DIARY FOR MAY.

2. Tues..English slave trade abolished, 1807.
5. Sun..Queen Victoria declared Empress of India, 1876.
7. Tues..Primary examinations—written.
8. Wed. Primary examinations—oral.
14. Tues..Sittings of the County Court of the County of York begin. Intermediate examinations.
15. Wed..Intermediate examinations.
16. Thur.Examinations for certificates of fitness.
17. Fri ..Examinations for call.
18. Sat ..Examinations for call with honors. Hon. D. A. Macdonald, Lieut.-Gov. of Ont., 1875.
20. Mon..Easter Term begins. Law Society Convocation meets.
21. Tues..Law Society Convocation meets,
22. Wed..Earl Dufferin, Gov.-Gen., 1872.
24. Fri ..Queen Victoria born, 1819.
25. Sar..Law Society Convocation meets.
30. Thur.Proudfoot, V.C., appointed Vice-Chancellor, 1874.

CONTENTS.

Canada Law Journal.

Toronto, May, 1878.

An Attorney of the Courts of Ontario and a somewhat prominent public man has recently been struck off the rolls for misappropriation of clients' money. The case was a very gross one. It would have been better perhaps if a little speedier justice had been done in this case, but there was a natural reluctance to deal with even a semblance of harshness to one who had some years ago occupied a high position. If the profession were promptly purged of those who bring disgrace upon their brethren, the public would not judge it by the black sheep only, but would respect it, for what in truth it is, a class most honourable and trustworthy.

We are glad to extract from the *Solicitors' Journal* of 13th April, the following observations on the subject of dissenting judgments which has lately been somewhat discussed in our columns. After commenting on the practice of the Privy Council, that no publication be made by any man, how the particular voices and opinions went, the *Journal* proceeds: "We should be glad if the House of Lords would adopt a similar rule. It appears to us that the effect of the decision of a final Court of Appeal in settling the law should never be marred by "the publication of dissentient opinions."

These hard times seem productive of novel advertisements by men in the profession who ought to know better. One, who puts half the alphabet after his name, issues a circular, reminding us of the effusion of a travelling dentist. He informs the public that he can give "good references as to honesty, integrity, etc., so that parties may be assured that all their moneys collected (less charges) will be paid over to them." By a *N. B.* we learn that no person without a careful investigation of a title "is justified or can be secure in risking the investment of moneys in Real Estate." We are glad he has evolved this important and mysterious truth. An enterprising legal firm in another place issue an enormous card in the shape and style of an Insurance Almanac, thereby claiming that the advertisers are the most desirable persons to borrow money from. The

amount of colour displayed suggests the thought of a Barrister appearing in Court in a velveteen coat, a red flannel shirt and a white tie. We suppose such an advertisement is the only means by which this firm can acquire business. With these things before us we are hardly in a humour to call attention to an Impudent Invader who "is prepared to do all manner of conveyancy at charges lower than anyone in Town," to say nothing of collecting and posting accounts, &c. He also indulges in a *N.B.*—"Legal advice free of charge." This last part of the advertisement is the only redeeming point. Legal business in his town must be rather brisk, in consequence of this liberality on his part.

"STRIKING OFF THE ROLL."

A good deal of attention has lately been directed to the penal jurisdiction which the Courts exercise against their own officers, in divesting them of their privileges, and degrading them from their professional position. We propose shortly to consider the cases in which attorneys and solicitors will be struck off the rolls of the Courts, as being unworthy of the confidence of the public.

The fiftieth general Order in Chancery indicates that the solicitor may be prohibited from practising for malpractice or misconduct as a solicitor, or other sufficient cause. By the Attorneys Act, (Rev. Stat., cap. 140) attorneys or solicitors acting as agents for unqualified persons are liable to be struck off the rolls (sec. 25), and by the next section it is enacted that either of the Superior Courts of Law, or the Court of Chancery may strike the name of any attorney or solicitor off the roll for default by him in payment of money received by him as attorney or solicitor.

The subject may be conveniently dealt with under this broad classification that the solicitor becomes amenable to the summary jurisdiction of the Court when he retains money obtained by him in his professional capacity, or where he misconducts himself in his office of solicitor.

In the first place, then, he is liable to be struck off the roll if he makes default in the payment of money directed to be paid on a summary application. In *Stephens* v. *Hill*, 10 M. & W., 28, 32, Lord Abinger adverts to the origin of this practice, by referring to *Strong* v. *Howe*, 1 Strange, R. 621, and says ever since that time, applications of a similar nature have been very common, in all cases where an attorney in his professional capacity has received money, for which though he might be made accountable in a civil action, the Court will compel him to do summary justice, without putting the client to the necessity of bringing one. Indeed, is would seem to be essential that the client should make a summary application for the payment of the money improperly withheld, because, if he first sues for the amount and recovers judgment, it is too late then to apply to have the defendant struck off the roll. It is said that the character of solicitor is merged in that of judgment debtor, and that obligations of a different character arise by virtue of the judgment. This was expressly held in *Re Corbet Davis*, 15 W. R., 46; 15 L. T. N. S., 161; 1 W. N., 321. In order to the exercise of this summary jurisdiction, it is requisite that the money should be received by the solicitor by virtue of his professional employment, or as a consequence of his professional character. This point was much discussed in *Re Keys*, 13 C.P., 283: see also *Anon.*, 12 C. L. J., 204.

Where a solicitor is appointed a trustee under a will or other instrument, it is assumed that his professional character

has been one of the considerations influencing the appointment, and his wrongful retention of moneys as such trustee renders him amenable to the penalty in question: *Re Chandler*, 22 Beav. 253.

In like manner, to make a transition to the second part of our subject, if a solicitor wilfully advises a breach of trust, he is liable to be struck off the roll for his misconduct. In such a case, to give the Court jurisdiction, there must be on the part of the solicitor either a design to benefit himself, or assistance rendered to his client in a scheme which he knows to be dishonest and fraudulent: *Barnes* v. *Abdy*, L. R., 9 Ch., 251.

It has been held in the Privy Council that a deliberate mis-statement of facts upon the face of a deed is highly censurable, but the solicitor guilty of such a misstatement is not liable to be struck off the roll on that account, unless he has acted with fraudulent intent, and this intent is brought home to him: *Re Stewart*, L. R., 2 P. C., App. 88.

Where a solicitor advises a client who is a trustee, to commit a breach of trust by selling out stock, and the solicitor himself profits by such a breach of trust, he is liable to be dealt with summarily by the Court, as in *Goodwin* v. *Gosnell*, 2 Coll., 457. So when he had fraudulently abused the confidence of his client, even though there had been considerable delay and offers to compromise, and the solicitor had been arrested under a *ne exeat*, and had been in prison for ten months, an order was made to strike his name off the roll: *Re Martin*, 6 Beav. 337. Nearly all the cases on this branch of the law are collected and very fully discussed in *Re Attorney*, 39 U.C.R., 171.

In all such applications, the Court keeps in view and acts on the principle that the exercise of this summary jurisdiction against its own officers is for the benefit of the public and to secure the community from being preyed upon by dishonest and unprincipled persons. To borrow the pointed language of Knight-Bruce, V.C., in one of the cases cited, "it is not the least urgent of the duties of those in whose hands is placed the administration of justice, to mark, to censure, to repress, and if necessary to extirpate from the Courts, such men, as by abusing the functions and privileges of so important a profession, become a scandal and a pestilence to society."

NOTES OF RECENT DECISIONS.

Brown v. G. W. R. Company.

[*Communicated.*]

This case* presents some interesting points; and its effect is of importance not only to the profession but also to the public. A Grand Trunk Railway train, of which the plaintiff was conductor, was crossing on the level the defendants' railway. The engineer of the defendants, when a short distance from the crossing, endeavoured to stop his train by means of air-brakes, which failed. It being too late to use the hand-brakes, the result was a collision and the injury complained of by the plaintiff.

The plaintiff declared upon the negligence and unskilfulness of the defendants. It was held, Moss, J. dissenting, that the 19th Vict. cap. 92, s. 10, imposed an absolute duty on the defendants to stop for three minutes before such a crossing, and judgment was therefore given for the plaintiff. The first question that presents itself is that upon which the above-named learned judge based his dissenting judgment, namely, the consideration of whether the defend-

* 40 U. C. R., 333; 2 app.

ants were negligent, apart from the statute; and if so, how far the plaintiff contributed to the accident. Then, whether the defendants were negligent by reason simply of their breach of a statutory duty. And lastly, whether, if the only negligence be the breach of the statute, the plaintiff can succeed on the simple declaration of negligence.

On the first question, it may be well argued that the defendants were not guilty of negligence, since they had supplied themselves with the best known apparatus for bringing their train to a stop; that the fact itself of their possessing the latest invention showed them to be diligent rather than negligent in providing means for stopping their trains. "In a word," says the learned judge who dissented, "the air-brakes which they used were the best procurable contrivance for preventing a collision,"—upon which remark, it must be admitted, the fact of the collision itself is rather a severe commentary. So far as the providing themselves with the best known contrivance goes, it may be conceded that the defendants are acquitted of negligence. But, while they may have been very diligent in providing themselves with this appliance, the plaintiff is still entitled to complain that they were negligent in its use. This leads to the question, Why are they said to be the *best* known contrivance? Because a much greater force can be applied to the wheels, and therefore the train can be stopped in a shorter time than with hand-brakes—and time is saved. This is, confessedly, a benefit to the defendants. On the other hand, these brakes are shown to have failed, on an average, once in three months before this. So that they are devoid of the *certainty* which the hand-brakes possess. We have then before us two methods of producing a desired result. On the one hand, a method whose chief characteristic is to save time, with a possible—rather probable—failure of effect; on the other, certainty of action with a small loss of time. So when negligence is imputed, and, of the two courses to adopt, the defendants reject that which is certain, and adopt that which is uncertain, it seems only reasonable to say that, having chosen to run the risk, they should abide by the consequences. And it is manifestly no answer for the defendants to say that the adoption of the certain method would have resulted in a loss of time to *themselves*; when the experiment of economizing time has resulted in an injury to the party complaining. What skilled and careful engineer, being apprised of the impending danger of a collision, or an open drawbridge, in time to stop the train by means of the hand-brakes, or in time to use them if the air-brakes failed, would choose to let that valuable and irrecoverable time slip by, and rush on to imminent danger, trusting to an appliance which had already failed him on an average once in every three months! And what weight would his plea of economizing time have, in case of an accident? And at this point, where they must have known of the absolute duty imposed upon them to stop, where there was an especial danger from trains running on a different road, and at times not harmonizing with their own, there was certainly an especial duty cast upon them to use extraordinary vigilance and diligence in proportion to the increased risk—and this even apart from the statute. The necessity for increased vigilance imposes on them a duty to resort to a *certain* method of avoiding any impending danger. And if they rely on the fact that the danger is not always present there, they are guilty of more than negligence, which implies a mere passive state of the will—they are guilty of an actively

formed intention of running an unwarranted risk. When it is admitted that the excellence of the air-brakes, is only conditional, who so bold as to deny that they are under an obligation to have some *certain* method of stopping their trains, in case of the failure of the air-brakes, other than the necessary ultimate cessation of motion consequent upon the withdrawal of the impelling force.

