with clear type, on good paper, and well deserves its name. A baker's dozen of sketchy articles, which originally appeared in the *Albany Law Journal*, are here grouped together, and form a volume most enjoyable. Especially to a Canadian lawyer do some of the American decisions and cases, herein referred to, appear as beautifully cool and refreshing as a draught from an Arctic soda water fountain.

We know not what higher praise we can give the work than the acknowledgment that in October, 1870, we republished in our paper the whole of the first chapter, on "The Conduct of the Courts;" a graphic and amusing account of the "doings and goings on" in an ordinary court room; and, in July of the following year (so much was the first article appreciated), we reproduced the interesting paper on "Ecclesiastical Law."

The second chapter deals with the Law of Sunday. The laws on this point in Connecticut and Massachusetts, as well as in the other New England States, savour strongly of the strictness of the Mosaic dispensation, and depend more upon the peculiar legislation and customs of the States than upon any general

* Humorous Phases of the Law. By Irving Browne. San Francisco: Summer, Whitney & Co. 1876.

principle of justice; they appear as severe now as in the early days of the Republic, when the Chief Justice of Massachusetts, and his associates, were indicted for Sunday travelling. Charity and necessity alone saved the Sabbath-traveller from punishment. A poor shoemaker, in Massachusetts, was imprisoned for hoeing a few hills of potatoes early one Sunday morning; although he had been unable to finish them the night before, even by working at them by moonlight (*State* v. *Josselyn*, 97 Mass., 411.) The poor wretch ought to have been mindful of the proverb, *ne sutor ultra crepidem.*

Even in Arkansas a man was indicted for cutting his grain on Sunday, although it was suffering from over-ripeness and he had been unable to get a machine before Saturday night (*State* v. *Goff*, 20 Ark., 289.) One can scarcely imagine the Scribes and Pharisees of old being much more stringent in their interpretations of the command, 'Remember the Sabbath day.' Blowing one's own horn is unlawful in Massachusetts on Sunday (*Com.* v. *Knox*, 6 Mass., 76.) The author remarks that this gives one a vivid idea of the amount of self-denial exercised by the Bostonians on that day. The decision reminds one of the unfortunate stranger in Toronto, who was arrested for playing a fiddle in his back room, fined heavily and admonished by the Police Magistrate. (4 U. C. L. J., N. S. 165.)

Visiting one's father is a work of necessity and charity (*Logan* v. *Mathews*, 6 Penn. Lt. 417); whether calling on one's sweetheart is so was discussed, but not decided (*Buffington* v. *Swansy*, 2 Am. Law Rev. 235.) Our author informs us that a will made on Sunday is valid, seemingly on the ground that many good words and pious expressions are therein contained.

Under "The Law of Necessaries" we are told that a wife's necessaries are to be judged not by the real, but by the apparent or assumed position, of the husband: 'The lawful measure of mercantile phlebotomy seems to be what the husband's apparent venous system will afford.' New bonnets have doubtless been necessaries ever since the days of St. Paul; still the courts have been rather severe upon ladies in the matter of millinery. Lord Abinger, in one case, declared that the expenditure of £5,287 on bonnets, laces, feathers and ribbons in less than a year, was extravagant (*Lane* v. *Ironmonger*, 13 M. & W. 368,) and that a husband was not bound to pay £67 for a sea-side suit for his wife, when he had forbidden her going to the watering place (*Atkins* v. *Curwood*, 7 C. & P. 759.) But a lawyer has had to pay £94 for silver fringes to a petticoat and side-saddle, which his spouse considered an essential (Stair, 349).

In Vermont a man was made to pay for his wife's false teeth (*Gilman* v. *Andrews*, 20 Vt. 241.) In the Republic a husband has not to pay for the file wherewith a wife seeks to sever the marriage fetters (*Coffin* v. *Dunham*, 8 Cush. 404). Less happy are the Benedicts of this side of the line, for they have to advance money, and pay the wife's costs in alimony suits. As to infants, "treats" are not necessaries (*Brooker* v. *Scott*, 11 M. & W., 67); nor are betting-books (*Genner* v. *Walker*, 3 Am. Law Rev. 590.) Sergeant Hawkins asserted that for a youth of twenty summers a wife was not a necessary, and that even if she were, a baby was not (*Harrison* v. *Fane*, 1 M. & G. 550.) Nor will the Court allow a tailor's bill of £840, for 19 coats, 45 waistcoats, 38 pairs of pants, &c., purchased within thirteen months (*Barghard* v. *Angerstein*, 6 C. & P. 690).

Mr. Browne discourses pleasantly on the subject of wagers, but his texts are well-known English decisions. In his

chapter on 'The Animal Kingdom in Court,' he quotes at length a most interesting and humorous judgment in an action brought for injuries done to the plaintiff's dog by the defendant's dog in a fight. The learned Judge concludes by saying, that the owner of the dead dog was clearly entitled to the skin, (although some, less liberal, would be disposed to award it as a trophy to the victor), and that with that he must be content (*Wiley* v. *Slater*, 22 Barb, 506.) Judge Nelson has decided that one may lawfully kill a dog that habitually haunts the neighbourhood, barking by day and howling by night (*Brill* v. *Hayter*, 23 Wend., 354). Would not this decision authorize the slaughter of those caterwauling animals who make night hideous with their feline loves and squabbles.

In the chapter on 'Negligence' we find the case of a man being sued for suffering his cow to drink his (the defendant's) maple syrup (*Bush* v. *Brainard*, 1 Cowen 78.) Under 'Nuisance' we learn that the North Carolinian courts have no music in their souls (this in Shakespeare's opinion will doubtless account for their following Jeff. Davis in the late unpleasantness); and they held it no nuisance for evil men and boys to curse and swear so loudly in a tavern as to break up a singing school hard by (*State* v. *Baldwin*, 1 Dev. & Bat. 195.) *State* v. *Linkham*, 69 N. C. 214 was an amusing case in the same State. A strict member of the Methodist Church, and a man of the most exemplary deportment, was indicted as a nuisance for singing the hymns of Wesley in such a way as to disturb the equanimity of the whole congregation, making the irreligious laugh and the pious fume. The Court set aside the jury's verdict of guilty; although one of the witnesses gave a specimen of the style of singing.

Space will not permit us to refer to the other chapters of this spicy—but somewhat irreverent—volume, which are entitled, Pleading before the Code; Pleading under the Code; A Society for the Prevention of Cruelty to Lawyers; The Idiocy of Married Women and Trade Marks.

LAW SOCIETY.

Easter Term, 39 Victoria.

The following is the *resumé* of the proceedings of the Benchers during this Term, published by authority:—

Monday, 15*th May*, 1876.

The Report of the Scrutineers appointed last Term was read by the Secretary, as follows:

"Osgoode Hall, April 10th, 1876.

We, the scrutineers appointed by the Law Society last Term, to act at the election of Benchers of the Law Society, under the Act in that behalf, for the next term of five years, find and report that the following thirty persons, having the highest number of votes, are entitled to be declared the Benchers of the Law Society from and after the first day of Easter Term now next, that is to say:

J. D. Armour, Q.C.; H. C. R. Becher, Q.C.; John Bell, Q.C.; T. M. Benson; James Bethune, Q.C.; B. M. Britton, Q.C.; M. C. Cameron, Q.C. (Toronto); Hector Cameron, Q.C.; John Crickmore; A. S. Hardy, Q.C.; J. A. Henderson, Q.C.; Thos. Hodgins, Q.C.; John Hoskin, Q.C.; Robert Lees, Q.C.; A. Lemon; Dalton McCarthy, Q.C.; F. McKelcan, Q.C.; Kenneth McKenzie, Q.C.; D. McMichael, Q.C.; John Maclennan, Q.C.; E. Martin, Q.C.; W. R. Meredith, Q.C.; J. A. Miller, Q.C.; F. Osler; T. B. Pardee, Q.C.; D. B. Read, Q.C.; S. Rich-

ards, Q.C.; Thos. Robertson, Q.C.; J. S. Sinclair, Q.C.; L. W. Smith.

(Signed,) John Crickmore.
Thomas Hodgins.
D. B. Read."

The Hon. John Hillyard Cameron, Q.C., was unanimously elected Treasurer for the ensuing year.

The Report on Rules for Special Cases, under 39 Vic., ch. 31, was received and read, and ordered to be discussed on Tuesday, 30th inst.

The Treasurer reported that J. S. Sinclair, Esq., a Bencher of the Society, had been appointed Judge of the County of Wentworth. Ordered that notice be given for the 30th inst. of the election of a Bencher to fill the vacancy caused by the retirement of Mr. Sinclair.

Ordered, That notice be given of the election of a Reporter of Practice and Chambers cases, in accordance with the Report of the Committee on Reporting.

The following gentlemen were called to the Bar, namely: Messrs. D. E. Thomson, Robert Pearson, H. J. Scott, R. M. Meredith, James Leitch, C. J. Holman, J. F. Wood, E. J. Reynolds, Philip Holt, M. Kew, Alex. Haggart, W. M. Hall, J. P. Whitney, A. Monkman.

The following gentlemen received certificates of fitness, namely: Messrs. Scott, Hodgkin, Thomson, Wells, Reynolds, Perkins, Robb, Goodwillie, Wood, Holman, Haggart, McMahon, Holt, McConkey, Burgin, Moscrip, Malone, Whitney, Galbraith, Morton, Locke.

Monday, 16th May.

By-Law relating to Law Benevolent Fund was read a first time, second reading on following Saturday.

Ordered, That notices of call of Messrs. McDonald, Essery and Van Norman may be given for next Trinity Term, or for any future Term.

Certificate of fitness granted to W. H. Ross.

Saturday, 20th May.

The address and testimonial voted by Convocation on 18th February, were presented to the Hon. John Hillyard Cameron.

Mr. O'Leary was called to the Bar.

The report of the President of the Law School on the examination for special honours was received and adopted.

Mr. J. B. Clark was allowed a reduction of eighteen months, and was called to the Bar.

Mr. T. C. Johnstone, on special petition, was called to the Bar under 39 Vic., ch. 31.

Mr. J. W. Nesbitt received certificate of fitness.

The several committees were duly appointed.

The report of Finance Committee on the communication received from the Dominion Telegraph Company, relative to their office in Osgoode Hall, was adopted.

The report of the Examining Committee was received, read and adopted, and examiners' fee for this term ordered to be paid.

Tuesday, 30th May.

Messrs. Kenrick and Plumb, members of the English Bar, were called to the Bar.

In the matter of J. S. Sinclair, Esq., Judge of the County Court of Wentworth,

Ordered, That it be referred to Messrs. Richards, McCarthy, and Osler, to consider the question of the eligibility of Mr. Sinclair to continue a Bencher after his appointment as a County Judge, and that they be instructed to report to Convocation on the last Tuesday in June, to which day further proceedings in the matter of the election of a Bencher are adjourned.

[Mr. Irving has since been appointed in Mr. Sinclair's place.]

Ordered, That the applications for Chamber Reportership be referred to Committee on Reporting, with instructions to report thereon on the last Tuesday in June.

Mr. Armour gave notice that he would, on the last Tuesday in June, move a resolution having for its object the putting of the Law School on a more efficient footing, or the abolishing of it.

The petitions of Messrs. Dingwall, Riordan, Johnston and McGillivray were granted.

The report of Finance Committee on the collection of unpaid fees was received, to be considered at the meeting in June next.

The petition of Mr. T. H. A. Begue to be called to the Bar under special circumstances was granted, and Mr. Begue was called to the Bar accordingly.

The following gentlemen were elected chairmen of the various committees, namely: Mr. Read, Finance; Mr. McKenzie, Library; Mr. Maclennan, Reporting; Mr. Hodgins, Legal Education.

Ordered, That the Rules under the Statute of last Session of Ontario Legislature do stand over for consideration until the last Tuesday of June.

Friday, 2nd June.

Messrs. Hodgins, Crooks, Meredith, Bethune and Benson were appointed a committee to meet a committee of the Senate of the University of Toronto on the subject of the Primary Examination of the Law Society.

Mr. Hodgins gave notice of motion for last Tuesday in June that application be made, under 36 Vic., ch. 29, to the proper authorities for the affiliation of the Law School with the University of Toronto.

Tuesday, 27th June.

The report of Committee to prepare Rules for Special Cases, under 39 Vic., ch. 31, was adopted.

The Committee on Reporting brought in their report, which was received and read.

Mr. J. Stewart Tupper was elected Reporter of Chamber, Practice and Election Cases.

NEW COURT OF LAW IN EGYPT.