On this assumption, then, even supposing the excellence of the air-brakes in economising time to furnish a complete answer to the party complaining of injury from their use, was the action of the defendants in running so near the crossing as they did before attempting to stop, an actual saving of time? Plainly not. The mathematical mind, even in an embryotic state, will hardly assent to the proposition that to have stopped for three minutes, at a distance of a quarter of a mile from the crossing, would have occasioned a greater loss of time than to have stopped, for three minutes, at a distance of fifty yards from the same point.

If there be an admission of negligence on the part of the defendants in the manner of using their air-brakes, we are then brought to the discussion of whether or not the plaintiff contributed to the accident. On the declaration as restricted by the learned judge already named, the defendants apparently could not accuse the plaintiff of contributing to the accident; for his being at the crossing—though perhaps negligently—was nothing more than a condition necessary to its happening; while the proximate cause was the bursting of the tube, and the consequent failure of the air-brakes to take effect. And we are again brought face to face with the question which we have already noticed, "was the manner of using them negligent?"

If there were no common law negligence, and the plaintiff were driven to show breach of a statutory duty, there would seem to be more difficulty in coming to a satisfactory conclusion. There was, no doubt, an intention on the part of the defendants to stop, whether in obedience to the statute or not. From the report it does not appear that they intended to stop for a less time than three minutes; and when it was their duty so to stop, we must, in all fairness, presume that they would have complied with the statute, unless prevented by the accident to the brakes. That the duty was an absolute one seems beyond dispute; and we are again referred to the means by which they tried to fulfil it, and their failure. Whatever may have been the cause of the breach is immaterial in this view of the case, so that the breach has been committed. The question, then, is this, Is the breach of a statute "negligence," in the sense in which it is alleged in the declaration?

If it be asserted that where the plaintiff has declared upon negligence simply, and shows a breach of a public statute, he must fail? then the inference is irresistible that breach of a public statute is not negligence, *per se*; or being negligence, cannot be complained of except the statute be specially declared upon. As to the first, Lord Brougham says, in *Ferguson* v. *Kinnoul*, 9 Cl. & F. 289, "If the law casts a duty upon a person which he refuses or fails to perform, he is answerable in damages to those whom his refusal or failure injures." No distinction is drawn between the different sources from which law emanates. A duty is imposed. It is broken. The result—an action. Whence the duty? Common Law. The plaintiff succeeds. Does it make any difference that the duty is imposed by another and equally powerful arm of the law; or that it springs from the other of the two tributa-

ries which, by commingling their streams, form the mighty basin upon whose uncertain currents the confiding plaintiff trusts himself? So that there be a public duty and a breach, what difference does it make whence the duty arises? And if the plaintiff declares that the defendant has neglected a duty, is it an answer to say that the alleged duty is one imposed by statute, and that since the plaintiff has not declared the source whence it sprung, he cannot recover? Sir William Blackstone says, "A general or public Act is an universal rule that regards the whole community, and this the Courts of Law are bound to take notice of judicially and *ex officio*, without the statute being particularly pleaded, or formally set forth by the party who claims an advantage under it: Com. I, 86. The plaintiff is not restricted by the statute to any particular form of action. It is true it does not even declare that the person injured by the neglect of this duty shall have an action. But this omission is hardly sufficient ground for denying a right to an aggrieved party, to maintain an action for injury resulting from the neglect of its directions. It would be idle for the Legislature to impose a duty, and then give no remedy for its breach. Its silence on this point, as well as the omission to impose a penalty, seem to lead to the supposition that it was intended to leave the party injured to the ordinary action for negligence. In fact, the imposition of a penalty, in many cases of this kind, would work injustice. For where many persons are injured, the first one suing for the penalty would obtain some slight compensation, and at the same time would discharge the aggressors from further liability. The reference of the negligence to the breach of the statute alone, however, makes it doubtful whether the plaintiff should not be debarred from complaining of the breach by the defendants, since he was *in pari delictu*. For, if the duty were an absolute one, it is as strictly applicable to the plaintiff as to the defendants; and how can he be heard to complain of the damage done to him, while he was in the very act of committing a breach of it himself?

The result of the case, as it has been decided, certainly does require especial care to be taken in the use of air-brakes; but railway companies can hardly complain of being obliged to exercise great vigilance and care in using a confessedly risky appliance. Even supposing the result to be the total prohibition of the use of the air-brakes, that is no valid ground upon which to rest the decision of the case.

An almost exact parallel to this case is to be found in the case of *Tuff* v. *Warman*, 2 C. B., N. S., 740, which was not cited to the Court. There the plaintiff declared on negligence simply, and the breach of a duty prescribed by a similar statute was given in evidence to support it, on which he succeeded.

E. D. A.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

(Reported for the *Law Journal*, by N. D. Beck, Student-at-Law.)

Re A. B. & C., Attorneys.

Lien of Town Agent.

Held, that, as against their principal, a country attorney, town agents have a general lien upon all documents, money and articles coming into their hands in the course of their agency business, without regard to the purpose for which they were received.

[February 7-8—Mr. Dalton.

Watson, for a country attorney, obtained a summons calling upon a firm of attorneys, who had until lately acted as his town agents

to shew cause why they should not deliver up a certain promissory note in their possession.

The facts appear from the argument.

On the return of the summons

Symons shewed cause.

The agents have unpaid general agency bills, the amount of which greatly exceeds that of the note. Some of these bills have been taxed and judgment obtained upon them; others have only been rendered. Although as against the client the lien of the town agent may be particular, that is, extends only to costs incurred in the particular matter in which the note was received, as against the attorney the lien is a general one, and that independently of any agreement for a lien. Marshall on Costs, 460; Stokes on Liens of Attorneys," 179 *et seq.* *Re Cross*, 4 Chy. Cham. 11, shews that the same principles have been adopted by the Courts here.

Watson, contra.

The note is one made by the client to the attorney in payment of a particular bill of costs; it was discounted, and, after protest, was taken up by the attorney out of his own money. Subsequently, at the instance of the client, an order was made for the taxation of this bill, with the usual provisions as to payment and delivery up of papers. The note was sent to the town agents to be used upon the taxation of the attorney's bill, for the sole purpose of being used as evidence of an admission by the client. Before the note was produced or the taxation completed, the agents voluntarily discharged themselves, and refused to deliver up any papers in their possession, claiming to have a general lien thereon. The country attorney denies his liability to the agents; that issue cannot be tried on this application; the question here is one of right between principal and agent, not of liability. The note not having been paid, the attorney need not give the client credit for it, but may proceed on his bill, and if he did so the client would be entitled to the note. This application is merely in anticipation of one by the client, to whom the agents are bound to deliver up the note: *Bell* v. *Taylor*, 8 Sim. 216; Stokes on "Liens of Attorneys, 180. The possession of the agent is possession of the attorney: *Watson* v. *Lyon*, 7 DeG. M. and G. 298. The agents having discharged themselves, cannot set up a lien: *Re Faithfull*, L. R. 6 Eq. 326.

Symons in reply.

Although the town agents have discharged themselves, it is not in such a case as this that they would be ordered to deliver up, and if it were it would only be upon an undertaking to return them: *Robins* v. *Goldingham*, L. R. 13 Eq. 440.

Mr. Dalton.—Town agents have a general lien on all documents, money and articles coming into their hands in the general course of their agency business as against the attorney himself, irrespective of the purpose for which they were received: Stoke 179 *et seq.* The decisions in *Re Faithfull* and *Robins* v. *Goldingham* are not applicable to the present case.

Summons discharged, with costs.

Trust and Loan Company v. McGillvray.

Ejectment by Mortgagee—Staying proceedings—Costs of an abortive sale.

Held, that a mortgagor moving to stay proceedings in an action of ejectment by the mortgagee must pay the costs of an abortive sale under a power in the mortgage.

[March 1—Mr. Dalton.

This was an action of ejectment by mortgagee against mortgagor.

Spencer obtained a summons to stay proceedings upon payment of the principal and interest and costs.

On the return of the summons,

Marsh appeared to consent to the order, but produced an affidavit showing that the plaintiffs had proceeded under a power of sale in their mortgage, but that the sale had proved abortive, and submitted that the defendant must pay the costs of this abortive sale as well as the costs of this action before proceedings could be stayed. He pointed out that the proceedings in ejectment were taken to complete the remedy under the power of sale, and, in effect, for the benefit of the mortgagor, for it was found that, when on a sale under mortgage possession could be given, a larger sum was obtained for the property. He cited *Dowll* v. *Neale*, 10 W. R. 627.

Spencer, contra.

Mr. Dalton held that the plaintiff was entitled to proceed, unless the defendant paid the costs of the abortive sale as well as the principal, interest, and the costs of this suit.

Usual order, with above provision as to the costs of the abortive sale.

MUNICIPAL CASES.

Regina *ex rel.* Haner v. Robert.
Regina *ex rel.* Taylor v. Stevens.

Municipal law—Disqualification—Contract with or on behalf of Corporation.

Held, that a person who was surety for a corporation in a bond for security for costs had "an interest in a contract with or on behalf of the corporation" within the meaning of Rev. Stat, cap. 174, sec. 74.

[March 7-14—Mr. Dalton.

In these cases summonses in the nature of writs of *quo warranto* were issued, calling on the defendants to show by what authority they held respectively the office of Reeve of the Township of Chatham and Reeve of the Township of Dover.

One of the grounds upon which the summonses were issued was that the defendants, at the time of their election, were sureties in a bond given by their townships as security for costs of an appeal, and were therefore disqualified under Rev. Stat. cap. 174, sec. 74.

M. C. Cameron, Q.C., shewed cause.

This is not a contract "with or on behalf of the Corporation" within the meaning of the Statute.

Ferguson, Q. C., contra.

This is a contract *with* the corporation: *Hungerford* v. *Hungerford*, Gilbert's Equity Cases, 1742; Pitman on Principal and Surety, 125; Burge on Suretyship, 378. Each of the defendants is interested jointly with the corporation in a contract expressly *on behalf of* the corporation. The defendants are interested in the contract within the spirit and letter of the Act, and come within the mischief contemplated by it. Their interest, should the abandonment of the appeal or a resolution to indemnify the sureties be discussed in the Council, would not be identical with that of their constituents.

Mr. Dalton.—I think that this is a contract both with and on behalf of the Corporations within the meaning of the statute, and I think, further, that it comes within the mischief contemplated. The defendants are unseated, and there must be a new election. The defendants must pay the costs.

Judgment accordingly.

NOTES OF CASES.

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

COURT OF APPEAL.

From C. C. York.] [April 11.

Werner v. Sibbald.

Abandonment of excess—Effect of.

The commencement of a suit for an amount less than the entire claim is not *per se* a release of the excess; but the part so abandoned cannot be sued for, after the recovery of judgment in such suit.

Nugent for the appellant.

Monkman for the respondent.

Appeal allowed.

From C. C. Renfrew.] [April 11.

Re Fair & Bell.

Insolvent Act, 1875—Garnishment after assignment.

Upon A's insolvency, T., a creditor residing in the County of Renfrew, proved his claim, and afterwards became insolvent. On the 7th of March, 1877, F. & A's assignee, not having heard of T's insolvency, collocated him on the dividend sheet for the amount due on his claim, and on the 22nd of the same month certain creditors of T. took proceedings in the Superior Court at Montreal to garnish this amount. Subsequently, in reply to a letter from one B., T's assignee, demanding payment of the dividend, F. informed him that some persons were endeavouring to get payment of this dividend from him in Montreal; but he neither mentioned who they were, nor specified the nature of their claim. He, however, asked for evidence of B's official character, which request was immediately complied with. In accordance with the practice of the Courts in Quebec, on the 30th of April, F. made an affidavit of the position he occupied towards the principal debtor, in which he recited the above facts, but took no further action in the matter. He neither advised B. that the declaration had been made, nor held any further communication with him. No opposition being offered, an order was made for the payment of the amount, debt and costs, by F., within fifteen days. Without waiting for the expiration of

the fifteen days, and without giving B. any notice, F. paid the amount. *Held*, that B. was entitled to recover the amount from F., and that F. could not protect himself on the ground that he had paid the money in obedience to the order of a Court of competent jurisdiction, as the Court had no authority to make such an order after T's assignment, the only remedy then available to his credifors being that given by the Insolvent Act; but even if the judgment had been that of a Court of competent jurisdiction, it could not defeat B's rights, as he was not a party to the proceedings, and was not affected with notice thereof.

Bethune, Q.C., for the appellant.

Richards, Q.C., for the respondent.

Appeal dismissed.

From C. C. Frontenac.] [March 11.

Re Erly.

Insolvent Act 1875—Secs. 70, 71, 72, 73—Damages on cancellation of lease.

One E. agreed to rent certain premises for ten years, on condition that certain improvements were made. The agreement was evidenced by a letter from the landlord, to the terms of which E. assented; but no lease was executed. After the alterations were completed E. entered, and while still in possession under this agreement became insolvent. The inspectors cancelled the lease and delivered up the premises at the end of the current year—whereupon the landlord claimed to be allowed damages under the 70th and three succeeding sections of the Insolvent Act of 1875.

Held, affirming the decision of the County Court Judge, that it was not intended to limit these sections to leases valid only at law, but that they applied equally to leases valid in equity, and that the landlord was therefore entitled to prove.

Delamere, for the appellant.

O'Sullivan, for the respondent.

Appeal dismissed.

From C. C. Hastings.] [April 16.

Re Jones.

Insolvent Act, 1875—Double proof.

Where a creditor holds security on the partnership estate for the individual liability of the insolvent, he is entitled to prove against the separate estate without putting a value on such security.

E. Martin, Q.C., for the appellant.

G. H. Dickson for the respondent.

Appeal dismissed.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR MAY, JUNE, AND JULY, 1877.

Accessory—See Murder.

Administration—See Executors and Administrators.

Ambiguity—See Will, 4.

Annuity—See Proof.

Appointmnnt—See Election.

Auction—See Sale, 4.

Bailor and Bailee—See Master and Servant, 2.

Bankruptcy—See Bills and Notes, 1, 2; Partnership, 2; Proof.

Banks and Banking—See Partnership, 1.

Bequest.

1. Gift of £10 to G. P. after the death of the life-tenant. G. P. was named as one executor and trustee, but did not accept. *Held*, that the usual presumption that the gift was made to him as executor was rebutted by its not being payable till after the death of the tenant for life, and that G. P. was entitled to the gift.—*In re Reeve's Trusts*, 4 Ch. D. 841.

2. Will appointing widow executrix, directing sale of real estate, and the widow to pay the debts. Bequest to the widow of "all my money, cattle, farming implements, &c; she paying my brother J. the sum of ——, to him or his heirs; to my brother L. the sum of ——, to him or his heirs." *Held*, that the widow was entitled to the whole, subject to the payment of the debts.—*Chapman* v. *Chapman*, 4 Ch. D. 800.

Bill of Lading.

December 22. 1875, G. & Co., fruit merchants, bought a shipment of goods of the defendants, payment by acceptance at three months on delivery of the shipping documents. Jan. 1, 1876, G. & Co. applied to the plaintiff for an advance of £2,000. They were already indebted to the plaintiff, and he advanced the £2,000, on the promise of G. & Co., to cover their previous account with further security. Jan. 4, the bill of lading, bearing date Dec. 29, 1875, indorsed in blank by defendants, was handed to G. & Co., and

they accepted a draft for the price. The next day, they delivered the bill of lading to the plaintiff, according to their promise of Jan. 1 to give him security. Jan. 8, G. & Co. suspended; the ship arrived Feb. 3; the defendants tried to stop the goods *in transitu*; and plaintiff claimed them under the bill of lading. The jury expressly found that all the plaintiff's acts were done *bona fide*. *Held*, that he was entitled to the goods. The transfer of the the bill of lading passed the property, even though the consideration therefor was past.—*Rodger* v. *Comptoir d'Escompte de Paris* (Law Rep. 2 P. C. 393), not approved; *Leask* v. *Scott Brothers*, 2 Q. B. D. 376.

See Vendor and Purchaser.

Bills and Notes.

1. Where the drawer of a dishonoured bill has been adjudged bankrupt before dishonour, a notice sent to him, instead of to the trustee in bankruptcy, by the holder of the bill, is sufficient to enable the latter to prove in the bankruptcy. Such notice sent to the only post-office address of the drawer with which the holder was acquainted is sufficient, although it had ceased for months to be the proper address of the drawer.—*Ex parte Baker*. *In re Bellman*, 4 Ch. D. 795.

2. M. & Co. made advances to K. & C.; and drew bills of exchange on K. & C. for the amount, which the latter accepted. They also made assignments to M. & Co. of certain debts due them, intended as security for the same advances. The debtors had notice of the assignment. K. & C. went into liquidation, and a bank which had discounted the above bills proved for the full amount thereof. the trustee collected the assigned debts, under an agreement between him and K. & C. that this should be done without prejudice to the rights of M. & Co. The latter applied to have the proceeds of the debts paid over to them. *Held*, that M. & Co. must first take up the bills which they had discounted at the bank; and, if anything was found due them above the amount of the bills, the proceeds of the debts should be applied first in payment of that balance, and if any thing then remained, it should be applied in discharging M. & Co.'s liability under the bills of exchange.—*Ex parte Mann*. *In re Kattengell*, 5 Ch. D. 367.

See Husband and Wife, 2.

Breach of Promise—See Evidence, 2.

Broker—See Sale, 1.

Burden of Proof—See Evidence, 1.

By-Law—See Railway, 1.

Carrier—See Common Carrier.

Caveat Emptor—See Sale, 2.

Codicil—See Will, 3.

Commendation of Goods—See False Pretences.

Common Carrier—See Railway, 2.

Compensation—See Election.

Conditional Will—See Will.

Condition at Sale—See Sale, 4.

Conflict of Laws—See Marriage.

Consideration—See Bill of Lading.

Construction.

1. A testator gave his residuary personal estate in trust to "all and every the children" of his uncle R., or their issue, in equal shares. He then devised to the trustees all his real estate in trust for A. for life, and after her death to sell the same, and hold the proceeds "upon trust for all and every the children of the said R., or their issue, in equal shares *per capita*." R. had six children, of whom four had died before the date of the will, each leaving issue. Two survived A., the tenant for life of the real estate. *Held*, that the fund should be divided into six parts; the two children surviving A. taking each one, and the several sets of issue of the four children dying before the date of the will each taking one.—*In re Sibley's Trusts*, 5 Ch. D. 494.

2. Testator directed his trustees that his daughter M. should have the income of all his property after attaining 21, for her separate use for her life; and that if she lived to become marriageable, and die leaving a "child or children," said income should be applied "to the support and maintenance of such child," if only one, or, if more, to such children, for life, "and in like manner to their children and children's children;" and, if the said M. died without being married, or left no child or children, or leaving children, "upon them or their families becoming extinct," then over. M. attained 21 without being married, and brought suit for immediate possession of the property on the ground that the limitations, except to her for life, were void for remoteness. *Held*, that she took an estate for life, and not an estate tail in possession. The court would not say what would become of the property on the death of her children if she had any.—*Hampton* v. *Holman*, 5 Ch. D. 183.

3. Cutting cocks' combs to fit them for cockfighting, or for winning prizes at exhibitions, *held*, to maintain an information that respondent did "cruelly ill-treat, abuse, or torture the birds," within 12 & 13 Vict. c. 92, § 2, as the operation

caused great pain.—*Murphy* v. *Manning et al.*, 2 Ex. D. 307.

Contract.

Contract to build school buildings to be finished by Dec. 25, in default of which the builders to forfeit £10 a week until the buildings were finished and delivered up. If the builders were prevented by bankruptcy, or any cause whatever, from completing the contract, the owners could terminate the contract, employ others to complete the work, and what had been paid the contractors should be held the full value of the buildings; and the material on the premises should be the property of the owners; and, finally, it was provided that, "in case this contract be not in all things duly performed by the said contractors, they shall pay to" the owners "the sum of £1,000, as and for liquidated damages." Before Dec. 25 the builders went into bankruptcy; the trustees in bankruptcy for a time carried on the work, and finally threw up the contract; and the owners had the work finished by another builder, but not till after Dec. 25. *Held*, that the £1,000 was in the nature of a penalty, and the owners could only prove for the actual damage they had sustained from the non-performance of the contract.—*In re Newman. Ex parte Capper*, 4 Ch. D. 724.

See Company, 7; Sale, 3.

Copyright.

If a dramatic piece has been first represented in a foreign country, the author has no exclusive right over the piece in England. Representation is publication within 7 Vict. c. 12, § 19.—*Boucicault* v. *Chatterton*, 5 Ch. D. 267.

See Libel and Slander.

Co-trustee.—See Trustee.

Covenant.