That well edited legal quarterly, the *American Law Review*, gives a sketch of the new law courts in Egypt. As will be seen by the following extract, the Khedive has exhibited a liberality quite contrary to the traditions of his race. Later news however would seem to shew that the wheels of justice are not yet so nicely adjusted as to give litigants the full benefit intended:

"The past year witnessed the inauguration in Egypt, with characteristic ceremonies of Oriental solemnity, of a new system of civil courts, to have exclusive jurisdiction of causes arising between natives and foreigners, or foreigners of different nationalities. This system must be regarded as an experiment, and has been accepted only as such by the Western powers; but the state of things which it displaces was, on the whole, so unsatisfactory that it is scarcely possible that the old measure should ever be restored, whatever may be the result of the present "reform," as the new system is hopefully called. The judges in the new tribunals are to be partly natives and partly Franks; a majority being accorded to the latter on the bench of each court. They all receive their appointments from the Khedive; but he has stipulated to appoint the Frank judges in each case on the nomination of the responsible minister in the country from which he is selected. For the Court of Appeal six Frank judges have thus been appointed, one from each of the following nations—the United States, Austria, Germany, Great Britain, Italy, and Russia. The system includes, also, courts of the first instance, three in number, established at Alexandria, Cairo, and Ismailia. For the first, eight Frank judges have been appointed; for the sec-

ond, four; and for the third, three. There is also a Frank attorney for the government in the Court of Appeal, who has three Frank deputies for the lower courts; making a total of twenty-five appointments from the Western nations. France is the only one of the great powers of Europe which has not, at present, a judge on the appellate bench; but a French appointment will no doubt be made. Most of the smaller foreign powers having colonies in Egypt have at least one member in the lower courts. The number of native judges on each bench is at least one less than the number of Frank judges. The whole number of judges already appointed in all the courts is, accordingly, forty. As the whole population of Egypt is but five millions, and the aggregate resident population of Europeans and Americans (of the latter there are but few) does not exceed one hundred thousand,* it is apparent that the judicial force is ample, in comparison with that generally supplied in civilized countries. Nevertheless, the scheme provides for an enlargement by placing an additional Frank judge on the Court of Appeal (which, when thus completed, will consist of seven Frank judges and four natives), and by giving the court of first instance at Ismailia the same composition as that at Cairo; that is, four Frank and three native judges. Decisions in the Court of Appeal, when thus completed, must have the concurrence of five Frank and three native judges; and in the courts of first instance, that of three Frank and two native judges. Moreover, the scheme authorizes a further increase in the number of judges, should it be found necessary; but, in such case, the established relations between the number of Franks and natives on each bench must not be changed. In hearing commercial affairs, the judges will call in two assessors—one Frank and one native.

The Frank judges are guaranteed an independent tenure of office for five years (the term for which the system has been accepted by the Western powers), and handsome salaries paid out of the Egyptian exchequer.

In mentioning that the jurisdiction of the new courts covers civil causes between natives and foreigners, and between foreigners of different nationalities, it must be understood that the Khedive has consented to place within the scope of their cognizance, transactions of foreigners with the Egyptian government itself, and its several departments or administrations, or with his "daïras" or private estates, or those of members of his family. This is a very important concession. The new courts will also take cognizance of actions relating to real estate situated in Egypt, even when the parties belong to the same nationality. They also have a restricted penal jurisdiction, with the assistance of a jury, applying only to simple police offences, and to offences of whatever grade directly against the judges, magistrates, assessors, jurors, and officers of justice, and also covering complaints against any of the classes of persons last mentioned.

The new courts are to be governed by a series of codes, "presented by Egypt to the powers," and comprised in a printed volume of five hundred and eighty-four duodecimo pages. "In case of the silence, insufficiency or obscurity of the law," as laid down in the codes, "the judges will conform to the principles of natural right and rules of equity." The languages to be used in the courts in pleading, and in official acts and decisions, will be the languages of the country, and Italian and French. The codes have already been printed in these languages, and copies of them extensively distributed.

The Khedive's brief but appropriate address on the occasion is worthy of record:

Gentlemen,—The high support of his Majesty the Sultan, my august sovereign, and the kindly co-operation of the Powers, allow me to inaugurate the judicial reform, and to install the new tribunals.

I am happy to see assembled about me the eminent and honourable magistrates, into whose hands, with entire confidence, I place the charge of rendering justice. Every interest will find complete security in your enlightenment, and your decisions will thus obtain universal respect and obedience.

This date, gentlemen, will be a marked one in the history of Egypt, and will be the point of departure of a new era in civilization.

God aiding us, I am persuaded that the future of our great work is assured.

The Khedive has been rather too sanguine as to the immediate success of the scheme. But Egypt will not for long be subject to the disturbing elements of a court of mixed nationalities.

* By a very exact enumeration made in 1871, the number was ascertained to be 79,696

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

Wright v. Wright.

Bills and Notes—Renewal—Statute of Limitations—Pleading.

[Feb. 7, 1876—Mr. Dalton.]

Declaration on promissory note. Plea that there was no consideration for the note, since it was given as a renewal of another note in which the plaintiff's remedy was barred by the Statute of Limitations.

Held, that the plea must be struck out, following the case of *Austin* v. *Gordon* 32 U. C. Q. B., 621, in which it was held that a debt for which a discharge had been given in insolvency was a continuing debt in conscience, and was, therefore a sufficient consideration for a promise to pay it.

Quebec Bank v. Howe.

Wife's separate Estate—35 Vic. c. 16. s. 9—Pleading.

[May 5, 1876—Mr. Dalton.]

Summons to strike out a replication. The action was brought against a married woman on a promissory note. She pleaded coverture at the time of contracting the debt; whereupon the plaintiffs replied that the note was made with respect to property, which was the defendant's separate property within the meaning of the statutes on that behalf.

Brough shewed cause.

Ritchie contended that the replication should be struck out on the ground that a married woman cannot be made liable unless she has a separate estate held to be such in Equity. The plaintiffs have already a replication on equitable grounds, setting up that the defendant had a separate estate, which is all that they require. The replication is embarrassing, as under it the plaintiffs might prove that the defendant had property within the meaning of Con. Stat, U. C., cap. 73, and succeed on such proof. But it has been held in *McGuire* v. *McGuire*, 28 C. P. 123, and other cases, that such property is not separate estate within the meaning of 35 Vic., c. 16, s. 9, so as to make a married woman liable on a contract made with reference to it.

Mr. Dalton thought that the replication was unnecessary to the plaintiffs, and embarrassing to the defendants, and should therefore be struck out.

Order accordingly.

Merchants' Bank v. Moffat.

Discovery—Communications between Attorney and Client.

[June 26, 1876—Mr. Dalton.]

A summons was obtained for the re-examination of the plaintiff's manager in Toronto, and the production by him of a letter of his written to the General Manager in Montreal, and a letter written in reply by the latter. On a former examination, the production of these letters was refused on the ground that they were privileged as containing an opinion by the plaintiff's attorney as to the validity of the defendant's endorsement on certain promissory notes, which endorsement had been given by another party acting under a power of attorney from the defendant.

Rae shewed cause. The affidavit of the attorney for the Bank shews that the first of these letters was in effect his opinion on the point submitted to him, having been taken down by the writer from his verbal statement, and read over to him before it was despatched, and that when he gave the opinion he was convinced that litigation would spring out of the facts on which it was based. It is also shewn by an affidavit of the Toronto manager, that the letter written in reply to his own was written with reference to the opinion and would certainly disclose it. The letters clearly come within the well established rule that makes communications between attorney and client privileged. This rule is of even wider application than it used to be and now applies to all communications made by an attorney in his professional capacity to his client, even though made with reference to no present or prospective litigation. The authorities are collected in *Minet* v. *Morgan* L. R. 8 Chy., 361, where reference is made to the wider application of the rule now than in former times. This case has been followed in *Hamelyn* v. *Whyte*, 6 P. R. 143. The second letter is equally privileged with the first—the opinion was given to the Corporation as a whole, and the letters were both written by its officers and had immediate reference to the same subject-matter.

Biggar contra. The cases relied upon by plaintiff's counsel are all Chancery cases and turn mainly on the question of title. In these cases the liability to produce is much less, and the privilege much wider than in any other. The Common Law jurisdiction as to inspection, under s. 197 of our C. L. P. Act (Imp. Stat., 14, 15, V, c. 99, s. 6) is extended by ss. 189, 190, which are taken from the Imperial Act of 1854 (c. 125, ss. 50, 51), and is now wider than

the equity jurisdiction as to discovery: *Woolley* v. *North London Railway Company*, L. R. 4 C. P. 612. It is "limited only by what the Court thinks just," (per Erle, C. J., in *Daniel* v. *Bond*, 9 C. B. N. S. 716, approved in *Hill* v. *Campbell*, L. R. 10 C. P. 222). The letters in question were neither written by the solicitor, nor to him. Even should the first letter be considered as coming in effect from him, and being therefore protected from inspection, the second letter could not be viewed in that light. It cannot be maintained that every letter which might be written, containing reference to a solicitor's opinion, is equally privileged with the opinion itself. The question for the Court is whether the ends of justice would be served by the production of the document, and the defendant in this case believed that these ends would be served by the production of the letter, since it would show that the plaintiffs were aware that the party who endorsed the defendant's name on the notes had no power to do so. The rule laid down by Brett J., in *Woolley* v. *North London Railway Company* has been followed in *Wiman* v. *Bradstreet*, 2 Chy. Cham. 77, and in *Toronto Gravel Road Co.*, v. *Taylor*, 6 P. R. 227, while the last English case on the subject, *Smith* v. *Daniell*, L. R. 18 Eq. 649 (July 1874), is strongly in favor of the defendant's contention.

Mr. Dalton thought that both letters were privileged under the general rule as to communications between attorney and client. The object of the rule would be defeated if parties were allowed to arrive indirectly at the purport of such communications by obtaining inspection of such documents as those in question in this case.

Summons discharged.

Ferguson v. Elliott.

Assignment of debt—Pleading.

[Sept. 1, 1876—Mr. Dalton.]

This was an action to recover a debt, to which the defendant pleaded assignment of the debt before action. A summons was obtained to strike out the plea on the ground that the name of the assignee should have been given.

Mr. Marsh (Mulock & Campbell) shewed cause, and contended that the statute which makes choses in action assignable at law, 35 Vict., cap. 12, has the effect of making the assignment complete by the mere giving of a writing to the assignee by the assignor. There is therefore no presumption that the debtor is acquainted with the name of the assignee, and he should not be required to give it. The plea in question is very similar to one alleging that the plaintiff was not the lawful holder in an action on a bill or note.

Monkman, contra, cited Stephen on Pleading, p. 246, to show that either the names of third parties referred to in pleadings should be mentioned, or an allegation should be made to the effect that they are not within the knowledge of the party pleading.

Mr. Dalton thought that the principle laid down by Stephen applied to this case, and that the plea should have been drawn in conformity with it. The plea must be amended by stating the name of the assignee, or alleging that his name is not within defendant's knowledge—such amendment, however, only to be permitted on the defendant making an affidavit as to his belief that an assignment has been made. Costs to be costs in the cause.

NOTES OF CASES.

CHANCERY.

Abell v. Morrison.

[May 31, 1876.

Lost Promissory Note.

This was a suit to compel the payment of a certain promissory note made by the defendant to the plaintiff, and by the plaintiff lost after maturity. The defendant allowed the bill to be taken *pro confesso*, and did not appear at the hearing.

Spragge, C., thought that under the circumstances a decree should issue for payment of the amount to be found due without requiring security from the plaintiff.

Black v. Fountain.

[June 21, 1876.]

Insolvency—Fraudulent assignment.

A trader being in insolvent circumstances made an assignment in Nov. 1871 for the benefit of creditors. In March, 1872, Lowe and Smith, two of his creditors, arranged with his other creditors by agreeing to pay 65c. on the dollar, out of moneys to be paid by the insolvent out of the business, and they then ranking as creditors of Fountain for a certain amount. Among the property assigned were two parcels of land, one a lot in Chatham, mortgaged for $700, and the other a farm lot mortgaged for $300, in which mortgages the wife of the insolvent had joined to bar her dower. In the assignment it was stipulated that the assignee should obtain an

absolute release of dower, but the wife objected to this. In the following July another agreement was entered into between Lowe and Smith and the insolvent by which Lowe and Smith's claim was stated and settled and its liquidation provided for. The Chatham lot was to be taken by them at $1,300 on account of the debt, they assuming payment of the mortgage, and, for the balance $2,280, a promissory note was given by the insolvent, indorsed by his wife and one Taylor, it being part of the arrangement that the wife should release her dower in the Chatham lot, for which she was to receive an absolute conveyance of the farm lot. The value of the farm lot was shewn to be $2,000 including the $300 mortgage.

Spragge, C. In my judgment this transaction was a fraud upon creditors and ought to be set aside as against them, and the decree must be with costs.

Moss for plaintiff.

Maclennan for defendant.

Re O'Donohue.

[June 21, 1876.]

Quieting Titles Act.

This was a proceeding to quiet the title of one K. O'Donohue to a lot of land in the Township of Elderslie. The original grant had been made to one Drysdale, his heirs and assigns in fee, but the evidence adduced before the Referee shewed that the grant was intended to be for the benefit of two partners of the granter as well as the grantee himself. The petitioner claimed title as purchaser at sheriff's sale under a *fi. fa.* lands on the 9th of May 1868, one of the execution debtors having died before the writ of *fi. fa.* issued, after having executed deeds of assignment of his interest in trust for creditors. The two other parties had entered into contracts for the sale of part of the lot and had also assigned their interests to trustees.

The Referee refused a certificate to quiet title, which decision was affirmed on appeal with costs by Spragge, C.

Meek for the petitioner.

Ewart contra.

Cameron v. Wigle.

[June 21, 1876.]

Railway Company—Compensation for land—Tenant for life.

The owner of land, one Stephen Brooker, devised the same to his wife for life, remainder to his three daughters who conveyed their estate in remainder to the plaintiff and the defendants Wigle and Quinn. In 1871 the widow conveyed 4 38-100 acres to the Canada Southern Railway Company for the purposes of the road; the Company paying her $244, which it was admitted by all parties, was a full compensation for the fee in the portion so sold.

Spragge, C. was of opinion that the plaintiff and the defendants, Wigle and Quinn, were entitled to an inquiry of what proportion of the compensation money paid to Eligah Brooker was, at the time of such payment, properly payable to her in respect of her interest as tenant for life, and what proportion was properly payable to the parties entitled in remainder in respect of their interest; and that they were entitled to an order for payment of the latter amount by the Railway Company to them with interest from the date of the payment to Mrs. Brooker.