Covenant by M., the lessee of a lot of land, in 1853, that he, his executors, administrators, or assigns, would not do anything upon the premises which might be an annoyance to the neighbourhood or to the lessees or tenants of the lessor, their heirs or assigns, or diminish the value of the adjacent property; nor erect, or permit to be erected, on the lot any building nearer than twenty feet to the road; nor erect any building, messuage, or erection whatsoever, without first obtaining the consent thereto of the lessors, their heirs or assigns. Subsequently, in 1858, H. took a lease of an adjoining lot by indenture containing similar covenants. In 1876, the assigns of M. began, with the approval of the lessor, to put up a building which would obstruct the windows of H.'s assigns. On bill by H. to enjoin A. from erecting the building, and the lessor from allowing it, *held*, that B. was without remedy.—*Master* v. *Hansard*, 4 Ch. D. 718.

See Lease, 2.

Creditor.—See Partnership, 3.

Custody of Deeds.—See Tenant for Life.

Demand.—See Railway, 1.

Devise.

1. Testator devised his freehold property at M., in trust for his two children. He never had any freehold property at M., but had some in R., to which M. adjoined, and in the parish of which M. was, but no mention of any property in R. was made in the will. *Held*, that the freehold in R. descended to the heir-at-law, as being undisposed of.—*Barber* v. *Wood*, 4 Ch. D. 885.

2. Under a general devise charged with debts or legacies, estates held in fee by the testator as trustee do not pass. *In re Bellis's Trusts*, 5 Ch. D. 504.

Discretion.—See Trust, 2.

Domestic Relations.—See Husband and Wife.

Easement.—See Covenant.

Election.

In 1848, P. & Son by deed covenanted to pay to trustees named therein a sum not exceeding £15,000 advanced and to be advanced to them by P.'s wife, in trust for such persons as she should by will or deed appoint, and, in default thereof, for her separate use for life. In 1851, by deed containing no power of revocation, she appointed that, after her and her husband's deaths, the funds should be held for the benefit of her two sons and her two daughters, in equal fourths; the daughters for life, remainder to their "children." In 1863, the advances had been more than £15,000; and the wife undertook by a third deed, also containing no power of revocation, to revoke the appointment of 1851, appointed the trust fund of 1848, and £20,000 more advanced to the firm by her, after the death of herself and her husband, to her children as before. The husband died in 1865. Subsequently, in 1865 and 1866, the wife undertook to make alterations in the appointments of 1843, also by deeds without power of revocation. In 1867, she made a will, undertaking to revoke all her appointments; gave her real estate to her son J., subject to a payment of £10,000 to her son W. She gave and appointed all her interest as it stood on the books of the firm of P. & Son, and certain railroad stock specified, and all

the residue of her personal estate, in trust to her two daughters for life, remainder to their "children or remoter issue." She had at this time a balance on the firm books in her favour; and the railroad stock, amounting to £10,000, had been purchased by the firm, by her direction, from a portion of the balance to her credit on said books. In 1873, the son J. died, leaving children and a will dated 1867, by which he left all the real estate to which he was or should be in any way entitled at his death to his oldest son. In 1874, the wife died, possessed of real estate of greater value than the amount she had appointed to her son J., in 1851, and of personal estate exceeding the £35,000 appointed in 1848 and 1863, as aforesaid; but she had only £10,000 in railroad stock. After her death, the £10,000 mentioned in her will was paid to W. The two daughters above named both had children. The action was begun to obtain a declaration of the rights of the various parties under the deeds and the will. *Held*, that all persons claiming under the will were bound to elect between the benefits conferred by the deeds and those conferred by the will; that J.'s estate must elect and make good to the disappointed legatees what was meant for them in the will; and that the real estate left to J. by his mother was liable for this amount exclusively. As to the rights created under the deed of 1863, if any, no decision would be made, as it might prejudice the interests of the children of the daughters thereunder.—*Pickersgill* v *Rodgers*, 5 Ch. D. 163.

Estate for Life.—See Construction, 2.

Estate Tail.—See Construction, 2.

Evidence.

1. Action for possession of real estate. Plaintiff proved that W., the purchaser, died in 1868 seized in fee, without issue and intestate; that the descendants of W.'s paternal grandfather were all dead, and that plaintiff was heir-at-law of W.'s paternal grandmother. He put in evidence wills and other documents, in which no mention was made of anybody of nearer kin than plaintiff, except those proved to be dead. On W.'s death, an advertisement was put in the newspapers for his heir-at-law; but nobody able to prove anything came forward, except the coheiresses of the mother of W., to whom the defendants had attorned. The defendants showed, by wills and other documents, that the father of W.'s paternal grandfather was J. W.; that he had another son, N., alive in 1755; and he had a sister, Mrs. M., a widow, and alive in 1755; and that the wife of J. W. was S. B. The defendants claimed that the plaintiff should give some evidence as to the extinction of these lines of descent which were preferable to his own. *Held*, that there was evidence for the jury to find for the plaintiff.—*Greaves* v. *Greenwood et al.*, 2 Ex. D. 289.

2. By 32 & 33 Vict. c. 68, § 2, the parties to a suit for breach of promise of marriage may give evidence; but no plaintiff shall recover, "unless his or her testimony shall be corroborated by some other material evidence in support of such promise." Plaintiff swore that the defendant, by whom she was with child, had promised to marry her, and he denied it. Her sister testified that she upbraided him for his conduct; and he said, "he would marry her, and give her anything," but he must not be exposed. After plaintiff was brought to bed, the sister said she overheard him offer her money to go away, and the plaintiff said to him, "You always promised to marry me, and you don't keep your word." The jury found for the plaintiff for £100. *Held*, that there was not sufficient evidence, according to the statute, to support the plaintiff's case.—*Bessela* v. *Stern*, 2 C. P. D. 265.

3. Indictment for obtaining money under false pretences. The prisoner was timekeeper, and C. was paying clerk, to a colliery company. Every fortnight the prisoner gave C. a list of the days worked by each man; and C. entered them in a time-book, together with the amount due each one. On pay-day, the prisoner had to read from the time-book the number of days so entered, and C. paid them off. While the prisoner read, C. looked on the book also. *Held*, that C. might refresh his money as to the sums paid by him to the workmen, by referring to the entries in the time-book.—*The Queen* v. *Langton*, 2 Q. B. D. 296.

4. Gift of residue in trust to A. for life, remainder for all or any of her children who should attain twenty-one or marry. A. died in 1876, having had four children. One child, a minor, petitioned to have herself declared the only person entitled, on the ground that the other children of A. were illegitimate. The evidence of A.'s husband that, after the birth of the petitioner, A. left him, and that they had never since been or lived together as husband and wife, but that A. had lived with another man, was admitted; and the petitioner was declared solely entitled.—*In re Yearwood's Trusts*, 5 Ch. D. 545.

See Negligence, 2; Will, 5, 7.

Digest of English Law Reports.

Executors and Administrators.—See Will, 1.

Factor.

H., a commission merchant and tobacco dealer, sold, through his agent, K., to the plaintiff, a lot of tobacco lying in bond at the dock. The tobacco, according to the usage practised between the parties, remained at the dock uncleared in the name of H.; but the transaction was entered in H.'s books as a sale; and Dec. 3, 1875, an invoice of sale by H. to the plaintiff was sent to the latter, and, Dec. 31, he paid for the tobacco in full. The usage had been in such cases for the plaintiff to receive the tobacco in instalments, as he wished it to manufacture, in which case he would send dock dues and charges for the portion he wanted, and that portion would be discharged and forwarded by H.; but in this case none of the lot had been sent, and March 9, 1876, H. absconded, and March, 15, was adjudged bankrupt. Meantime, Jan. 26, 1876, he had pledged the tobacco to the defendants, and given them the dock warrants, and transferred the tobacco into their name. He represented it to be his property, and they had no knowledge that the plaintiff claimed it. The court had power to draw inferences of fact. *Held*, that the plaintiff was entitled to the tobacco; and that H. had no authority to sell or pledge the tobacco while lying in the dock in his name, but only to clear and forward it to the plaintiff.—*Johnson* v. *The Crédit Lyonnais*, 2 C. P. D. 224.

False Pretences.

Indictment for obtaining money under false pretences. Prisoner was a pedler, and induced a woman to buy some packages, which he called good tea, but which turned out to be three-quarters foreign and deleterious substances. The jury found that he knew the character of the stuff, and that he falsely pretended it was good, with intent to defraud. *Held*, that the conviction must stand.—*The Queen* v. *Foster*, 2 Q. B. D. 301.

Ferry.

A ferry cannot maintain an action for damage to its traffic against a railroad or bridge company which has provided a foot or other bridge. and thus drawn off travel from the ferry. *Reg.* v. *Cambrian Railway Co.* (L. R. 6 Q. B. 422) overruled.—*Hopkins et al* v. *The Great Northern Railway Co.*, 2 Q. B. D. 224.

Frauds, Statutes of. See Statute of Frauds.

General Average.

A captain burnt some spars and a part of the cargo, to keep the donkey engine running to pump the ship in bad weather, and thus saved her. The ship sailed properly equipped with coals; but they ran short, owing to unexpected bad weather. *Held*, a case for general average. *Robinson* v. *Price*, 2 Q. B. D. 295; s. c. 2 Q. B. D. 91, 11 Am. Law Rev. 695.

Gift to Executor.—See Bequest, 1.

Husband and Wife.

1. A wife cannot commit larceny from her husband, no matter whether she has been guilty of adultery or not.—*The Queen* v. *Kenny*, 2 Q. B. D. 307.

2. The wife of G. received a legacy, given her for her separate use, in the form of a banker's draft, to her order for the amount. She indorsed it to her husband; he indorsed it in blank, and deposited it to his own account. He died a few days after. *Held*, that the wife was entitled to the amount of the draft.—*Green* v. *Carlill*, 4 Ch. D. 882.

3. W. sold to T. a claim, which he had by right of his wife, to certain engravings, once the property of Turner, the artist, who died intestate in respect of them. W., T., and W's wife died in the order named, and W's executor's brought suit against T's representatives to set aside the sale. *Held*, on the preliminary objection that the wife's representative was the party who should have sued, that the suit was properly brought by W's executors.—*Widgevy* v. *Tepper*, 5 Ch. D. 516.

See Evidence, 4.

Illegitimacy.—See Evidence, 4.

Insurance.

The ship F. was insured while lying in the docks under repair, for "the space of twelve calendar months," from Jan. 24, 1872, to Jan. 23, 1873. The clause as to time was written in upon a printed blank, designed for a voyage policy; and some of the words, such as "present voyage," inconsistent with the tenor of a time policy, had not been erased. The vessel was found to have been unseaworthy by the jury, though without the knowledge of the owner. *Held*, that the policy was a pure time policy, notwithstanding the printed words not erased; and the court reiterated the rule laid down in *Gibson* v. *Small* (4 H. L. C. 353), and repeated in snbsequent cases, that in time policies there is no implied warranty of seaworthiness. The insured fails to recover, only when he had knowingly sent the ship to sea in an unseaworthy condition.—*Dudgeon* v. *Pembroke*, 2 App. Cas. 284.

Joint Will.—See Will, 6.

Jury.—See Libel and Slander.

Landlord and Tenant.

Defendant hired plaintiff's furnished house from May 7. She went to the house

on that day, and had her horses put in the stable; but she perceived a bad smell, left the house, and removed her horses at once. The house was found to be untenable from bad drainage, and the plaintiff put it in order, and tendered it to defendant, May 20. She refused to accept it. *Held*, that she was not liable. When a furnished house is let, there is an implied condition that it is tenantable at the beginning of the term. If it prove otherwise, the tenant may throw up the bargain.—*Wilson* v. *Finch Hatton*, 2 Ex. D. 336.

See Lease, 1, 2.

Larceny.—See Husband and Wife, 1.

Lease.

1. Lease not under seal for three years, with right in the tenant to remain on three and a half years more at the same rate, *held* to be within the Statute of Frauds, and of 8 & 9 Vict. c. 106, s. 3.—*Hand* v. *Halt*, 2 Ex. D. 318.

2. B. conveyed an eating-house in lease, and covenanted that he would not let any house in that street "for the purpose of an eating-house;" but it was provided that the covenant should not bind B's heirs or assigns. He then let another house in the street, and the lessee covenanted with him that he would not carry on any business there without a license from B. Both leases were assigned, and the assignee of the first brought action against the assignee of the second and B., to restrain them, respectively, from carrying on and allowing to be carried on the business of an eating-house. *Held*, that the covenant was not broken.—*Kemp* v. *Bird*, 5 Ch. D. 549.

See Landlord and Tenant; Statute of Limitations, 2.

Legacy.—See Devise, 1.

Aex Domicilii.—See Marriage.

Lex Loci Contractus—See Marriage.

Libel and Slander.

Defendant was agent for C. & Co. and M. & Co., proprietors of certain musical and dramatic copyrights, and received the fees for their representation in theatres and concert-rooms. The plaintiffs were singers, and put the following advertisement in the *Era* newspaper: "The Sisters Hartridge have great pleasure in thanking Messrs. Chappell & Co., Messrs. Metzler & Co., and others, for their kind, unhesitating permission to sing any *morceaux* from their musical publications." Seeing this, defendant wrote to two concert-hall proprietors, where the plaintiffs were singing, to the effect that the said advertisement was calculated to mislead them into incurring penalties under the Copyright Act, as the said C. & Co. and M. & Co. were not authorized to grant such permission; and he had been assured by them that they had not given such permission, and that the said proprietors had a poor opinion of concert-hall performances; and he added that he knew the lady advertisers had no such intention of so misleading them. *Held*, on a motion to set aside a nonsuit, that the letters contained matter which might be libellous; and that the question should have been left to the jury.—*Hart et al.* v. *Wall*, 2 C. P. D. 146.

Limitations, Statute of—See Statute of Limitations.

Liquidated Damages—See Contract.

Loan—See Partnership, 3.

Manslaughter—See Murder.

Marine Insurance—See Insurance.

Market—See Sale, 2.

Marriage.

B. and S., Portuguese subjects, and first cousins, went through the form of marriage, in 1864, in London, in accordance with the requirements of English law. Subsequently they both returned to Lisbon, and lived there still, and have never lived together as husband and wife. By the law of Portugal, marriages between first cousins are null and void. A petition by the wife, S., for nullity of this marriage was refused.—*Sottomayor*, otherwise *De Barros* v. *De Barros*, 2 P. D. 81.

Master and Servant.

1. The defendants employed the plaintiff with other workmen, and also a steam-engine, with an engineer, in sinking a shaft in their colliery. When the work was partly done, they employed W. under a verbal contract to finish it. W. was to employ and pay the plaintiff and the other workmen. The engine and engineer were under his control; but the engineer's wages were to be paid by the defendants. The plaintiff was injured through the negligence of the engineer. *Held*, on appeal, that the defendants were not liable. *Rourke* v. *The White Moss Colliery Co.*, 2 C. P. D. 205; s. c. 1 C. P. D. 556; 11 Am. Law Rev. 286.

2. Defendant was proprietor of a cab, which was run over the plaintiff while being furiously driven by the cabman. The contract between the proprietor and the cabman was, that the cabman should have the cab each day for as long as he chose, and pay therefor 16s. *per diem*. If he took more, he pocketed the surplus; if less, he made up the deficit. When the accident happened, the cabman had returned with

the cab for the day; but, on approaching the stables, thought he would drive by a quarter of a mile to a tobacconist's and get some snuff. On his return, being drunk, he ran over the plaintiff. *Held*, that the defendant was liable.—*Venables* v. *Smith*, 2 Q. B. D. 279.

See Negligence, 1.

Measure of Damages.

A ship, owing to being unseaworthy, was one hundred and twenty-seven days on a voyage, usually made in sixty-five. In consequence of the delay, the cargo had to be sold at a lower rate, the market having fallen, and the assignee brought suit for damages. *Held*, reversing the judgment of the Admiralty Division, that he could not recover for loss of profit from a reduced market.—*The Parana*, 2 P. D. 118; s. c. 1 P. D. 452; 11 Am. Law Rev. 691.

Mortgage.

Dec. 1, 1874, M., the owner of a vessel, mortgaged it to the plaintiffs for £7,500. Jan. 4, 1875, defendants, in ignorance of the mortgage, advanced M. £3,000 on security of a cargo shipped by M. on nominal freight of 1s. per ton. Feb. 2, 1875, M. again mortgaged the vessel to the plaintiffs for £4,000. Feb. 19, M. and the defendants sold the cargo to J., on terms of freight being paid, at 55s. per ton. Feb. 22, the defendants advanced £9,000 more to M. Feb. 26, M. assigned to defendants the freight at 55s. per ton, as security for their advances. On the arrival of the vessel, the plaintiffs took possession. The defendants acquired J.'s right. *Held*, on appeal, reversing the decision of Common Pleas, that the plaintiffs were entitled to 1s. freight, and not 55s.—*Keith et al* v. *Burrows et al*, 2 C. P. D. 163; s. c. 1 C. P. D. 722; 11 Am. Law Rev. 508.

Murder.

A man indicted as an accessory after the fact to murder, may be convicted as an accessory after the fact to manslaughter.—*The Queen* v. *Richards*, 2 Q. B. D. 311.

Negligence.

1. The defendant was a coal merchant; in delivering coals to his customer, one of his men left the coal grate in the sidewalk open, and the female plaintiff, without negligence on her part, fell in and sprained her ancle. It was the sole duty of the servant to deliver the coals for defendant to his customers. It was objected, on the strength of *Pickard* v. *Smith* (10 C. B. N. S. 470), that the customer, as occupier of the premises, was responsible for the gate's being open. *Held*, that defendant was liable.—*Whiteley and Wife* v. *Pepper*, 2 Q. B. D. 276.

2. Plaintiff was a third-class passenger on defendant's underground railway; and at the G. station three persons got in, and stood up, the seats in the compartment being already full. The plaintiff objected to their getting in; but there was no evidence that defendants' servants were aware of it, and there was no evidence tending to show that there was no guard or porter present at the G. station. At the next station the door was opened and shut; but there was no evidence by whom. Just as the train started, there was a rush by persons trying to get in; the door was thrown open; the plaintiff partly rose to keep the people out; the train started; the plaintiff was pitched forward, and caught with his hand by the door-hinge to save himself; a porter pushed the people away, just as the train was entering the tunnel, and slammed the door to, and thereby plaintiff's thumb was caught and injured. *Held*, by a divided court, that, on these facts, there was evidence from which the jury might find negligence on part of defendants.—*Jackson* v. *The Metropolitan Railway Co.*, 2 C. P. D. 125; s. c. Law Rep. 10 C. P. 49.

See Master and Servant, 1, 2.

Notice—See Bills and Notes, 1.

Novation—See Partnership, 1.

Nuisance.

A person having an artificial drain under his house is bound so to keep it as not to do injury to his neighbour, although he has been guilty of no negligence, and the existence of the drain was not in any way known to him. *Humphries* v. *Cousins*, 2 C. P. D. 239.

Parol Evidence—See Will, 5, 7.

Partnership.

1. Prior to April 16, 1872, H. & E. were partners under the firm of H. & Co., and by the name of the "L. M. Bank." April 16, 1872, W. and J. H. were admitted partners; April 29, 1872, H. died; and May 23, 1874, E. died. The business was, during all this time, carried on under the same firm, name and designation, and the customers of the same knew of the various changes. In December, 1875, the firm went into liquidation. The business of the bank was to receive money on deposit, for which they gave notes signed "H. & Co., L. M. Bank;" and, when a customer changed his deposit, his note was given up, and another made out to him. The claims in this action were by depositors against the estate of H. Some of the claimants had left their deposits unchanged from H.'s death, and some had changed them; and all had received interest from the firm up to its

suspension, and a dividend in the settlement of the firm's affairs, "for money lent and advanced" to the bankrupts. *Held*, that they had no claim against the estate of H., but that there had been a complete novation,—a new liability had been substituted for the old.—*Bilborough* v. *Holmes*, 5 Ch. D. 255.

2. J. gave a guaranty for £1,000 to a bank, in favour of A. & Co., of which firm he told the bank he was a member, though he did not wish the fact to be known. A subsequently went into bankruptcy as "A. & Co.;" and the bank filed proof of a claim against the firm, and brought a suit at law against J., as being a partner. J. filed a petition in equity to restrain, and denied the partnership. The claim against J. was settled; and the bank gave up the guaranty to J. indorsed in payment and discharge thereof, and "also of all claims against J. in reference to us in connection with A. & Co." *Held*, that the indorsement did not preclude the bank from proving against A. & Co. in bankruptcy, though J. must be held to have been a partner.—*Ex parte Good. In re Armitage*, 5 Ch. D. 46.