A. Cameron for plaintiff.

Cattanach for the Railway Company.

Patric v. Sylvester.

[June 28, 1876.

Patent of invention—Infringement—Injunction.

This was a bill to restrain the infringement by the defendant, of a patent obtained by the plaintiff in 1869, and renewed on amended specifications in Sept. 1874, for "Improvement on grain and seed drills," and, so far as the suit was concerned, the improvement claimed, consisted of "the novel combination and arrangement . . . of flexible conductor tubes, *(f)* ground tubes, *(g)* chains or analogous suspenders, *(h)* roller, *(i)* draw bars, *(m)* locking stud, *(n)* spiral spring *(o)* pivot connections 1 2 3," the object attained being that, "the union of the ground tubes to the draw bars is accomplished in a manner which will permit the lower end of the tube to give way when coming in contact with a fixed stone, or other serious obstruction, without injury to the tube, which immediately resumes its position when the obstacle is surmounted, and without stoppage of the machine, or demanding any attention of the person in charge. The defendant it appeared had obtained a patent in January 1875, for what he called "Sylvesters improved spring hoe," the only difference as the bill stated, between the pretended invention of the defendant, and that of the plaintiff, being one of mere form, without any material alteration of situation, and without any substantive different combination of mechanicism. The defendant objected that plaintiff's patent was void for want of novelty.

Proudfoot, V. C., thought it established by

many cases, that a patent may issue for the combination of previously known implements, or elements. That this must be so, is apparent from the limited number of the mechanical powers though the combinations of them may be very numerous.

Bethune, Q.C., and *Moss*, for plaintiff.

The Attorney General (*Mowat*) and *Fitzgerald*, Q.C., for defendant.

INSOLVENCY CASE.

Re Harris, an Insolvent.

Insolvent Act of 1875—*What constitutes "default of appointment" of assignor—Interpretation of* 38 *Vict. cap.* 16, *secs.* 22, 29 *and* 102.

It is improper for the official assignee at the first meeting of creditors to act as chairman.

When the majority of creditors in numbers vote one way as to the appointment of an assignee, and the majority in value another way, there is not a "default of appointment," and under the circumstances of this case it was properly brought before the Judge, under sec. 102, to decide as to who should be assignee.

A person properly selected as assignee is not ineligible because he is not an official assignee, or a resident of the county.

[Brockville, April 13, 1876.]

The insolvent in February, 1876, made an assignment under the Insolvent Act of 1875 to E. H. W., an official assignee for the County of Grenville. A meeting of the creditors was called for 28th March, to receive statements of the insolvent's affairs and to appoint an assignee, if they should see fit. At this meeting the official assignee was appointed chairman, and acted as such. A motion was made to appoint him assignee of the estate, to which an amendment was moved to appoint one A. M. to that position. Upon a vote being taken 19 creditors representing $9,334.14 in value, supported the motion; and two, representing $22,150.00, the amendment. The chairman held that there was "no assignee appointed." (The effect of a default of appointment being that he would, under sec. 29, become assignee.)

Some of the creditors who voted with the majority in value, brought the matter before the Junior County Judge of Leeds and Grenville by petition, asking that he should decide upon the motions respectively, and declare A. M. the duly appointed assignee, or should make an order directing the official assignee to call a meeting of the creditors to appoint an assignee. A summons having been issued returnable on 13th April.

Walker shewed cause. He contended that the matter did not come within the purview of section 102, as no resolutions were moved to be submitted to the Judge; that there was a "default of appointment" under sec. 29, and that the official assignee, therefore, became assignee; that there was no power to appoint A. M. assignee, as he was not an official assignee, or a resident of the United Counties; and that the Judge had no power to command the official assignee to call a meeting to elect an assignee.

Pinhey contra, contended that the words "default of appointment," refer to a case where no meeting has been held, or some similar case. The resolutions voted on at the meeting are brought before the Judge by the petition, and he has a right to decide between them under sec. 102 of the Act.

McDonald, J. J. (after drawing attention to the fact that the official assignee ought not, under sec. 22 of Act, to have been chairman of the meeting, and commenting strongly upon the impropriety of his occupying that position.) As to the question whether there was a default of appointment under sec. 29, or whether this was a case within sec. 102, my decision is that the words "default of appointment" do not refer to a case where the majority in number vote one way and the majority in value the other way, for I hold that in such an event there is no default but really an election, although the result of that election may not be known, until the judge has decided between the conflicting resolutions, or parties, or, as I might say, upon the double choice. I presume, if a meeting were called, but the creditors entitled to appoint an assignee did not attend, or attending, did not make any appointment, not seeing fit to do so, (see form 9 to Act,) there would be a default, Bumps on Bankruptcy, 466. So if there was a tie in numbers and a tie in value, (of course an exceedingly improbable contingency) there might possibly be a default. But I hold that in this case there was not a default, and that it is my duty to decide under sec. 102, as between the views of each section. Those views as expressed in the resolutions submitted and voted upon at the meeting, are sufficiently brought before me by the petition and the minutes. The latter show that one of the petitioners moved a resolution that the offer of the insolvent be not then accepted, and to adjourn the meeting from the 28th March to the 18th April, and that an amendment, which did not really effect the question of adjournment, but merely the offer of the insolvent, was supported by the majority in number and declared carried. Had

the meeting been adjourned, ample opportunity would have been afforded for submitting the whole question to the Judge, and having it decided before the time fixed for the adjourned meeting. But the mere fact of a majority voting down a resolution to adjourn, or refusing to embody its views in the shape of resolutions, or taking any other high handed course must not be allowed to defeat the law. I have above stated that I consider the views of each section to be before me, and I think the proceedings taken in this matter have "referred the resolutions with a statement of the vote taken thereon" (sec. 102) to me. I therefore proceed to decide between them, and do decide in favor of the views of the majority in value, and in favor of such majority, and do decide that A. M. is the assignee.

I also overrule the objection that because the candidate of the majority in value is not an official assignee, and is not a resident of these United Counties, he is not eligible to be appointed assignee.

Did I think it necessary so to do I would order M. W. to call a meeting; but I do not. If my decision is correct he is not assignee. If I am wrong, and there was a "default of appointment" by virtue of which he became assignee, the inspectors, or five creditors can require him to call a meeting, which will have power to remove him and appoint another in his stead.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR NOVEMBER AND DECEMBER, 1875, AND JANUARY, 1876.

From the American Law Review.

Accountant.—*See* Costs.

Acknowledgment.—*See* Deed.

Action.

An action for arrears of a rent-charge upon land in Australia is not maintainable in England.—*Whitaker* v. *Forbes*, L. R. 10 C. P. 583; s. c. 1 C. P. D. 51.

Act of God.—*See* Carrier, 1.

Adultery.—*See* Contract, 3.

Adverse Possession.—*See* Limitation, Statute of, 1.

Affidavit.—*See* Deed.

Agency.—*See* Principal and Agent.

Agreement.—*See* Contract.

Alteration of Contract.—*See* Contract, 2.

Ancient Lights.

A house with ancient lights abutted upon a street varying in width from thirty-four to thirty-eight feet. An injunction was granted, restraining the erection of a house on the opposite side of the street to a height which would make the angle incidence of light upon the centre of said lights greater than forty-five degrees.—*Hackett* v. *Baiss*, L. R. 20 Eq. 494.

Annuity.—*See* Legacy, 2.

Appointment.

A testator disposed of his property in the following terms: "I give, devise and bequeath all my property, over which I have any disposing power at my decease," to trustees in trust for his wife for life; and after her decease, for all his children equal shares, who should attain twenty-one; and upon failure of children, upon trust for the brothers and sisters of the testator's wife. Under a settlement the wife had an estate for life in certain property, and the testator had a power of appointment among his children. Under the will of T., the testator had a power to appoint certain other property to his wife for life, subject to which power the property was given to his children. *Held*, that the will operated as an appointment both under the settlement and under the will.—*Thornton* v. *Thornton*, L. R. 20 Eq. 599.

See Trust, 2.

Apportionment.—*See* Legacy, 2.

Appropriation of Payments.

A creditor of a partnership, who is also creditor of one of the partners separately, and has security applicable to both debts, may apply the proceeds of the security to the payment of such debts in any way he may think fit.—See *Ex parte Dickin. In re Foster*, L. R. 20 Eq. 767.

See Bills and Notes, 1, 2.

Arbitration.

The plaintiff was the transferee of shares in a company which denied his right to the shares; and the ground of the charge in the plaintiff's declaration was, that the company refused him his right as a member. The company answered, that the cause of action was a dispute between the company and the plaintiff as a member of the company, and by the rules of the company ought to be settled by arbitration. *Held*, that the dispute was not between the company and the plaintiff *as a member*, and did not fall within the arbitration clause.—*Prentice* v. *London*, L. R. 10 C. P. 679.

Assignment.—*See* Priority, 2.

Attorney.—*See* Solicitor.

Bankruptcy.

1. Certain bankers to whom S. was indebted refused to accept security which S. offered; but they said that circumstances might arise which might make it desirable for them to have it; and S. agreed to let them have it at any time thereafter, if they should desire it. The bankers made further advances,

and then refused to advance more, and requested S. to transfer said security to them, which S. did. A few days later S. filed a petition for liquidation. *Held*, that the bankers were entitled to hold said security, as there was no fraudulent preference. The bankers were incumbrances acting in good faith and for valuable consideration; and the transaction was not illegal or an evasion of the law. —*Ex parte Hodgkin. In re Softly*, L. R. 20 Eq. 746.

2. In accordance with suggestions of a creditor and under pressure from him, a debtor bought goods from other parties, and with the proceeds of their sale paid off part of said creditor's debt. The debtor became bankrupt. *Held*, that said transaction was in its nature fraudulent, and that the creditor must repay to the trustee in bankruptcy the sum he had received, as it was a fraudulent preference, although made under pressure.—*Ex parte Reader. In re Wrigley*, L. R. 20 Eq. 763.

3. A bankrupt carried on his business for the benefit of his creditors with consent of the trustee. The plaintiff, who became a creditor of the bankrupt after and in ignorance of the bankruptcy, obtained judgment on his debt, and seized a part of the bankrupt's effects which had been acquired since the bankruptcy. *Held*, that in equity the effects seized belonged to the plaintiff.—*Engelback* v *Nixon*, L. R. 10 C. P. 645.

See Bills and Notes, 1, 2; Lease, 2; Partnership, 1; Trust, 3.

Bequest.—*See* Devise; Illegitimate Children; Legacy; Will, Bill of Sale.—*See* Fixtures.

Bills and Notes.

1. M. in South America drew a bill on Y. in London, and Y. accepted it. M. then remitted Y. bills of exchange to cover the acceptance. Y. became insolvent before the bill was paid. M. also became insolvent, being indebted to Y. for a sum much larger than the amount of said bill, and executed a composition deed with some of his creditors; but to this deed the indorsee of said bill was not a party. The indorsee applied for an order directing that the proceeds of said remittances should be applied to the payment of said bill. *Held*, that as M. was not in bankruptcy, the remittances were subject to his direction and might be applied to the general balance of his indebtedness to Y., if he should so direct; and that the court had no jurisdiction over the remittances.—*Ex parte General South American Co. In re Yglesias*, L. R. 10 Ch. 635.

2. G. in Malaga was in the habit of drawing bills on Y. in London, and of remitting bills to enable Y. to meet his acceptances. An account was kept of these transactions, entitled "Account No. 1." All other dealings between the parties formed the subject of a separate account, entitled "Account No. 2." Y. transmitted half-yearly accounts made up substantially as follows: Bills accepted were entered on the debit side, and interest was debited on each bill for the period between the day upon which it would become payable and the day upon which the next half-yearly account was made up. Bills remitted were entered upon the credit side, and interest was credited on each bill for the period between the date of its falling due and the close of the account. If a bill remitted was dishonoured at maturity, then the amount of the bill and interest were entered on the debit side; thus, in substance, striking the bill out of the account. Y. became insolvent, and compounded with his creditors for 3s. 4d. in the pound. Crediting Y. with 3s. 4d. in the pound on his acceptances, the balance was in favour of G. At the time of his suspending payment, Y. held remittances sent him by G. as aforesaid. *Held*, that as Y. was discharged from his liability on his acceptances by the composition, and as the remittances were specifically appropriated to Y.'s acceptances, the remainder of the remittances, after Y. had been reimbursed for the amount he had paid on the bills, belonged to G.—*Ex parte Gomez. In re Yglesias*, L. R. 10 Ch. 639.

3. A bill of exchange was drawn in London by the defendant upon French subjects domiciled in Paris, and was indorsed by the plaintiff. The bill was payable Oct. 5, 1870; but before this date the time for payment and protesting current bills of exchange was enlarged by Napoleon, and again, from time to time, by the French government; so that the said bill did not become payable until Sept. 5, 1871, upon which day it was protested, and notice of dishonor sent all parties. *Held*, that the obligations of the indorser or drawer of said bill were to be measured by the obligations of the acceptor, which were governed by said legislation; and that the defendants were therefore liable in an action brought in England on said bill.—*Rouquette* v. *Overman*, L. R. 10 Q. B. 525.

See Check; Principal and Agent; Set-off, 4.

Carrier.