3. By deed of partnership, dated Oct. 10, 1868, B. & H. agreed to become partners on the terms therein mentioned, the partnership to continue fourteen years under the name of B. & Co. The capital was to be £30,000, of which £15,000 was the good-will of the business. B. put in £1,000, and H. £4,000, and the remaining £10,000 was to be raised "by way of loan" under Bovill's Act, 28 and 29 Vict. c. 86, "in sums of £500, from persons willing to advance the same for the purpose of the said partnership; and the said capital shall be divided into sixty equal parts of £500 each," of which B. was to be the owner of seventeen, and H. of twenty-three; "and the remaining twenty equal parts or shares shall be considered as appropriated to or for the benefit of the person or persons so advancing money by way of loan, as aforesaid, on the proportion on which the same shall be advanced by them respectively." The capital was not to be drawn out of the business during the continuance of the partnership. Then followed a clause that the partners were to conduct the business to the best of their ability. The profits were to be paid out each year to persons holding £500 shares, according to the number thereof; and, on the expiration or earlier termination of the partnership, the parties thus making "advances by way of loan" were to be repaid the same, less what might have been overpaid them by way of profits. The other provisions usual to partnership articles were contained in these. About the same time, a deed was made between one D. and the partners B. and H., reciting the partnership papers, and that D. had agreed to advance them £2,500 under Bovill's Act, by way of loan, to carry on their business, which B. and H. agreed to repay within six months after the termination of the partnership; that B. and H. should observe all the provisions of the partnership articles, and the latter should be always open to D.'s inspection; that B. and H. would make out yearly accounts, and pay D. either five-sixtieths of the profits, or such a proportion of all the profits as D.'s advance bore to the whole capital; that, if either partner became bankrupt, the other should pay D. his advance and profits due him in full; that, within six months after the termination of the partnership, said £2,500 should be repaid "out of the assets" of the firm; and that if, at the end of the business, the amounts paid D. as profits turned out to exceed the whole profits of the business, D. should refund the excess, not exceeding £2,500. There followed an arbitration clause. Bovill's Act provides that "the advance of money to a firm upon a contract that the lender shall receive a rate of interest varying with the profits, or a share of the profits, shall not of itself constitute the lender a partner." *Held*, that the act was declaratory of the common law; and that, at common law, D. was liable, as a partner, for the whole of the partnership debts. *Pooley* v. *Driver*, 5 Ch. D. 458.

Pleading and Practice—See Murder; Railway, 1.

Post-Office Address—See Bills and Notes, 1.

Precatory Trust—See Trust, 3.

Prescription.

A sea-wall had been maintained, time out of mind, along a creek on which plaintiff and defendant each had land. It was necessary now and then to put fresh material on the top of the wall, to keep it up to a proper height. Defendant neglected to "top" his wall, and, in consequence, the sea flowed over and injured not only his own land, but also that of plaintiff. *Held*, that there was no evidence of a prescriptive liability of any one abuttor to maintain his wall for the protection of the others; and the common law created no such liability on the frontagers.—*Hudson* v. *Tabor*, 11 Q. B. D. 290; s. c. 1 Q. B. D. 225.

Prima Facie Proof—See Evidence, 1.

Principal and Agent—See Factor.

Probate—See Will, 3, 7.

Proof of Claim.

Where a widow was entitled to an annuity, during life or widowhood, out of property bequeathed to her sons, and the sons had given bonds for the payment of the same, and then went into bankruptcy, *held*, that the value of her claim was capable of being fixed and proved through the report of an actuary.—*Ex parte Blakemore. In re Blakemore*, 5 Ch. D. 372.

Railway.

1. A person was informed against under 8 & 9 Vict. c. 20, § 145, for not showing his ticket on a railway company's carriage, for which offence a by-law of the company required him "to pay the fare from the station whence the train originally started to the end of his journey." *Held*, that to recover under this by-law, there must have been a demand of the specific sum due thereunder in this particular case complained of.—*Brown* v. *The Great Eastern Railway Co.*, 2 Q. B. D. 406.

2. By the Railway and Canal Traffic Act (17 & 18 Vict. c. 31), § 2, railway companies are forbidden to "give any undue or unreasonable preference or advantage to, or in favour of, any particular person or company," in the matter of carrying and forwarding traffic. Plaintiff had a brewery at B., where there were three other breweries. The latter were connected with the M. Railway; plaintiff was not. In order to get some of the freight from the three breweries for themselves away from the M. railway, the defendant company carried their goods from the breweries to the freight depot, free of charge, and still made a profit on the transportation. They made a charge to the plaintiff for the same service. *Held*, that this was "undue preference" within the Act, and the plaintiff could recover an amount equal to the cost of carting his goods to the defendant's depot.—*Evershed* v. *The London & Northwestern Railway Co.*, 2 Q. B. D. 254.

See Company, 1, 2; Ferry; Negligence, 2.

Rape.

The prisoner was consulted by the prosecutrix, a girl of nineteen, with her mother, for fits. He said the difficulty was, that "Nature's string wanted breaking." Without knowing what that meant, the girl consented to his remedy; and, under pretence of performing a surgical operation, he had carnal intercourse with her, she being wilfully and fraudulently induced to believe that it was merely medical treatment. *Held*, that he was guilty of rape. The judges all intimated a wish that the point decided in *Reg.* v. *Barrow* (Law Rep. 1 C. C. 156) might be reconsidered.—*The Queen* v. *Flattery*, 2 Q. B. D. 410.

Remoteness.—See Construction, 2.

Request—See Trust, 3; Will, 1

Revocation—See Election; Will, 6.

Sale.

1. March 3, 1876, D., a broker, bought for B. & Co., his undisclosed principals, certain dry goods lying at the K. Docks consigned to C., payment to be made in fourteen days. C. signed a delivery order to the Docks' superintendent to the order of D. D. indorsed it to B. & Co. B. & Co. indorsed it to plaintiffs, as security for advances. March 18, being prompt day, plaintiffs sent the delivery order to the Docks' office, with the request to hold the order, and have warrants made out as soon as possible. He was told the goods would be ready for delivery on the 20th; and a clerk was sent to the Docks' warrant office with the order, where he arrived at 3 P. M. Meantime D., hearing that B. & Co. had suspended, paid C. for the goods, sent to the Docks' warrant office, and obtained a warrant for the goods in the name of C. before the other order arrived, had C. indorse the warrant to him, and give him a second delivery order. The Docks Company returned the first delivery order unexecuted, and plaintiffs brought suit against C., D., and the company. It is a usage of the London Dry Goods Market, that a broker who does not disclose his principal is liable as surety for the latter's default. *Held*, that the unpaid vendor's lien had passed to D., who was surety for R. & Co., and the plaintiffs gained no title.—*Imperial Bank* v. *London & St. Katharines Docks Co.*, 5 Ch. D. 195.

2. A man brought in pigs from his infected herd, out of which many had died, and had them sold, expressly stating that they were to be taken with all faults. *Held*, that at common law, as well as by the Contagious Diseases (Animals) Act, 1869, he was liable in damages to the buyer, on whose hands the pigs died.—*Ward* v. *Hobbs*, 2 Q. B. D. 331.

3. N. undertook to sell to E. three farms. The agreement to purchase was signed Sept. 3, 1873, and payment was to be made and possession given Sept. 29 following. In case the purchase was not completed on that day, the purchaser was to pay interest to such reasonable date as might be agreed upon. On that day it turned out that the seller had not a legal

title to the property, and the purchaser refused to accept the same, and afterwards, when the seller offered him a clear title, persisted in his refusal. *Held*, that time was of the essence of the contract, and therefore the refusal was justified.—*Noble* v. *Edwards*, 5 Ch. D. 378.

4. The defendants were auctioneers, and issued a list headed: "Great Western Railway Co., catalogue of unclaimed property, which will be sold by auction by Messrs. H. & E., on Tuesday, Nov. 7, or following day. By order of the directors of the above company," &c. There were the following conditions also printed on the same document: "The lots to be cleared away within three days after the sale, at the purchaser's expense. If any deficiency arise, or from any cause the auctioneer shall be unable to deliver any lot . . . then, in such case, the purchaser shall accept compensation. Upon failure of complying with the above conditions, the money deposited in part payment shall be forfeited. All lots unclaimed within the time aforesaid shall be resold by public or private sale, without further notice, and the deficiency made good by the defaulter." Plaintiff bought a lot on Wednesday, and paid his deposit, but did not go for the goods till Monday, when he was told the lot had been delivered to another party. A witness said that he saw the goods Saturday morning in process of being delivered. Defendants claimed that they were not liable, on the ground that they were the agents merely of the railway company, and, also, on the ground that plaintiff was bound to take the goods within three days, that being a condition precedent. *Held*, that there was evidence of a personal contract on the part of the defendants, and that the condition to remove the goods was not a condition precedent. *Woolfe* v. *Horn*, 2 Q. B. D. 355.

Sea-wall.—See Prescription.

Seaworthiness.—See Insurance.

Slander—See Libel and Slander.

Solicitor and Client.—See Attorney and Client.

Statute.—See Construction, 3; Evidence, 2.

Statute of Frauds.—See Lease.

Statute of Limitations.

1. Demurrer that the following note did not revive a debt otherwise barred by the statute: "Your note . . . forwarded to me here. I return to S. about Easter. If you send me there the particulars of your account, with vouchers, I shall have it examined, and check sent to you for the amount due; but you must be under some great mistake in supposing that the amount due to you is any thing like the sum you now claim." Demurrer overruled.—*Skeet* v. *Lindsay*, 2 Ex. D. 314.

2. In 1783, a lease was granted for ninety-nine years, and there was enjoyment under the lease until 1876, when an action was brought for possession, on the ground that the lease was void under 13 Eliz. c. 10. Demurrer that the claim was barred by the Statute of Limitations. *Held*, that the lease was voidable, not void, and that consequently the statute did not begin to run till the action was brought.—*Governors of Magdalen Hospital* v. *Knotts*, 5 Ch. D. 175.

See Company, 2.

Stoppage in Transitu.—See Bill of Lading; Vendor and Purchaser; Vendor's Lien.

Substitution.—See Construction, 1.

Tenant for Life.

A tenant for life was allowed by the court to retain possession of the title-deeds, as against the remainder-man, who applied to have them deposited in court.—*Leathes* v. *Leathes*, 5 Ch. D. 221.

Time.—See Contract; Sale, 3.

Time Policy.—See Insurance.

Trust.

1. In 1807, a testator left a will, with the following clause: "I appoint my executor, Charles E., my youngest brother, to be trustee for the following legacies," naming them: "Considering that money will be more essential to my brother Samuel than a distant possession of land I bequeath to Samuel during his natural life the interest of £3,000; and, after his death, to his eldest son, James, by his last wife, Margaret J., or M. or E., till he attains twenty-one, and then to obtain the principal. I order that my youngest brother, Charles E.; shall be liable to all my lawful debts of every description, and pay them as soon as he can; and also pay my legacies when regularly due; . . . and, to enable him to do this, I bequeath unconditionally to him all my estates . . . in Armagh. I also bequeath to him . . . all my estates . . . in Louth or elsewhere." The legacy of £3,000 to Samuel was not paid; but, in 1833, his son accepted £300 in settlement, on the ground, urged upon him by Charles's representative, that he was entitled to nothing, as being illegitimate. In 1872, a bill was filed by parties interested under his claim, asking that the composition of 1833 be set aside as unconscionable, and the £3,000, with interest, be declared well charged upon the estates and for general relief. *Held*,

that the agreement of 1833 was null and void,—all the parties having plainly proceeded upon the assumption that the question of the illegitimacy of Samuel's son decided his right; whereas, on the words of the will, that had nothing to do with it; that there was created a trust in respect of the £3,000 on the estates in Armagh bequeathed to Charles (*quære* as to the Louth estate, that point not having been disputed), and consequently the Statute of Limitations did not apply. Interest on the legacy was, however, allowed for six years only, on the ground that no direct proceedings had been taken to enforce the claim before 1872.—*Thomson* v. *Eastwood*, 2 App. Cas. 215.