1. The defendant, who ran a line of steamers from London to Aberdeen, received the plaintiff's mare to be carried to Aberdeen. At a part of the voyage not determined by the evidence, the mare was injured during rough weather, so that she died. The jury found that the injury was caused partly by more than ordinary bad weather, and partly by the conduct of the mare herself by reason of fright and consequent struggling, without any negligence of the defendant. *Held*, that the defendant was liable as an insurer, not because he was a common carrier, but because he carried the plaintiff's mare in his ship for hire; and that it made no difference whether the mare was injured within or without the realm. A loss to be caused by the act of God must have been caused directly and exclusively by such a direct and violent and sudden and irresistable act of nature as the defendant could not by any amount of ability foresee would happen, or, if he could forsee that it would happen, could not by any amount of care and

skill resist, so as to prevent its effect. Discussion of law of common carriers by water.—*Nugent* v. *Smith*, L. R. 1 C. P. D. 19.

2. The defendant, whose business it was to move furniture and other goods to all parts of England, agreed in writing to move the plaintiff's furniture, the defendant "undertaking risk of breakages, if any, not exceeding £5 on any one article;" and these terms the plaintiff accepted. The furniture was burned while in transit, without any negligence on the defendant's part. *Held*, that by the contract the defendant was not liable, as he had undertaken the casuality of breakage only; and that it was unnecessary to consider whether the defendant was in the ordinary course of his business a common carrier, as there was a special contract.—*Scaife* v. *Farrant*, L. R. 10 Ex. (Ex. Ch.) 358.

Charitable Trust.—*See* Trust, 1.

Charter Party.

By charterparty, the cargo was to be loaded on a vessel in thirteen working-days, and to be discharged at not less than thirty-five tons per working-day; ten days' demurrage for all days above said days; charterer's liability to cease when the ship is loaded, the captain or owner having a lien on cargo for freight and demurrage. The vessel was detained five days over said thirteen days. *Held*, that the charterer's liability for the demurrage of five days ceased when the ship was loaded. *Quære*, whether a lien is given for all breaches for which the shipowner would have had a remedy against the charterer but for the clause limiting his liability. *Quære*, whether the charterer's liability for unliquidated damages for detention beyond the demurrage days would cease on the vessel being loaded.—*Kish* v. *Cory*, L. R. 10 Q. B. (Ex. Ch.) 553.

Check.

Where the drawer of a check has no funds at the bank at the time of drawing, and had for some months had notice from the bank that no checks of his would be paid unless provided for, it was held unnecessary for the payee to prove presentment and dishonor.—*Wirth* v. *Austin*, L. R. 10 C. P. 689.

Churchyard.

An English churchyard is the freehold of the incumbent, subject to the right of the parishioner, or stranger happening to die in the parish, to simple interment, but to no more. The incumbent has a *prima facie* right to prohibit altogether the placing of any gravestone, or to permit it upon proper conditions, such as those which relate to the size and character of the stone, the legality or propriety of the inscription upon it, on the payment of a proper fee.—Sir Robert Phillimore in *Keet* v. *Smith*, L. R. 4 Ad. & Ec. 398.

Class.—*See* Legacy, 3; Settlement, 4.

Commercial Paper.—*See* Bills and Notes; Negotiable Instrument.

Common Carrier.—*See* Carrier.

Condition.—*See* Contract, 6.

Conflict of Laws.—*See* Bills and Notes, 8.

Consideration.—*See* Contract, 3, 4.

Construction.—*See* Appointment; Carrier, 2; Charterparty; Contract; Devise; Fixtures; Illegitimate Children; Insurance, 1; Legacy; Partnership, 2; Settlement; Statute; Way; Will.

Contract.

1. The defendant, a telegraph manufacturing company, agreed to manufacture a series of submarine cables for the plaintiff, a telegraph company, by a contract containing the following terms: The cable to be laid within ten months; a payment of £40,000 to be made on the order being given for the cable; certain instalments to be paid upon certificates from the plaintiff's engineer that the manufacturer of the cable was making sufficient progress to entitle the defendant thereto; a final payment to be made on the cables being completely laid and certified by the plaintiff's engineer. B. was named in the contract as the plaintiff's engineer. B., who agreed to act as engineer for the plaintiff for a certain commission, subsequently agreed with the defendant to lay the cables for it upon receiving certain payments therefor, to be made upon the receipt by the defendant of the instalments payable by the plaintiff under its contract. The plaintiff paid said £40,000, and subsequently learned of B.'s contract with the defendant. *Held*, that the plaintiff was entitled to a decree for return of said £40,000, and the commission paid B.; and that the contract between the plaintiff and defendant should be rescinded.—*Panama & South Pacific Telegraph Co.* v. *India Rubber, Gutta Percha, & Telegraph Co.*, L. R. 10 Ch. 515.

2. The plaintiff entered into a written contract to erect buildings on the defendant's land. One of the conditions of the contract made the certificate of the defendant's architect a condition precedent to the right to any payment. The plaintiff was paid for all the works for which the architect gave his certificate, and he brought an action for the value of certain work for which the architect's certificate had not been obtained. Said contract had been kept by the defendant's architect, and had been by him altered in a material part. The plaintiff contended that the contract was therefore void, and that he was entitled to a *quantum meruit* in respect of said work. *Held*, that although the defendant was responsible for said alteration, the written instrument must be looked at to ascertain the terms of the contract, whether the instrument were intrinsically binding or not; and that therefore the plaintiff was not entitled to recover.—*Pattinson* v. *Luckley*, L. R. 10 Ex. 330.

3. To an action against the defendant as executor on a bond, the executor pleaded that the plaintiff had seduced and committed adultery with the testator's wife, and that it had

been agreed between the testator and the plaintiff, that if the testator should not make public the plaintiff's conduct, the plaintiff would not sue on the bond; and that the testator had not made the adultery public. *Held*, that there was no consideration for said agreement. Demurrer allowed.—*Brown* v. *Brine*, 1 Ex. D. 5.

4. The plaintiff contracted to sell the defendant certain iron, deliverable in June, 1873. On June 2, and again in the middle of June, the defendant requested the plaintiff to allow the delivery to stand over; and accordingly nothing was done until Aug. 1, when the plaintiff wrote to the defendant, asking when he would take delivery; the defendant on Aug. 9 asked more time, and the plaintiff waited for a reasonable time, and on Oct. 20, 1874, began this action for breach of contract in refusing to accept or pay for the iron. The defendant contended that there was a substituted verbal agreement not enforceable under the Statute of Frauds. *Held*, that it appeared that there was neither a binding agreement to enlarge the time of delivery, nor a substituted contract; and that damages ought to be estimated according to the price of iron at a reasonable time after the defendant's letter of Aug. 9.—*Hickman* v. *Haynes*, L. R. 10 C. P. 598.

5. The defendant sold to the plaintiff the exclusive right of using a certain patent in Berlin. At the time of the sale the defendant had no such exclusive right, nor any patent in Prussia; nor could he acquire such patent, as the Prussian government uniformly refused to grant a patent for inventions already patented in a foreign country as this had been. All this was known to the plaintiff; but he purchased the exclusive right with the intention of deceiving the stockholders in a company being formed to use the patent with the belief that the company had such exclusive right; and the plaintiff expected, that if the company were formed, and proceeded to use the patent in Berlin, the company would make profits even without the exclusive right. The plaintiff brought this action to recover the purchase-money paid the defendant on the ground of failure of consideration. *Held*, that as the plaintiff knew all the facts in the case, he got what he paid for, and there was no failure of consideration; and also, that as the plaintiff had paid his money with the purpose of defrauding the intended shareholders in said company, it was money paid in furtherance of a fraud, and could not be recovered back.—*Begbie* v. *Phosphate Sewage Co.*, L. R. 10 Q. B. 491.

6. The defendant agreed to purchase the plaintiff's house and business on a certain future day in the event of the latter being proved by the plaintiff's books to be worth 7*l.* per week. The defendant entered into possession of the plaintiff's premises, and carried on the business, and ultimately sold it. The business was not proved by the books to be worth 7*l.* per week. *Held*, that the defendant, having received a substantial portion of the consideration, could not rely upon the non-performance of a condition precedent to excuse him from payment of the contract price.—*Carter* v. *Scargill*, L. R. 10 Q. B. 564.

7. The plaintiff railway company applied to the defendant railway company for a loan, which the defendant agreed to advance upon receiving running powers over the plaintiff's line. The money was advanced, and an agreement entered into, whereby (1) the defendant was to have running powers over the plaintiff's line, subject to such by-laws as the plaintiff should make from time to time; (2) the receipts from through traffic to be divided in certain proportions; (3) the defendant to be at liberty to have their own servants at the plaintiff's stations; (4) a complete system of through booking to be had, whether running powers were exercised or not; (5) the defendant, if using its running powers, to fix the fares, and if the plaintiff objected, the matter to be referred to arbitration; (6) the defendant not to carry local traffic upon the plaintiff's line unless desired so to do, and in such case, to receive fifteen per cent of the local fares; (7) the two companies to send by each other all traffic not otherwise consigned to and from stations on the lines of each other, when such lines formed the shortest route; (8) any difference under this agreement to be settled by arbitration. The plaintiff gave the defendant three months' notice of the determination of the agreement. *Held*, that the agreement was not determinable.—*Llanelly Railway & Dock Co.* v. *London & Northwestern Railway Co.*, L. R. 7 H. L. 550; s. c. L. R. 8 Ch. 942; 8 Am. Law Rev. 535.

See Bills and Notes, 3; Carrier; Insurance; Lease, 1, 3; Limitations, Statute of, 2; Partnership, 2; Settlement, 5; Specific Performance; Vendor and Purchaser; Wagering Contract.

Copyright.

To constitute an infringement under the English Dramatic Copyright Act, a material or substantial part of the copyright drama must be pirated.—*Chatterton* v. *Cave*, L. R. 10 C. P. 572.

Costs.

Five guineas per diem allowed a skilled accountant, and two and one-half guineas per diem allowed his clerk, for days upon which they were employed on work necessary and proper to be used in evidence in support of a claim.—*Laffitte's Claim*, L. R. 20 Eq. 650.

Damages.—*See* Contract 4; Negligence.

Decree.

In a salvage cause, after decree rendered, a mistake was discovered in the value of the vessel and cargo upon which the salvage was estimated. The court re-opened the case and altered its decree.—*The James Armstrong*, L. R. 4 Ad. & Ec. 380

Deed.

An acknowledgment of a deed was taken in

Pennsylvania before commissioners, who made an affidavit that it was duly taken, but omitted in the affidavit the place where it was taken and the description of the deponent. There was a notarial certificate setting forth the place where the affidavit was taken, and identifying the parties. *Held*, that the defect in the affidavit was supplied by the notarial certificate.—*Re Ann Coldwell*, L. R. 10 C. P. 667.

Delivery.—*See* Stoppage in Transitu.

Demurrage.—*See* Charterparty.

Demurrer.—*See* Vendor and Purchaser.

Devise.

1. A testator directed his trustees to divide the income arising from the residue of his estates between all his sons as tenants in common, with benefit of survivorship between them in case any or either of them should die without leaving lawful issue; and, in case any child who should be entitled to any principal money or income should die leaving lawful issue, the principal money, or share from which the interest of such child should be derived, should go to and be divided amongst such issue as tenants in common. Two sons died childless; two sons died leaving issue; and a fifth survived the other four, and died childless. The issue of said two sons claimed the capital sum representing said fifth son's share, against his personal representatives. *Held*, that the issue of said two sons of the testator were entitled to said capital sum.—*Cross* v. *Maltby*, L. R. 20 Eq. 378.

2. In February, 1826, the testator devised all his real estate, "except mortgage and trust estates," and all his personal estate, upon trust for T. and F. He also gave to his trustees all hereditaments whereof he was seized as mortgagee, upon trust upon payment of the moneys due to convey the same to the persons entitled to the equity of redemption; and he directed that the money received should form part of his personal estate. At the date of the will the testator was mortgagee of the Benliffe Estate, under a power-of-sale mortgage, whereby he could, on giving the mortgagor six months' notice, at any time sell the estate. In March, 1826, the mortgagor became bankrupt; and his assignees agreed to sell the equity to the testator, who paid the purchase money and entered into possession. No conveyance of the equity was ever made. In October, 1826, the testator died, leaving J. and C. his co-heirs. The trustees entered into receipt of the rents of the Benliffe Estate and administered them until 1869, when T. claimed one-half of the estate as heir-at-law of the testator. *Held*, that the purchase of the equity of redemption of the Benliffe Estate took the estate out of the operation of the will, and that no dry legal estate with an implied trust for the testator's heirs passed to the trustees; that there was, therefore, intestacy as to the Benliffe Estate, and T.'s claim against the trustees was barred by the Statute of Limitations.—*Yardly* v. *Holland*, L. R. 20 Eq. 428.

3. Devise of "all that messuage or tenement houses, buildings, farm, and lands called H., situate in the parish of L., containing by estimation eighty acres, more or less, now in the occupation of C.," to C. C. was, at the date of the will, occupying a farm called H., containing one hundred and seventy-five acres, of which eighty-nine were freehold in the parish of L., sixty-six were copyhold in said county, and the remainder were copyhold in another county. *Held*, that the whole hundred and seventy-five acres passed by the devise.

Devise under a power in a settlement, of "all that messuage or tenement, barn, and lands thereunto belonging, situate in the parish of B., called by the name of Claggetts and Sievelands." The settlement contained a schedule describing a piece of land by the above name, and subsequently six other pieces of land by different names. At the date of the will, all seven pieces of land were in one occupation, and known as "Claggetts, or Claygate Farm." *Held*, that all seven pieces of land passed by the devise.

Devise of a messuage, farmhouse, lands, and appurtenances, called T., situate in the parish of E., and in the occupation of A. At the date of the will, the T. farm consisted of two hundred and seventy-nine acres, of which one hundred and eighty-three were in the parish of W., and eighty-six in the parish of E. The farmhouse was in W., but the greater portion of the farm-buildings in E. *Held*, that the whole two hundred and seventy-nine acres passed by the devise.—*Whitfield* v. *Langdale*, 1 Ch. D. 61.

See Illegitimate Children; Legacy; Will.

Disclaimer.—*See* Lease, 2.

Disseisin.—*See* Limitations, Statute of, 1.

Documents, Inspection of.

Where the defendants in an action admitted that certain documents were in their custody, possession, or power, they were not allowed to refuse inspection on the ground that other persons had an interest in them.—*Plant* v. *Kendrick*, L. R. 10 C. P. 692.

Easement.—*See* Ancient Lights.

Equitable Mortgage.—*See* Priority, 1.

Equity.—*See* Bankruptcy, 3; Contract, 1; Injunction; Lease, 1; Nuisance, 1; Partnership, 2; Receiver; Settlement, 2, 3; Specific Performance; Trust, 4; Vendor and Purchaser.

Evidence.

1. Goods exposed to easy access by the public were stolen from a railway company. It was *held* that the fact that the company's servants had easier access and greater opportunities of stealing the goods than the public did not raise the presumption that the goods were stolen by the company's servants.—*M'Queen* v. *Great Western Railway Co.*, L. R. 10 Q. B. 569.

2. The prisoner was indicted for obtaining money from a certain person by false pretences; and also for insertiug in a newspaper, with intent to defraud, a fraudulent advertisement, which constituted the false pretences in question. In the course of the trial, two hundred and eighty-one letters, directed to the address given in the advertisement, were offered in evidence. These letters had been stopped by the post-office authorities, and had never been in the prisoner's possession. No proof was offered that the letters were written by the persons from whom they purported to come. *Held*, that the letters were admissable in evidence.—*The Queen* v. *Cooper*, 1 Q. B. D. 19.

See Check; Deed; Principal and Agent.

Executors and Administrators.—*See* Set-off, 2.

Fees.—*See* Costs.

Fixtures.

The lessee of a public-house borrowed money from M. for the purpose of carrying on his business, and as security for repayment executed a deed-poll, whereby he acknowledged the deposit of the lease as security for the loan and any sums paid "for insuring the premises, fixtures, and fittings therein against damage by fire;" and he agreed to execute on demand a legal mortgage of the premises. Subsequently the lessee delivered to J. a bill of sale, whereby, in consideration of a loan, he assigned to J. all the goods, chattels, property, and effects in and about the premises; and J. was given power to enter and sell. After this the lessee executed a mortgage to M. of the public-house and all the premises demised by the lease, with their appurtenances, together with the lease, according to the agreement in said deed-poll. In this mortgage, no mention was made of fixtures. The fixtures in the house consisted partly of what had been there before the date of the deed-poll, and partly of those which had been added subsequently. J. entered and took possession of the fittings and fixtures, and M. brought a bill in equity to restrain J. from selling. The Bill of Sales Act provides that a bill of sale must be registered, otherwise such bill of sale shall, as against assignees of the effects of the person whose goods are comprised in such bill of sale under the laws relating to bankruptcy, or under any assignment for the benefit of creditors, and as against sheriff's officers, be null and void. Fixtures under the interpretation clause are to be personal chattels. *Held*, that the above provisions of the Bill of Sales Act defining fixtures related only to the cases previously mentioned in the Act, and that said fittings and fixtures passed under the mortgage to M. who was entitled to hold them against J.—*Meux* v. *Jacobs*, L. R. 7 H. L. 481.

Food.—*See* Nuisance, 2.

Fraud.—*See* Contract, 1, 5.

Frauds, Statute of.

The plaintiff contracted verbally with the defendant to sell him twenty-two trees, then growing on the plaintiff's land, for £26, "the trees to be got away as soon as possible." The defendant had entered and cut six trees, and had agreed to sell the tops and stumps to a third person, when the plaintiff countermanded his sale. The defendant, nevertheless, cut down the remainder of the trees, and removed the whole; and the plaintiff brought an action for trespass, trover, and injury to his reversion. *Held*, that the sale was not of an interest in land within the fourth section of the Statute of Frauds; and that there was a sufficient receipt of said six trees to satisfy the seventeenth section of the statute.—*Marshall* v. *Green*, 1 C. P. D. 35.

Fraudulent Preference.—*See* Bankruptcy, 1, 2.

Husband and Wife.—*See* Settlement, 2, 5.

Illegitimate Children.

A testator, who had married the day before the date of his will, gave his wife power to dispose by will of his property amongst their children; and in default of such disposal, the testator gave his property equally between his children by his said wife. At the date of the will the testator had two illegitimate children by his said wife. *Held*, that, in default of disposal by the wife as aforesaid, the testator's property was undisposed of by his will.—*Dorin* v. *Dorin*, L. R. 7 H. L. 568; s. c. 17, Eq. 463; 9 Am. Law Rev. 92.

Injunction.

1. An injunction was granted restraining the defendant from entering upon, or depositing rubbish upon the plaintiff's garden; which acts the defendant was doing in such a manner as to constitute continuing trespasses, under color of an agreement with the occupiers of certain houses which abutted on the garden, to the enjoyment and management of which the occupiers were entitled.—*Allen* v. *Martin*, L. R. 20 Eq. 462.

2. A. and B., owning distinct properties, brought a bill to restrain a nuisance. A. made out a case, but B. did not. It was decreed that so much of the bill as related to B. be dismissed with costs, so far as occasioned by his joining with A. in the bill; and that an injunction in favor of A. be granted.—*Umfreville* v. *Johnson*, L. R. 10 Ch. 580.

See Ancient Lights; Lease, 1; Nuisance, 1.

Inspection of Documents.—*See* Documents, Inspection of.

Insurance.

1. A vessel was insured from "P. to Newcastle-on-Tyne, and for fifteen days whilst there after arrival." The vessel arrived at Newcastle-on-Tyne, discharged her cargo, was chartered for a new voyage and received part of a cargo, and then moved to a different part of the harbor to complete her loading, and, while there, was damaged by a storm. The stamp on the policy was sufficient to cover both a voyage and a time policy. *Held*, (by Kelly, C. B., and Amphlett, B.,—Cleasby,

B., dissenting), that the insurance was for a specific voyage which ended when the cargo was discharged, and that the insurers were not liable.—*Gambles* v. *Ocean Insurance Co.*, 1 Ex. D. 8.

2. Declaration to the effect that the defendant was member of a mutual insurance association, and caused himself to be insured upon a certain vessel, and that the plaintiff subscribed a policy on behalf of the members of the association in consideration of the defendant's agreeing to comply with certain rules which were to form part of the policy. By said rules, the manager was authorized to assess certain contributions upon the members of the association, and, in case of neglect to pay, to sue the delinquent member. The plaintiff was manager, and assessed a contribution on the defendant, which the latter refused to pay. Demurrer. *Held*, that the plaintiff by the terms of the policy was not personally liable; and that therefore there was no consideration between the plaintiff and defendant for the defendant's promise to pay said contributions. Demurrer sustained. —*Evans* v. *Hooper*, 1 Q. B. D. 45.

3. The plaintiff's effected insurance with the defendant on wool "in all or any shed or store or station, or in transit to S. by land only, or in any shed or store or any wharf in S., until placed on ship." No claim was to be recoverable if the property insured was previously or subsequently insured elsewhere, unless the particulars of such insurance should be notified to the defendant in writing, and allowed by endorsement on the policy. Subsequently the plaintiff's effected insurance on wool "at and from the River H. to S. per ships and steamers, and thence per ships to London, including the risk of craft from the time that the wools are first water-borne, and of transshipment or landing and reshipment at S." Of this insurance the defendant was not notified. It is the practice at S. not to deliver wool which has arrived for shipment direct to the ship for which it is intended, but to convey it to stores belonging to the stevedores of the ship. Receipts are then given by the stevedores, which are regarded as between ship and shipper as equivalent to the mate's receipts; and, in exchange for them, bills of lading are given on demand, whether the wool is in store or on board ship. The plaintiffs forwarded wool from said river to S., and there made a contract of affreightment for its conveyance to London in a certain vessel, and then caused it to be carried to the stores belonging to the stevedores of said vessel, who gave receipts according to the abovementioned practice. While in the stevedore's store, the wool was burned. *Held*, that the plaintiffs could not have recovered for said loss from the underwriters of the second policy; and that, as subsequent insurance to be within the clause in the first policy requiring notification thereof must be insurance as to a portion of the risks covered by the policy sued on, the plaintiffs were entitled to recover on the first policy.—*Australian Agricultural Co.* v. *Saunders*, L. R. 10 C. P. (Ex. Ch.) 668.

See Carrier, 1; Set-off, 3.

Judgment.—*See* Mortgage.

Jurisdiction.

The claim of a right which is not within the jurisdiction of a court to try cannot oust the jurisdiction of such court, if such right cannot exist in law.—*Hargreaves* v. *Diddams*, L. R. 10 Q. B. 582. See *Watkins* v. *Mayor*, L. R. 10 C. P. 662.

See Action; Bills and Notes, 1.

Landlord and Tenant.

The plaintiff, who was standing in a street upon an iron grating serving the double purpose of a coal-shoot and access of light to a kitchen, was injured by the grating giving way. A tenant was in possession of the premises under an agreement by which he covenanted to repair and keep the premises in tenantable repair and condition. The jury found that the grating was in an unsafe condition when the premises were let. There was no evidence that the lessor had any knowledge of the unsafe condition of the grating when the house was let; and the jury found that the lessor was not to blame for not knowing it. *Held*, that the lessor was not liable for the plaintiff's injury.—*Gwinnell* v. *Eamer*, L. R. 10 C. P. 658.

See Lease, 2; Specific Performance, 3; Waste.

Lease.

1. H. agreed to lease to the plaintiff certain premises, the lease to be in the form annexed to the agreement; and it was provided in the agreement that nothing therein should be construed as giving to the plaintiff a right of any easement which did not belong to the premises to be demised as they then existed, nor to any right of light and air derived from over the houses opposite. Subsequently H. granted to the plaintiff a lease of said premises, together with the house erected thereon, "and all cellars, lights, easements, ways, watercourses, privileges, advantages, and appurtenances to the said premises belonging," being in the form annexed to the agreement. H. subsequently leased to the defendants said houses opposite the premises leased the plaintiff; and the defendants pulled the houses down, and began the erection of a new building which was intended to be of a much greater height than the houses. *Held*, that the lease was controlled by the above provisions in said agreement, and that the plaintiff was not entitled to restrain the erection of said building by the defendants.—*Salaman* v. *Glover*, L. R. 20 Eq. 444.

2. The lessee of a building agreed to underlet a portion of the building to the plaintiff at a much less rent than the lessee was obliged to pay under his lease. The provisions in the agreement were substantially different from those in the lease. The lessee went into bankruptcy; and the trustee, in pursuance of the Bankruptcy Act, disclaimed all interest in the lease. By the act, if a lease was disclaimed, it was to be deemed to have been surrendered. The original lessor brought ejectment against the plaintiff, who then filed

this bill, praying that the original lessor might be ordered to execute a lease in accordance with the lessee's agreement with the plaintiff, and for an injunction restraining said action. The plaintiff contended that said disclaimer merged the term granted by the defendant in his reversion, subject, nevertheless, to said agreement. Bill dismissed. —*Taylor* v. *Gillott*, L. R. 20 Eq. 682.

3. An agreement for a lease of mines and minerals provided that the lease should contain all usual and customary mining clauses. *Held*, that the lessor was not entitled to have inserted in the lease a proviso for re-entry on non-payment of rents or royalties, or if and whenever there should be any breach by the lessee of any of the covenants and agreements contained in the lease.—*Hodgkinson* v. *Crowe*, L. R. 10 Ch. 622.

See Landlord and Tenant; Specific Performance, 3.

Legacy.

1. The testator gave the residue of his property upon trust to distribute the same "to my relatives, share and share alike, as the law directs." *Held*, that the residue must be distributed according to the Statute of Distributions; that is, *per stirpes*, and not *per capita*. —*Fielden* v. *Ashworth*, L. R. 20 Eq. 410.

2. The testator bequeathed £10,000, with interest on the same at four per cent from his death, to trustees, upon trust to pay the income on certain persons during the life of A., remainder over. The testator's estate was not sufficient to pay his legacies, and the realization of his estate occupied several years. The court directed that all sums applicable to said legacy and received by the trustees should be divisible reteably between capital and income, so that the trustees should pay to the tenants for life four per cent upon every sum invested to answer the legacy.—*In re Tinkler's Estate*, L. R. 20 Eq. 456.

3. A testatrix bequeathed her property "unto and equally between my father and mother, and all my brothers and sisters, share and share alike: nevertheless, I direct that the shares of my said brothers respectively shall not vest in them respectively until they shall respectively attain the age of twenty-one years; and the shares of my said sisters shall not vest in them respectively until they shall respectively attain that age or marry." There were five brothers and sisters living at the death of the testatrix, one of whom, a sister, attained twenty-one in the life-time of the testatrix. After the death of the testatrix, her mother gave birth to another son, and subsequently one of the sons attained twenty-one. *Held*, that the brothers and sisters formed a single class, to which they could be no addition upon one of the class attaining twenty-one; and that, therefore, the brother born after the death of the testatrix took no share of the legacy.—*In re Gardiner's Estate. Garratt* v. *Weeks*, L. R. 20 Eq. 647.

See Devise; Illegitimate Children; Will.