2. A testator devised his property to trustees upon trust, *inter alia*, that they should, "in their discretion and of their uncontrollable authority, pay and apply the whole or such portion only of the annual income . . . as they shall think expedient to or for the clothing, board, &c., for the personal and peculiar benefit and comfort of my dear wife." One of the trustees was residuary legatee. The wife was an insane person, and had property in fee in her own right. *Held*, that the court would not make a decree that the trustees "should exercise such discretion by paying and applying such portion only of the income of the estate of the testator as with the income from other sources will make up" the amount needed for the wife's support, &c. The court would not interfere with the exercise of the discretion given to the trustees by the will.—*Gisborne et al.* v. *Gisborne et al.*, 2 App. Cas. 300.

3. Residuary bequest to trustees to hold "in trust for such of my nieces, M. and N., as shall be living at my death, my desire being that they shall distribute such residue as they think will be most agreeable to my wishes." *Held*, that M. and N. took absolutely for their own benefit.—*Stead* v. *Millor*, 5 Ch. D. 225.

See Devise, 2.

Trustee.

Trustees advanced money to A., a builder, on security of land purchased by A. of B., the defendant and one of the trustees, and which A. had built upon. The money was used partly to pay for the land, and partly to repay other sums which A. owed B. The plaintiff, the other trustee, knew that A. and B. had had business relations. A. went into bankruptcy, and the plaintiff filed a bill against B., his co-trustee, alleging that the security was insufficient, and asking that the property be sold, and that the defendant be held to make up the deficiency. Refused.—*Butler* v. *Butler*, 5 Ch. D. 554.

Usage.—See Vendor's Lien.

Vendor and Purchaser.

Feb. 10, 1876. L., a merchant, and W., a manufacturer, made an agreement under which W. was to supply L. with goods from time to time, and W. should draw upon L. bills of exchange for the invoice price, which L. should accept, L. having regularly a credit of £5,000. L. was to ship the goods to R. & Co., Shanghai, for sale on his account; sending the bills of lading by post, and made out to R. & Co.'s order. W. was to have a lien on the bills of lading, and the goods in transit to Shanghai, or in anybody's hands as well as upon the proceeds or the goods purchased therewith in the hands of the consignees, or in transit homewards; such lien not to be general, but to be confined to the particular shipment, and cease when the bills for such shipment had been paid by L. L. was to insure primarily for the benefit of W., as mortgagee or pledgee. L. promised W. to give R. & Co. notice of this agreement; but they had no notice of it. Under the agreement, L. ordered goods of W.; they were packed by W.'s packer, and marked "Shanghai." W. sent the invoice to L., headed "L., bought of W." L. wrote the packer to send the goods to the G., a Shanghai vessel loading at the dock. W. paid the freight to the dock, and the packer advised L. that he had sent the goods thither, at L.'s disposal. W. drew on L., at six months, for the amount of the bill of the goods; and L. accepted the bill. The carriers who took the goods to the dock notified L. that they had arrived at their warehouse, and would be sent to the G.; and they were shipped on board that vessel, and the bills of lading made out to L.'s order. He did not, however, pay the freight, and the bills of lading remained in the ship-owners' hands. Subsequently, April 5, 1876, L. suspended payment. April 8, the G. sailed. April 12, L. filed his petition in bankruptcy, and, May 20, was adjudged bankrupt. The trustee in bankruptcy and W. each demanded the bills of lading before the ship reached Shanghai; and it was agreed that the goods should be sold, and the proceeds held to abide the decision of the court. *Held*, that W. had a right of stoppage *in transitu* until the goods reached Shanghai; and that, by demanding the bills of lading, he had exercised his right, and could have the bill of exchange accepted by L. paid out of the proceeds of

sale of the goods.—*Ex parte Watson. In re Love*, 5 Ch. D. 35.

See Bill of Lading; Sale, 3.

Vendor's Lien.

The P. Company, defendants, manufacturers of steel rails, made a contract for rails with S. & Co., to furnish them a certain quantity at stated times, delivered at Liverpool on board ships; payment to be made three-fifths net cash, and two-fifths by buyer's acceptance, at four months, as each five hundred tons of rails were ready for shipment. The warrant signed by the defendant company for the delivery of the rails contained the phrase, "Iron deliverable (f. o. b.) to S. & Co., or to their assigns by indorsement hereon;" and it was shown to be the usage of the iron trade that such warrants were considered to pass the goods to the holder hereof free from vendor's lien. Several warrants in this form were sent, with invoice and drafts, to S. & Co., as the instalments of rails were finished, and the rails stored at the company's works. S. & Co. pledged the warrants to the plaintiff banking company for advances; and, before the contract was completed, and while some of the goods were still at the works, and some had been sent to Liverpool on the order of S. & Co., and were in the railway company's warehouse, S. & Co. suspended. *Held*, that under the above usage, the plaintiffs were entitled to the goods at the works, and were, moreover, entitled to those in the warehouse, as being no longer in transit.—*Merchant Banking Co. of London* v. *Phœnix Bessemer Steel Co.*, 5 Ch. D. 205.

See Bill of Lading.

Warranty.—See Insurance.

Will.

1. Testatrix made a will disposing of all her property. In 1860, she made another, making some changes in the bequests as they stood in the first document. The second will contained no residuary clause, and made no allusion to the previous will; but it declared that "this is the last will . . . . of me." *Held*, that the first will must be considered revoked: the second alone admitted to probate.—*Dempsey* v. *Lawson*, 2 P. D. 98.

2. Clause: "I appoint my sister . . . . my executrix, only requesting that my nephews," F. & J., "will kindly act for or with this dear sister." *Held*, that F. and J. were duly named executors with the sister of the testatrix.—*In the goods of Brown*, 2 P. D. 110.

3. Testatrix wished to revive a will and codicil dated respectively Jan. 26, and Feb. 21, 1876, and which had been subsequently revoked. Her solicitor made copies of them, and had the two documents re-executed Jan. 18, 1877. He neglected to change the reference to the date of the will made in the codicil, and the codicil read, "my last will dated Jan. 26, 1976." *Held*, that the will and codicil should be admitted to probate.—*In the goods of Ince*, 2 P. D. 111.

4. Clause in will: "I hereby appoint one of my sisters my sole executrix." Testator had three sisters living at the date of the will; but only one survived him. The court refused to granl probate to her on the gfound of uncertainty.—*In the goods of Blackwell*, 2 P. D. 72.

5. Testator, living in Brighton, left a will appointing twelve executors thereof, one of whom he described as "Percival ——, of Brighton, the father." There was evidence that testator had an intimate friend in Brighton, named William Percival Boxall; that testator was accustomed to call him Percival, and had appointed him executor in his previous will; that Boxall had a son named Percival, well known to the testator; and that testator knew no other person named Percival. This evidence was admitted to determine who was meant.—*In the Goods of De Rosaz*, 2 P. D. 66.

6. He made a will dated March 15, 1864, giving his property to his wife. Oct. 12, 1874, he and his wife made a joint will, "in case we should be called out of this world at one and the same time, and by one and the same accident." There was a clause revoking all previous wills. He died Dec. 31, 1876; his wife surviving. *Held*, that the joint will was made in view of an event which never happened, and hence it had become and was of no effect. The other will was good.—*In the Goods of Hugo*, 2 P. D. 73.

7. Testator used a blank lithographed form for a will to give property absolutely to children after the life-estate of the widow. The lithographed words giving to the children were marked out, and the words, "to my only son, H.," written in. No note was made on any part of the will to these alterations, and the attesting witness (one witness had died) knew nothing about it. Testator left five children by a former wife, and the said son H. by a wife living. Testator has said to the trustee named in the will that he meant to provide for his son H.; and this evidence was admitted, and the will admitted to probate.—*Dench* v. *Dench*, 2 P. D. 60.

See Bequest, 1, 2; Devise, 1, 2; Election; Trust, 1, 2, 3.

Words.

"*Money, Cattle, Farming Implements, &c.*"—See Bequest, 2.

"*All and Every the Children of our Issue.*"—See CONSTRUCTION, 1.

"*Uncontrollable Authority.*"—See TRUST, 2.

"*Act for and with.*"—See WILL, 1.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

HILARY TERM, 1878.

FIRST INTERMEDIATE.

Williams on Real Property.

1. Distinguish between a reversion and a remainder.

2. What do you understand by the foreclosure of an equity of redemption? Explain the necessity of it.

3. What is the distinction between a vested and contingent remainder as to liability to destruction.

4. Distinguish between incorporeal hereditaments, appendant, appurtenant, and in gross.

5. What is an interesse termini?

6. Give an example of a tenant in tail after possibility of issue extinct.

7. There is a grant to A. for life, remainder to B. for life, remainder to the heirs of A. in fee. B. dies during A's life. What estate has A. in the land?

Broom's Common Law and Administration of Justice Acts.

1. What is the "golden" rule for the interpretation of statutes given by Mr. Broom?

2. What are the preliminary matters according to Mr. Broom in regard to which an individual should satisfy himself before commencing an action?

3. Define the meaning of the expression "Estoppel by matter of record."

4. What is the effect of the endorsement of a bill (*a*) *in blank*, (*b*) by special endorsement? Is there anything further necessary to perfect the title of the endorsee to the bill, and if so, what?

5. A. is the owner of a vessel which B. voluntarily undertakes to get insured; B. neglects to do so, and the vessel being lost A. thus sustains damage through the non-performance of his undertaking by B. Will A. have any redress, and why?

6. Distinguish between *larceny* and *obtaining goods by false pretences.*"

7. What summary method is given by statute to a judgment creditor of reaching lands conveyed away by the judgmeut debtor by a conveyance which is void, as being made to delay, hinder or defraud creditors? Describe shortly the different steps to be taken.

CERTIFICATE OF FITNESS.

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

1. Define a *corporation aggregate.* By what means only can it usually express its intention? What exceptions to this exist in the case of a *trading corporation*, and on what grounds are such exceptions based?

2. Give instances referred to by Mr. Smith where the nomination of an agent must be (1) in writing, (2) by deed.

3. Under what circumstances, if any *must* an agent contracting in his own name for an undisclosed principal sue in his own name? Explain your answer.

4. What exceptions are there in favour of trade (1) to a landlord's right to distrain goods on leased premises for rent; (2) to his right to fixtures affixed by the tenant to the freehold during tenancy?