Letters.—*See* Evidence, 2: Limitations, Statute of, 2.

Libel.

Libel for the publication of the following words: "W. Science and Art Institute. The public are informed that M.'s connection with the institute has ceased, and that he is not authorized to receive subscriptions on its behalf;" signed by the defendants as officers of said institute; innuendo that the plaintiff falsely assumed and pretended to be authorized to receive subscriptions. The plaintiff had been a master in said institute, had been discharged, and had started a school called the W. Government School of Art, after which the above words were published. The plaintiff never had solicited subscriptions for said institute. *Held*, that there was no evidence of the innuendo, and that the words were not libellous.—*Mulligan* v. *Cole*, L. R. 10 Q. B. 549.

License.—*See* Statute.

Lien.—*See* Charterparty.

Light and Air.—*See* Ancient Lights.

Life-Estate.—*See* Limitations, Statute of, 1.

Limitations, Statute of.

1. Lands were settled in trust for A. for life, remainder in trust for B. for life, remainder in trust for B.'s wife for life, remainder in trust for the sons of B. and his wife successively in tail male, remainder in trust for B. in tail general, remainder over. By indenture, made without the consent of A., and reciting contrary to the fact that B. was seised in fee-simple of said lands, B. and his wife conveyed said lands to S. in fee-simple. S. entered into possession in 1835. A. died in 1848, B. in 1859 without issue, and his wife in 1873. *Held*, that S. had been in possession by virtue of the life-estates of B. and his wife, and not as possessor of a base fee, and that he had not acquired a title by adverse possession under the 23d section of the Statute of Limitations.—*Mills* v. *Capel*, L. R. 20 Eq. 692.

2. After a note was barred by the Statute of Limitations, the maker wrote to the payee as follows: "The old account between us, which has been standing over so long, has not escaped our memory; and as soon as we can get our affairs arranged, we will see you are paid. Perhaps in the mean time, you will let your clerk send me an account of how it stands." *Held* (by Cleasby, Pollock, and Amphlett, BB., and Grove and Denman, JJ.,—Coleridge, C. J., dissenting), that the letter took the note out of the Statute of Limitations.—*Chasemore* v. *Turner*, L. R. 10 Q. B. (Ex. Ch.) 500.

See Devise, 2; Set-off, 2.

Marriage Settlement.—*See* Settlement.

Misjoinder.—*See* Injunction, 2.

Mistake.—*See* Settlement, 3.

Mortgage.

A mortgagor covenanted to repay further advances. Further advances were made.

Held, that the further advances constituted a debt contracted at the date of the mortgage, so far as to prevent the creditor from presenting a petition in bankruptcy against the mortgagee under an act passed after the date of the mortgage, but before the date of a judgment obtained against the mortgagor for the amount of his debt.—*Ex parte Rashleigh. In re Dalzell*, L. R. 20 Eq. 782.

See BANKRUPTCY, 1; DEVISE, 2; FIXTURES; PRIORITY, 1; TRUST, 4.

MOTION.—*See* SPECIFIC PERFORMANCE, 4.

NEGLIGENCE.

The plaintiff's cattle were being driven along a road which crossed a railway; and while the cattle were crossing the railway, the servants of the railway company negligently let some trucks run down the railway, and frightened the cattle. Several of the cattle escaped, and ran along said road about a quarter of a mile, and then got into an orchard, and through a defective fence on to the railway, where they were discovered dead about four hours after their escape, having been run over by a train. *Held*, that the railway company was liable for the value of the cattle which were killed.—*Sneesby* v. *Lancashire and Yorkshire Railway Co.*, 1 Q. B. D. 42; s. c. L. R. 9 Q. B. 263; 9 Am. Law Rev. 95.

NEGOTIABLE INSTRUMENT.

Scrip was issued in England by an agent of Russia, by which the holder was to be entitled, after payment of certain instalments, to bonds of the Russian government to the full amount of said instalments. By the usage of bankers and of the stock exchange, this scrip was bought and sold before the bonds were issued, and was passed by delivery as a negotiable instrument. *Held*, that a good title to the scrip passed by delivery to a *bona fide* holder for value.—*Goodwin* v. *Robarts*, L. R. 10 Ex. (Ex. Ch.) 338; s. c. L. R. 10 Ex. 76; 10 Am. Law Rev. 120.

NOTARIAL CERTIFICATE.—*See* DEED.

NUISANCE.

1. The owner of houses sublet to weekly tenants cannot maintain a suit to restrain the noise, steam, and smoke of machinery causing a temporary nuisance. *It seems* that the weekly tenants could maintain the suit.—*Jones* v. *Chappell*, L. R. 20 Eq. 539.

2. It is a nuisance at common law to expose for sale for human food, cheese which is unfit for human food.—*Shillito* v. *Thompson*, 1 Q. B. D. 12.

PARISH.—*See* CHURCHYARD.

PARTIES.—*See* INJUNCTION, 2.

PARTNERSHIP.

1. By decree in a suit for dissolution of partnership, the business was ordered to be sold as a going concern. By order of the court, an offer of the plaintiff, one of the former partners, to buy the business for £3,000, was accepted; and he was ordered to pay interest upon the purchase-money until paid, and he was to be entitled to possession of the partnership property. The plaintiff entered into possession, but subsequently filed a petition in liquidation. The trustees sold the business for £3,500. *Held*, that the partnership business and effects were in the order and disposition of the plaintiff, with consent of the true owner, at the time of the bankruptcy; and that consequently the £3,500 belonged to the plaintiff's estate, the partnership being entitled to prove for the unpaid £3,000.—*Graham* v. *McCulloch*, L. R. 20 Eq. 397.

2. Four partners entered into an agreement, wherein, after reciting that they each had considerable sums of money employed in the business, which it might be detrimental for the others to repay immediately upon the retirement or decease of either of them, they agreed, that upon the decease of a partner, the clear balance as ascertained by the last stock-taking, due to such partner, should be repaid out of the business by certain annual instalments, unless the surviving partners should wish to pay such balance at an earlier period, which they might do; and they agreed that the last stock-taking should be conclusive as to the share of the deceased partner, and should be the sum to be paid his executors. *Held*, that the agreement was merely an arrangement for ascertaining and paying the pre-existing joint and several liability of the surviving partners to the estate of a deceased partner, and not an agreement substituting a new liability of the surviving partners, which should be joint only; and further, that if a new liability was treated, this liability was in equity several and not joint only. *Beresford* v. *Browning*, L. R. 20 Eq. 564. This decision was affirmed on appeal.—*Beresford* v. *Browning*, 1 Ch. D. 30.

See APPROPRIATION OF PAYMENTS.

PATENT.

A patent for a combination of several parts is not necessarily infringed by using a combination of a portion only of those parts.—See *Clark* v. *Adie*, L. R. 10 Ch. 667.

POSSESSION, REDUCTION TO.—*See* SETTLEMENT, 5.

POWER.—*See* APPOINTMENT; WILL.

PRACTICE.—*See* COSTS; SPECIFIC PERFORMANCE, 4.

PRESENTMENT.—*See* CHECK.

PRESUMPTION.—*See* EVIDENCE, 1.

PRINCIPAL AND AGENT.

M., the plaintiff's traveller, who had often received orders and payments for the same from the defendant, drew a bill payable to "my order," with the drawer's name left in blank, which the defendant accepted, and gave to M. by way of payment of the defendant's account with the plaintiff's. The defendant had previously accepted a bill drawn by M., with the drawer's name left blank, and the plaintiffs had accepted it in payment of a debt, but it did not appear whether such bill was drawn payable to "my order," or to

"our order." *Held*, that there was no evidence that M. had authority to receive in payment of the defendant's debt a bill payable to "my order."—*Hogarth* v. *Wherley*, L. R. 10 C. P. 630.

See Company, 4; Vendor and Purchaser.

Priority.

1. P., who was seised of an estate in trust for himself and H., as tenants in common, for several years received the whole of the rents, without accounting for any part of them to H. By his will, P. devised his freehold estate to his wife upon trust to raise an annuity for herself, and subject thereto to her two children R. and C. In 1872 R. and C. deposited the title-deeds of the estate with the plaintiffs, who were ignorant of H.'s interest, as security for a loan. In 1874 H. obtained a decree that the estate of P. was liable to account to H. for one moiety of the rents P. had received, and that H. was entitled to a charge upon the other moiety of the estate in respect of the amounts due H. The plaintiffs then instituted this suit for a declaration, that their security had priority over H.'s charge. Demurrer. *Held*, that the plaintiffs had a prior charge.—*British Mutual Investment Co.* v. *Smart*, L. R. 10 Ch. 567.

2. Residuary legatees were entitled to a testator's estate subject to an annuity, and a fund was retained in court to provide for the annuity. The legatees assigned their interest in said fund, and subsequently creditors established claims against the testator's estate. *Held*, that the creditors were entitled to payment from said funds in priority to the assignees of the same.—*Hooper* v. *Smart*, 1 Ch. D. 90.

Proviso.—*See* Lease, 3.

Quantum Meruit.—*See* Contract, 2.

Railway.—*See* Contract, 7; Evidence, 1; Negligence; Trust, 4.

Receiver.

A suit was brought to rescind a contract for the purchase of a coal-mine from the defendants, who held it under a lease by which they were obliged to keep the mine in operation. The plaintiffs were in occupation of the coal-mine, and in their bill they prayed the appointment of a receiver and manager of the mine. Receiver and manager appointed.—*Gibbs* v. *David*, L. R. 20 Eq. 373.

Rectification of Instruments.—*See* Settlement, 5.

Re-formation of Instruments.—*See* Settlement, 5.

Rent-Charge.—*See* Action.

Rescission of Contract.—*See* Contract, 1.

Residuary Legatee.—*See* Priority, 2.

Sale.—*See* Contract, 4; Frauds, Statute of; Specific Performance, 1, 2; Stoppage in Transitu; Vendor and Purchaser.

Salvage.—*See* Decree.

Scrip.—*See* Negotiable Instrument.

Security—*See* Appropriation of Payments Bankruptcy, 1.

Set-off.

1. Two trustees gave £4,000 to P. for investment in a mortgage. P. only invested £3,050 in the mortgage; but he represented he had so invested the whole of the fund. Subsequently £2,200, part of the sum invested in the mortgage, was paid off, and the money retained with the consent of the trustees for reinvestment; but it never was reinvested, and P. died insolvent. One of the trustees was indebted to P. *Held*, that the debt due to the trustees from P. could not be set off against the debt due from the trustees to P.—*Middleton* v. *Pollock*, L. R. 20 Eq. 515.

2. An administrator was held entitled to set off the whole of a debt due to the estate against a legacy to the debtor, although part of the debt was barred by the Statute of Limitations.—*In re Cordwell's Estate. White* v. *Cordwell*, L. R. 20, Eq. 644.

3. A policy-holder in a life-insurance company borrowed money of the company on his policy. The company was wound up, and the value of said policy was estimated. The insured died, and the company offered to prove the whole of their loan against his estate. The trustee of his estate claimed a set-off of said estimated value of the policy. *Held*, that there had been no such mutual dealings between the insured and the company as to constitute a case for set-off.—*Ex parte Price. In re Lankester*, L. R. 10 Ch. 648.

4. The holder of a bill of exchange received a dividend from the drawer's estate in bankruptcy, and subsequently sued the acceptor for the whole amount of the bill. The acceptor pleaded an equitable plea, that the holder was suing as trustee for the drawer to the amount of said dividend; and he claimed to set-off a debt due from the drawer to the amount of said dividend. *Held*, that the defendant was in equity entitled to set-off his debt.—*Thornton* v. *Maynard*, L. R. 10 C. P. 695.

Settlement.

1. D. agreed to execute a settlement of any property of the value of £100 or upwards to which he should become entitled at any one time and from one source. At this time D. was receiving half-pay as a lieutenant in her Majesty's navy. Subsequently, in accordance with the provisions of a statute, D. commuted his half-pay for the sum of £2,175. *Held*, that the commutation-money was not bound by the settlement.—*Churchill* v. *Denny*, L. R. 20 Eq. 534.

2. A carpenter earning 12*s.* a week had a wife and six young children to support. The court settled upon the wife and children the whole of a fund to which the wife became entitled, without deducting the amount of a debt owed by the husband.—*In re Cordwell's Estate. White* v. *Cordwell*, L. R. 20 Eq. 644.

3. A father induced his son to join with him in a new settlement of estates by representing that he had a power to charge the estates to the extent of £5,000, which power was to be released by the new settlement. The father was mistaken in thinking he had said power. *Held*, that the new settlement must be set aside, although the mistake was innocently made.—*Fane* v. *Fane*, L. R. 20 Eq. 698.

4. Certain property was settled in trust for E. for life, remainder, after her death leaving a child or children, to all and every the child or children of E., and the issue of such of said children as might be then dead, such issue to take their parent's share equally between them; the shares of sons to be paid to them on their attaining twenty-one, and of daughters on their attaining twenty-one or marriage. E. had six children, five of whom survived her and attained twenty-one; the sixth attained twenty-one, but died childless in E.'s lifetime. *Held*, that said sixth child took a vested interest, as the contingency upon which the gift to the class was to take place was not to be imported into the constitution of the class who were to take under the settlement.—*In re Orlebar's Settlement Trusts*, L. R. 20 Eq. 711.

5. A man who was about to marry a woman owning considerable personal property insisted that any settlement of the property should provide, that in case he survived the woman and there should be no child of the marriage, the fund should be at his absolute disposal. An agreement was signed by both said parties immediately before the marriage, providing that they should join after the marriage in transferring said property to trustees upon trust for the husband and wife during their lives; "the trusts of the capital being for and amongst the children according to the appointment of said husband and wife, or the survivor of them, and in default of appointment, to the children equally; and in the event of there being no children, and of the husband being the survivor, the trust-property to be at his absolute disposal." A settlement was subsequently executed; but it contained no provision for the event of there being no child and the husband dying before the wife. The property was transferred to trustees, and the husband received the income for several years, and died with part of the income in arrear. There was one child of the marriage, who died an infant in the lifetime of both parents. The representative of the husband claimed the arrears of income, and the whole of the property subject to the wife's life-estate. *Held*, that the settlement was not in accordance with the agreement, and must be rectified; and that the wife was entitled to the arrears of income and to the whole of the property. The transfer to the trustees after the marriage was not a reduction to possession by the husband.—*Cogan* v. *Duffield*, L. R. 20 Eq. 789.

6. By a marriage settlement, a fund was settled upon the following trusts: To pay the income to the husband during his life, and after his death to the wife for life; and after the death of the survivor, then, in case they should leave issue, who being daughters should marry or attain twenty-one, or being sons should attain twenty-one, to pay the principal equally amongst such issue as they should respectively attain twenty-one or marry; and in the mean time, until such issue should attain twenty-one or marry, to apply the income to the support of said issue: provided, that if any such issue as aforesaid should happen to die before they should respectively become entitled to their portions under the settlement, leaving issue of their respective bodies them surviving, then such last-mentioned issue should take their father's or mother's share or shares equally between them, the same to be paid over, and the interest in the mean time applied, at the time and in the manner limited relative to the original trust-moneys and the immediate issue of the marriage. But in case the husband and wife should die without leaving issue, or their issue should all die before they became entitled to receive their respective portions, and without leaving issue, then over. There were four children of the marriage, of whom two died in infancy in the lifetime of both parents. The third child survived his mother, attained twenty-one, and died a bachelor and intestate in the lifetime of his father. The fourth child attained twenty-one, and survived both parents. The question was, whether the whole fund belonged to the surviving child, or whether the third child acquired an indefeasibly vested interest in one moiety. *Held*, that the fourth child took the whole fund.—*Jeyes* v. *Savage*, L. R. 10 Ch. 555.

Shareholder.—*See* Trust, 4.

Ship.—*See* Carrier, 1; Charterparty; Decree; Insurance.

Slander.—*See* Libel.

Solicitor.

The relation of trustee and *cestui que trust* does not ordinarily exist between solicitor and client, although the solicitor may have received moneys from or for the client.—*Watson* v. *Woodman*, L. R. 20 Eq. 720.

Specific Performance.

1. An agreement was made for the sale of an estate, the vendor reserving "the necessary land for making a railway through the estate to Prince Town."—*Held*, that the reservation was void for uncertainty, and that the agreement could not be specifically en-

forced.—*Pearce* v. *Watts*, L. R. 20 Eq. 492.

2. The defendant agreed to assign his lease of certain premises and to sell certain fixtures to the plaintiff at a valuation to be fixed by L. In a suit for specific performance, a motion was made that the defendant be ordered to permit L. to enter the premises for the purpose of inspecting said fixtures and making an inventory of the same. Order granted.—*Smith* v. *Peters*, L. R. 20 Eq. 511.

3. An agreement between the owner of a public-house and the assignee of a lease of the same in possession stipulated that a new lease of the premises, to begin on the expiration of the old lease, should be granted by the owner and accepted by said assignee, the rent to be £100 yearly, and the lessee to pay a bonus of £600 upon a day which was fixed for completion of the lease; and it was further agreed, that if from any cause the lease should not be completed on said day, nor said bonus paid, the lessee should pay interest at five per cent from said day until completion. A lease was prepared and sent to the lessee, who never returned it nor paid the bonus, nor was a new lease executed; but he remained in possession for fourteen years after the expiration of the old lease, paying rent at £100 per annum, which was the same in amount as the rent which was payable under the old lease. The lessor died, and her representatives brought a bill for performance of the agreement, and payment of said bonus, with interest thereon at five per cent from the day fixed in the agreement for completion of the lease. *Held*, that the lessee was in possession under the agreement, and not under the old lease, and that there had been no waiver of the agreement. Decree according to the prayer of the bill.—*Shepheard* v. *Walker*, L. R. 20 Eq. 659.

4. In a redemption suit against a mortgagee in possession of business premises, a compromise was entered into between the plaintiff and defendant, whereby the plaintiff (the mortgagor) was to pay the defendant £4,500 upon a certain day, and the defendant was to pay all sums owed by him, and receive all moneys owed to him, growing out of the occupation of the mortgaged premises. The business was to be carried on by the defendant until the plaintiff paid said sum; and all the expenses of the business incurred after the date of this agreement were to be allowed to the defendant, he accounting for the proceeds of all sales. The plaintiff further agreed to stay proceedings, and the defendant to pay his own costs. The plaintiff failed to pay said sum by the appointed day, and the defendant moved for a decree of specific performance of said contract. *Held*, that the agreement could not be enforced by motion, but only by a bill for specific performance.—*Pryer* v. *Gribble*, L. R. 10 Ch. 534.

See Vendor and Purchaser.

Statute.

The defendant's house, called a "café," was found open, and seventeen females and twenty gentlemen were there, and were supplied with and paid for cigars, coffee, and ginger-beer, which they consumed. *Held*, that the house fell within a statute requiring a license for "houses kept open for public refreshment, resort, and entertainment."—*Muir* v. *Keay*, L. R. 10 Q. B. 594.

See Fixtures; Lease, 2; Mortgage; Way.

Statute of Frauds.—*See* Contract, 4; Frauds, Statute of; Vendor and Purchaser.

Statute of Limitations.—*See* Limitations, Statute of; Set-off, 2.

Stoppage in Transitu.

A. shipped cotton from Charleston for Liverpool under the following arrangement: A. sent to B., his agent at Liverpool, bills of lading of the cotton, under which the cotton was to be delivered at Liverpool to "order or its assigns, he or they paying freight immediately on the landing of the goods." The cotton was consigned to B.; and in the invoice it was described as "consigned to order for account and risk of C." Bills of exchange were also sent to B., who, on the arrival of the cotton at Liverpool, sent them to C. at Luddenden Foot for acceptance; and, upon their return accepted, B. sent the bill of lading of the cotton to C. C. then indorsed the bill of lading to a railway company, who paid charges, and sent the cotton to C. at Luddenden Foot. Said cotton was accordingly delivered to the railway company. C. became insolvent. *Held*, that, upon delivery of the cotton to the railway company, A.'s right of stoppage *in transitu* ceased.—*Ex parte Gibbes. In re Whitworth*, 1 Ch. D. 101.

Surrender.—*See* Lease, 2.

Tail, Tenant in.—*See* Limitations, Statute of, 1.

Tenant for Life.—*See* Legacy, 2.

Tenant in Tail.—*See* Limitations, Statute of, 1.

Tresspass.—*See* Injunction, 1.

Trust.

1. Lands were conveyed to certain persons upon a secret trust for the use of a parish. The rents of the lands were used for nearly three hundred years for charitable purposes. *Held*, that the lands were held subject to a charitable trusts.—*Attorney-General* v. *Webster*, L. R. 20 Eq. 483.

2. Trustees held a fund in trust for A. in default of appointment by B. B. died, and the solicitors wrote to the trustees, stating that in their belief there was not the slightest ground for supposing that any appointment had been made. The trustees paid the fund into court. *Held*, that the trustees would

have been justified in paying over the fund to A., even though an appointment had been subsequently discovered.—*In re Cull's Trusts*, L. R. 20 Eq. 561.

3. A bankrupt trustee who has trust-money to receive or deal with, so that he can misappropriate it, should be removed from his trusteeship.—*In re Barker's Trusts*, 1 Ch. D. 43.

4. H. held as trustee for the defendants, directors of a railway company, certain certificates of stock in said company, and was registered proprietor thereof. Such stock was issued to registered proprietors, and it was never noticed on the face of the certificates that the proprietor was a trustee. H. obtained advances from R. on deposit of the certificates as security, with a written agreement to execute a valid mortgage and transfer of the stock when requested. R. died without being registered as proprietor of the stock. The defendants discovered the fraud, and gave R.'s widow and executrix notice that H. had been trustee for them. The executrix thereupon obtained from H. a transfer of the certificates to herself; and she subsequently applied for a mandamus, commanding the defendants to register her as the proprietor of said stock. *Held*, that the defendants were entitled to the stock.—*Shropshire Union Railways and Canal Co.* v, *The Queen*, L. R. 7 H. L. 496; s. c. L. R. 8 Q. B. (Ex. Ch.) 421; L. R. 3 Q. B. 704; 8 Am. Law Rev. 303.

See Devise, 2; Priority, 1; Set-off, 1, 4; Solicitor.

Ultra Vires—*See* Company, 5.

Vendor and Purchaser.

In a bill for specific performance of an agreement to sell certain real estate, the plaintiff alleged, among other things, that the agreement was "signed on behalf of the company [the defendant] by B., the secretary, who was their authorized agent;" and also that the term "vendors," used in said agreement, "is intended to refer to the company, who were, in fact, the vendors of said premises." Demurrer. *Held*, that by the demurrer it was admitted that the vendors referred to in said agreement were said company, and that the agreement must be read as if the name of the company were inserted therein, and that therefore the vendors were sufficiently described in said agreement to satisfy the Statute of Frauds; also that it sufficiently appeared that B. was the company's agent for the purpose of signing said agreement.

It seems that a contract for the sale of real estate signed by an auctioneer on behalf of an unnamed owner is a valid contract under the Statute of Frauds.—*Beer* v. *London & Paris Hotel Co.*, L. R. 20 Eq. 412.

See Frauds, Statute of; Specific Performance, 1, 2; Stoppage in Transitu.

Venue.—*See* Action.

Vested Interest.—*See* Settlement, 4, 6.

Vis Major.—*See* Carrier, 1.

Wagering Contract.

To a declaration on a check the defendant pleaded that the check was received by the plaintiff for money alleged to be due upon a wagering contract, whereby the plaintiff was to furnish certain money which the defendant was to use in bets upon the result of certain horse-races; and in case of success the defendant was to pay the plaintiff a certain proportion of the money won, which money was that for which the check was given. *Held*, that the plaintiff was entitled to recover, as he was not claiming under a contract by way of wagering.—*Beeston* v. *Beeston*, 1 Ex. D. 13.

Waste.

The erection of buildings upon leased land by the lessee is not waste.—*Jones* v. *Chappell*, L. R. 20 Eq. 539.

Way.

A person who allowed trees and underwood on his land to grow across a way was held not to wilfully obstruct the way.—*Walker* v. *Horner*, 1 Q. B. D. 4.

Will.

1. Under the direction in a will to pay testamentary expenses and debts, it was *held* that the costs of an administration suit were included.—*Harlee* v. *Harlee*, L. R. 20 Eq. 471.

2. A married woman having separate estate, and having under her marriage settlement a power of appointment in the event of her dying in the lifetime of her husband, made a will with the assent of her husband, whom she survived, which disposed of all her property which she then had or thereafter should have. The husband left his wife all his property. After her husband's death, the wife expressed her adherence to the will, but did not re-execute it. *Held*, that the wife's will passed only her separate estate, and did not execute the power of appointment, nor pass property acquired from the husband.—*Willock* v. *Noble*, L. R. 7 H. L. 580; s. c. L. R. 8 Ch. 778; L. R. 2 P. & D. 276; 8 Am. Law Rev. 545.

See Appointment; Devise; Illegitimate Children; Legacy.

Words.

"*Entertainment.*"—*See* Statute,

"*Survivorship.*"—*See* Devise, 1.

"*Usual and customary Mining Clauses.*"—*See* Lease, 3.

"*Wilfully obstruct.*"—*See* Way.

FLOTSAM AND JETSAM.

To the many members of the legal profession whom the close of the Long Vacation brought back with reluctant steps from seaside or "centennial," it must have been some alleviation of their regrets to observe the changed and beautified aspect of the Hall which is the scene of their toils. The midsummer weeks have been busily employed in imparting a thorough cleansing and renovation to wall, pillar and ceiling, the beneficial effects of which shew that whatever evil associations may cling to political "whitewash," the value of the commercial article is undeniable. New carpets have been laid down in the court-rooms of the west wing, and we hear that in this respect, at least, Law is to follow Equity before long —thus reversing the time-honoured maxim. We are glad, also, to observe that in beautifying the interior of the Hall, the grounds in front of the building have not been neglected, as their newly gravelled walks and general appearance abundantly testify. The addition to the rear of the main building, now in process of construction by the Government, for the use of the Court of Appeal and the Master in Chancery, is rapidly approaching completion, and may not improbably be ready for occupation by Michaelmas Term. We regret that nothing has been done about a lavatory and other necessary conveniences. Osgoode Hall is in this respect one of the curiosities of the nineteenth century.

This passage occurs in Sir Vicary Gibb's* argument in the Banbury Peerage :† "Age may not be proof of impotency, but it is evidence of it. The probability of the Earl's begetting a child at eighty is very slight, and it is not increased by the appearance of another child two years later. Instances have been adduced for these extraordinary births, but none have been cited, in which a man at eighty-two, having begotten a son, had concealed the birth of such a son. Would not he seek publication rather than concealment? Besides, at the birth of children in families of distinction, it is generally an object of much anxiety to have the event authenticated. Some registry is made of it. None has been found here after the most diligent search. If the register is lost, the date may always be supplied by the banquets and festivities with which it is contemporaneous. Why! the whole country would have resounded with the ringing of bells; you would have had processions of old men upon the anniversary of such a prodigy. It would have excited as much surprise as if a mule had been brought to bed? It reminds me of the lines of Juvenal :—

Egregium sanctumque virum si cerno, bimembri
Hoc monstrum puero, vel mirandis sub aratro
Piscibus inventis, et fartæ comparo mulæ.
Sat. XIII. 64.

In no register, in no will, in no document, is there any notice of this wonderful production. And then, not content with one, the miracle must be multiplied. It was not enough that one child should be born to a man at eighty-two; he must have another when he was eighty-four. And nature consummated her prodigality, by lavishing on these children the strength and vigour which she usually denies to the offspring of imbecility."

Demurrers seem from the following report in the *Law Times* to be *in extremis* in England. We must say we do not see, if the parties agree upon the facts, why they should be put to the expense of a trial :—

* At the time attorney-general.

† Reported in an Appendix to Le Marchant's Gardner's Peerage, pp. 427, 428.

On the first case being opened, which came before the Court on "demurrer" to portions of the plaintiff's statement of facts,

Mellor, J., observed that the demurrers were what might be called "niggling demurrers"—that is, demurrers rather to the mode of stating the case than to the case itself, and

Quain, J., quite concurred in the observation.

Benjamin, Q.C., and *Cohen*, Q.C., the leading counsel in the case, said that they quite agreed in this view, and proposed to strike out the "demurrer," except on the broad ground that the action was not maintainable, which was assented to, and the case, which turned on the construction of a contract, was argued and decided on that footing.

On the next case being opened, which also came before the Court on "demurrer" to the statement of claim—the same counsel being concerned in the case—the same course was taken.

Benjamin said the demurrers were "ridiculous," and the best way would be to strike them out and let the case go to trial, when the broad question could be raised upon the real facts — not the pleader's facts — whether the action was maintainable.

Mellor, J., observed that this tended to show that demurrers had better be abolished altogether, the only really substantial ground of demurrer being that the action was not maintainable, which could be raised on the real facts stated in a case.

Quain, J., observed that this had been found to be the proper course to be pursued under the Common Law Procedure Act—a quarter of a century ago—long before the Judicature Act, and it was strange that under the Judicature Act the old obsolete method of "demurrer" should have been returned to.

It was agreed to strike out the demurrer, and send the case to trial.

"Just a Dream, my Lord."—There is something very beautiful in the exclamations and reflections occasionally given vent to by prisoners on hearing the sentence of the law after their conviction for the offenecs they have committed. For instance, what can be more touching than the utterance of a man named James Brown, who, at the Dundee Circuit Court, recently, was charged with having (1), on the 8th February, stolen a pair of trousers, a pair of braces, and penknife from an inn at Letham, (2), with having stolen a filly from a farm at Dunnichen; and (3), with having committed a peculiarly aggravated assault on a woman in the parish of Dunnichen? Brown, against whom there were previous convictions for theft and assault, having pleaded guilty to two out of the three charges now brought against him, was sentenced to fifteen months' imprisonment by the judge, who remarked that "short sentences did not seem to have any effect on him." "Fifteen months," ejaculated Brown, "is just a dream, my lord." The dreams of Brown evidently, like those described by the poet,

> "Repeat the wishes of the day.
> Tho' further toil his tired limbs refuse,
> The dreaming hunter still the chase pursues;
> The judge abed dispenses still the laws,
> And sleeps again o'er the unfinished cause."

How Sergeant Ballantyne Manages.—A correspondent of the *Scotsman*, referring to the debate on the rejected Barristers' Fees Bill, says:—The stories throughout the debate were as numerous as they are at any bar mess, but they did not include one which is fathered on Sergeant Ballantine. This distinguished barrister, as the story goes, was travelling down to his suburban house one night, when a friend asked him how it was that he managed to overtake all his work, and especially how he got on when two cases were called in different courts at the same time. "Well," replied the learned and witty sergeant, "I will give you a sample. To-day I was just in such a fix. One of my clients was a clergyman and the other a railway company, and I thought the best thing I could do was to stick by the railway company, and leave the clergyman to Providence. I won my case." The occupants of the carriage in which they were riding were amused at the division of labour, and were laughing at it somewhat immoderately, when a mild looking stranger in a white neckcloth interposed, and said, "And perhaps you will allow me to add, Mr. Sergeant that we lost ours."

Law Business in England. — The *Law Times* says: — When sitting in the Court of Appeal up in a committee room of the House of Lords (where the drawing of corks in the refreshment bar adjoining was distinctly audible), Lord Chief Baron Kelly remarked that we want three more judges and five more courts. We do not

think his Lordship has over estimated the want. The courts are becoming blocked in precisely the same manner as before the passing of the Judicature Acts. In the fond anticipation of getting rapidly to trial, many country cases have been brought to town, and, as Mr. Justice Blackburn remarked a few days since, more new cases are added daily than are disposed of. Further, the lives of the judges at present are far from pleasant. One of them has said that the life is that of a bagman—he never knows in the morning where he will have to attend during the day. Unless Lord Cairns recognizes the machinery, the deadlock predicted by Mr. Justice Grove will become a hideous reality.

English Solicitors.—The duty on solicitors' ceretificates—the name of "attorney" no longer being used in legal circles—amounted in the year ended 31st of March last to £94,433. The number practising in the United Kingdom was 14,409.

AUTUMN ASSIZES, 1876.

EASTERN—HON. MR. JUSTICE GWYNNE.

Pembroke	Thursday	Sept. 21st.
Perth	Tuesday	Oct. 3rd.
Cornwall	Tuesday	Oct. 10th.
L'Orignal	Tuesday	Oct. 17th.
Ottawa	Tuesday	Oct. 24th.

MIDLAND—HON. MR. JUSTICE WILSON.

Napanee	Monday	Oct. 2nd.
Brockville	Monday	Oct. 9th.
Belleville	Monday	Oct. 16th.
Picton	Monday	Oct. 30th.
Kingston	Monday	Nov. 6th.

VICTORIA—HON. MR. JUSTICE PATTERSON.

Lindsay	Monday	Oct. 2nd.
Peterborough	Monday	Oct. 9th.
Whitby	Monday	Oct. 16th.
Brampton	Monday	Oct. 23rd.
Cobourg	Wednesday	Nov. 8th.

BROCK—HON. MR. JUSTICE MOSS.

Stratford	Monday	Oct. 2nd.
Goderich	Tuesday	Oct. 10th.
Walkerton	Tuesday	Oct. 17th.
Woodstock	Wednesday	Oct. 25th.
Owen Sound	Monday	Nov. 6th.

NIAGARA—HON. THE CHIEF JUSTICE OF ONTARIO.

Milton	Tuesday	Oct. 3rd.
St. Catharines	Monday	Oct. 9th.
Welland	Wednesday	Oct. 18th.
Cayuga	Tuesday	Oct. 24th.
Hamilton	Tuesday	Nov. 7th.

WATERLOO—HON. THE CHIEF JUSTICE OF THE COMMON PLEAS.

Simcoe	Monday	Sept. 25th.
Berlin	Monday	Oct. 2nd.
Barrie	Monday	Oct. 9th.
Brantford	Monday	Oct. 23rd.
Guelph	Monday	Nov. 6th.

WESTERN—HON. MR. JUSTICE BURTON.

London	Monday	Oct. 9th.
St. Thomas	Monday	Oct. 23rd.
Sarnia	Monday	Oct. 30th.
Chatham	Monday	Nov. 6th.
Sandwich	Tuesday	Nov. 14th.

HOME—HON. MR. JUSTICE GALT.

Toronto, (Oyer and Terminer and General Gaol Delivery)	Wednesday	Oct. 4th.
Toronto, (Assize and Nisi Prius)	Tuesday, Oct. 17th.	

N.B.—There shall be in the City of Toronto, Hamilton and London a Jury List and a Non-Jury List. The former shall be first disposed of, and the latter not taken till after the dismissal of the Jury panel, unless otherwise ordered by the Judge.

Mr. Justice Morrison will remain in Toronto during the Autumn Circuit, to hold the sittings of the Queen's Bench and Common Pleas, each week, and for the transaction of business by a Judge in Chambers.

CHANCERY AUTUMN CIRCUITS—1876.

THE HON. VICE-CHANCELLOR PROUDFOOT.

Toronto	Tuesday	Nov. 7th.

THE HON. THE CHANCELLOR.

WESTERN CIRCUIT.

Stratford	Thursday	Oct. 26th.
Goderich	Tuesday	Oct. 31st.
Sarnia	Tuesday	Nov. 7th.
Sandwich	Friday	Nov. 10th.
Chatham	Tuesday	Nov. 14th.
Walkerton	Tuesday	Nov. 21st.
Woodstock	Friday	Nov. 24th.
London	Wednesday	Nov. 29th.

THE HON. VICE-CHANCELLOR BLAKE.

EASTERN CIRCUIT.

Lindsay	Tuesday	Sept. 19th.
Peterborough	Friday	Sept. 22nd.
Cobourg	Tuesday	Sept. 26th.
Belleville	Tuesday	Oct. 3rd.
Kingston	Wednesday	Oct. 11th.
Ottawa	Monday	Oct. 16th.
Brockville	Monday	Oct. 23rd.
Cornwall	Wednesday	Oct. 25th.

THE HON. VICE-CHANCELLOR PROUDFOOT.

HOME CIRCUIT.

Whitby	Tuesday	Sept. 19th.
Barrie	Tuesday	Sept. 26th.
Owen Sound	Tuesday	Oct. 3rd.
Guelph	Friday	Oct. 6th.
Brantford	Tuesday	Oct. 10th.
Simcoe	Tuesday	Oct. 17th.
St. Catharines	Friday	Oct. 20th.
Hamilton	Tuesday	Oct. 24th.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Easter Term, 39th Victoria.

During this Term, the following gentlemen were called to the Bar namely:

Daniel Edmund Thomson.
Robert Pearson.
Henry J. Scott.
R. Martin Meredith.
J. Bond Clarke.
Albert Monkman.
James Leitch.
Charles J. Holman.
John Fisher Wood.
Thomas Cooke Johnstone.
Hugh O'Leary.
Edmund John Reynolds.
Philip Holt.
Michael Kew.
William Hall Kingston.
Alexander Haggart.
William Myddelton Hall.
J. Pliny Whitney.
Theophilus H. Begue.
Edward Kenrick.
Thomas Street Plumb.

And the following gentlemen received Certificates of Fitness, namely:

Henry James Scott.
Thomas Hodgkin.
Daniel Edmund Thomson.
George W. Wells.
Edmund John Reynolds.
William Henry Ross.
William Clark Perkins.
George Robb.
George S. Goodwillie.
John Fisher Wood.
Charles Joseph Holman.
Alexander Haggart.
Eugene McMahon.
Philip Holt.
Charles H—— McConkery.
John Wallace Nesbitt.
Joseph Burgin.
William Cowan Moscrip.
Elias Talbot Malone.
James Pliny Whitney.
George Howes Galbraith.
Thomas Mercer Morton.
Silas Corbett Locke.

And the following gentlemen were admitted into the Society as Students of the Law:

Graduates.

Murdoch Munro.
William John Ferguson.
Charles Wesley Coltek.

Junior Class.

Henry Walter Hall.
Charles Edward Irvine.
John O'Meara.
Charles Wright.
Frederick Weir Harcourt.
Daniel McLean.
James Scott.
Frank Jeffrey Howell.
William Chalmers.
Angus McCrimmon.
Frederick Herbert Thompson.
Rufus Shorey Neville.
Albert Beresford Wood.
John Birnie.
Wallace Leslie Palmer.
Frank Andrew Hilton.
Frederick W. Harper.
Stewart Campbell Johnston.
Charles Herbert Allen.
Hedley Vicars Knight.
Henry Hobart Fuller.
Robert Edson Bush.
William David Smith.
William Forsyth McCreary.
Francis Edward Galbraith.
Lawrence John Munro.
James Leland Darling.
Robert Abercrombie Pringle.
Arthur William Gundry.
S. G. McKay.
Delos Charles McDonall.
Daniel R. Cunningham.
Æneas Donald McKay.

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

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

That all other candidates for admission shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination upon the following subjects namely, (Latin) Horace, Odes, Book 3; Virgil, Æneid, Book 6; Cæsar, Commentaries, Books 5 and 6; Cicero, Pro Milone. (Mathematics) Arithmetic, Algebra to the end of Quadratic Equations; Euclid, Books 1, 2, and 3. Outlines of Modern Geography, History of England (W. Douglas Hamilton's), English Grammar and Composition.

That Articled Clerks shall pass a preliminary examination upon the following subjects:—Cæsar, Commentaries Books 5 and 6; Arithmetic: Euclid, Books 1. 2, and 3, Outlines of Modern Geography, History of England (W. Doug. Hamilton's), English Grammar and Composition, Elements of Book-keeping.

That the subjects and books for the first Intermediate Examination shall 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.

That the subjects and books for the second Intermediate Examination 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 Vict. c. 16, Statutes of Canada, 29 Vict. c. 28, Administration of Justice Acts 1873 and 1874.

That the books for the final examination for Students-at-Law shall be as follows:—

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

2. 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.

That the subjects for the final examination of Articled Clerks shall be as follows:—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.

That the Books for the Scholarship Examinations shall be as follows:—

1st year.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes 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 Vol. II., chaps. 10, 11 and 12.

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

That no one who has been admitted on the books of the Society as a Student shall be required to pass preliminary examination as an Articled Clerk.

J. HILLYARD CAMERON,
Treasurer.