5. What steps *must* be taken by the holder of a bill of exchange in order to hold endorsers liable on the bill after maturity? Answer fully.

6. Define shortly the duties and liabilities of a common carrier at common law.

7. A, in consideration that B would not sue C, promises to pay the money due from C to B. Would A be liable on his promise? If so, why? If not, why not?

8. A sells B a field of hay, not to be paid for till a future period, and not to be cut till paid for. Before the day of payment the hay is accidentally destroyed. What are the respective rights and obligations of A and B in the case.

9. Give a short sketch of the practice regarding the examination of judgment debtors as to their property, stating the conditions necessary to enable a judgment creditor to proceed with such examination, and stating also the practice in case the judgment debtor happens to be a corporation.

10. In case of the hearing of a summons pending before a Judge it becomes requisite to have some papers in the hands of your opponent produced for use on the hearing, what means would you adopt for attaining this end, and by what authority would you act in adopting such means?

CALL.

Equity.

1. What is a general demurrer? What is a special demurrer?

2. With what degree of certainty must the material facts be alleged in the plaintiff's bill of complaint?

3. Under what circumstances may a plaintiff be entitled to specific performance of a written contract with a parol variation?

4. What must appear on the written memorandum respecting the sale of a parcel of land, so as to entitle the plaintiff to specific performance?

5. What is meant by charities? Suppose a person make a valid gift of money to a charity, expressing a general intention of charity, but the named charity does not exhaust the gift, what becomes of the surplus?

6. After foreclosure of a mortgage, has the mortgagee any, and if so, what remedy against the mortgagor in respect of the mortgage debt.

7. Where there has been a fraudulent alienation of trust property, when can the cestui que trust follow the property, and when not?

8. A mortgagee having sold the mortgaged lands under a power of sale contained in the mortgage, more is realized than is owing to him, and the mortgagee cannot find the person entitled to this surplus, what disposition may the mortgagee make of this surplus so as to be free from further accountability therefor?

9. What is meant by election to take under the instrument, and what by election against the instrument?

10. What right, if any, have executors to compromise debts due the testator?

REVIEWS.

Void Judicial Sales. By A. C. Freeman. St. Louis: The Central Law Journal. 1877.

The title page amplifies the above description of this book as follows:—Void Execution, Judicial and Probate Sales, and the legal and equitable rights of purchasers thereat, and the constitutionality of special legislation validating void sales, and authorising involuntary sales in the absence of judicial proceedings.

This book will be of especial use to the legal profession in the United States, and the bulk of the cases cited are from the Courts of that country; but the English cases have apparently not been omitted. The author gives a clear exposition of the subject discussed; the subject, moreover, is new, at least in its present shape, and the book will be a great saving of time to the busy practical man who has to look up the law on any point within the limits the author has laid down for himself.

A Manual of Criminal Law; including the mode of procedure by which it is enforced; especially designed for the use of students. By Emory Washburn, LL.D. Edited with notes by Marshall D. Ewell. Chigago: Callaghan & Co. Chicago, U. S. 1878. R. Carswell, Toronto.

This is, as the title-page testifies, an elementary book. Coming from the late Professor Washburn it cannot but be good. It is designed "to serve the student the purposes of an outline map of the country he has to travel over" in his wanderings after a complete knowledge of the criminal law. The author adopts the plan of tracing a criminal prosecution from its incipient stage before the magistrate, to its final judgment and sentence, and in the main follows in his arrangement the treatise of Mr. Chitty on the criminal law. The matter was prepared for the press by Mr. Ewell after the author's death. The book is attractive in shape and style, and the typographical execution is of the very best.

The Doctrines of the Law of Contract in their Principal Outlines, stated, illustrated and condensed. By Joel Prentiss Bishop. St. Louis: Soule, Thomas & Wentworth. 1878. R. Carswell, Toronto.

This is in Mr. Bishop's own particular style; its merits may be assumed from the reputation of its author. It is, he tells us, the outgrowth of a plan to collect in simple and compact language, and arrange in an order of his own, the essential doctrines of the law of contract. He says he has felt in books on this subject "for the ribs in the body of the law of contract, and for the spinal column, but could not distinguish rib or backbone from muscle." He has accordingly made a skeleton in the shape of short legal propositions, arranged under the various chapters into which he has divided his matter. We do not quite agree that the arrangement of the author is in all respects the best; but it certainly has the merit of being in many ways novel. Nevertheless, whilst there is originality in every page, the reader finds when he has read a few pages that he has had firmly impressed on his mind an amount of first principles or "ribs" which make it clear to his mind that the author has something approaching a genius for evolving principles out of a maze of illustrations. It is thus a valuable book for students, for practitioners, and for the man of business. These propositions, without the authorities cited, would not be of much use to those who have to apply them to the particular case before them. We could wish to see this skeleton covered with the Canadian authorities, and so made more useful to us; the cases cited are almost exclusively American. The work is a valuable addition to the many that have been written on this most important branch of the law.

American Criminal Reports. By John G. Hawley, late Prosecuting Attorney at Detroit. Vol. I. Chicago, Callaghan & Co., Law Publishers, 1878. R. Carswell, Toronto.

This is the first of a series designed to contain the latest and most important criminal cases determined in the Federal and States Courts in the United States, as well as selected cases, important to American lawyers, from the English, Irish, Scotch, and Canadian Law Reports, with notes and references.

The whole value of this series will depend upon the care and research of the compiler. As far as we, in this Dominion are concerned, it will be valuable only so far as the leading American cases are concerned. As we have access to the rest of the matter in other ways. The American cases seem, on the whole, to be selected with much care, though many of them are not applicable to the law as it stands on this side of the border, and some are curiosities in their way. The judgment in the case of *State* v. *Neely* is not only a curiosity, but an outrage on common sense, law and justice. The Court that pronounced it was as devoid of legal knowledge as it was filled with blind, unreasoning prejudice. The prisoner was indicted for an assault to commit rape. The evidence was simply that the prisoner saw the prosecutrix walking through a wood. He called to her to stop; she ran on and he followed her a short distance, being about seventy yards from her, until she came to a clearing, when he walked off in another direction. He was convicted on this evidence. On an appeal, this conviction was sustained. The only way we can account for such a result is, that the prisoner was a negro and the *locus in quo* was North Carolina. We notice in this volume the case of *The People* v. *Wilson*, which was referred to in *Reg.* v. *Wilkinson*. The Canadian authorities republished are *Reg.* v. *Belmont*, *Reg.* v. *Hennesey*, *Reg.* v. *Starr*, and *Reg.* v. *Smith*.

BOOKS RECEIVED.

A Compendium of Roman Law. By Gordon Campbell, M.A., of the Inner Temple, London. Stevens & Haynes, Law Publishers, Bell Yard, London. 1878. Willing & Williamson, Toronto.

Mayne on Damages. Third edition. By J. D. Mayne and Lumley Smith.

London: Stevens & Haynes. 1878. Willing & Williamson, Toronto.

Wheaton's International Law. English edition. By A. C. Boyd. London: Stevens & Sons, Law Publishers, 119 Chancery Lane. 1878. R. Carswell, Toronto.

Law of Trade Marks and Goodwill. By L. B. Sebastian, B.C.L., &c. Stevens & Sons. 1878. R. Carswell.

Practice of the Supreme Court of Judicature in England. By John Indermann, Solicitor, &c. London: Stevens & Haynes. 1878. Willing & Willlamson.

The Constables' Manual. By S. R. Clarke, Barrister, Toronto. Hart & Rawlinson, 1878.

FLOTSAM AND JETSAM.

The following—shall we call it—*Process*, has been sent to us. The ingenious inventor ought to patent it, should he not be previously incarcerated for felony under the enactment which provides that "Every person who knowingly acts or professes to act under any false colour of process of the Court shall be guilty of felony." The document, which we forward to the County Attorney of Bruce, is in the size, style and shape of a Division Court Summons, and is as follows:—

"Final Notice before proceeding in the

Division  **Court.**

For the more easy recovery of small debts and demands as per Act for Division Courts.

—o—

Name.)

VS.

(Name.)

TAKE NOTICE that unless the sum of $3 and 80 cents, due from you to us be paid within ten days from date hereof, you shall be proceeded against under the above Act; which enacts that, after ten free days, execution pass hereon for the said amount, by arresting and pointing, but with certification, that if the defender agrees to pay by instalments, and he or she allow two instalments to run into the third unpaid, then, and in case, the indulgence of paying by instalments shall cease; and ordains execution to pass by the diligence aforesaid, for the whole sum decerned for and unpaid, in terms of the said Act of Parliament.

Dated at Kincardine, this fourth day of March, in the year of our Lord one thousand eight hundred and seventy eight years.

EXPENSES.		
Original Debt.	$3	80
Cost of this application....		25
Postage		1
Total.....	$4	06

P.S.—If you prefer settling with ourselves, before going into Court, bring this notice with you and avoid all costs."

On the 22d ult., as Sir George Jessel, Master of the English Rolls Court was alighting from his cab at the court door, he was shot at with a pistol in the hands of a lunatic, who had a few days before been removed from the court by his order. The bullet grazed the ear of the judge. The man was immediately arrested. On taking his seat on the bench, the judge remarked that assaults on civil judges in England have been extremely rare. The *Solicitors' Journal* can not recall within the last few years any instance of assault on a judge in a civil court more serious than that perpetrated by the man from Texas, who discharged at Vice-Chancellor Malins an egg of dubious freshness. But in 1616 Sir John Tyndal, one of the Masters in Chancery,

was killed by a shot fired at him, while entering his chambers at Lincoln's-inn, by a man called Bertram, against whom Sir John had given a decision. The assassin was examined before the Attorney-General and Solicitor-Ceneral "according to special directions given by his Majesty in that behalf," but committed suicide before he could be punished (see 2 Morant's History of Essex, 281). A few years later a very severe and summary punishmeut was inflicted on a ruffian who attempted to injure a judge of assize. Chief Justice Richardson at the assizes at Salisbury, in the summer of 1631, was assaulted by a prisoner, condemned there for felony, who, after his condemnation, threw a brickbat at the judge, which narrowly missed him. For this an indictment was immediately drawn by Noy against the prisoner, whose right hand was forthwith cut off and fixed to the gibbet upon which he was himself immediately hanged in the presence of the court (see 2 Dyer, 188b).—*Ex.*

The London correspondent of a Chicago paper was in attendance on the great detective case at the Old Bailey, and was astonished beyond measure at the methods of English justice: "There did not seem to be an impression among the opposing counsel that they were deadly enemies because they happened to be engaged on opposite sides of the same case. Their treatment of each other was characterized by all the courtesy of gentlemen, such as one would find at a dinner-table or in the social intercourse of a drawing-room. The absence of unseemly squabble, of the ill-tempered wrangles of counsel made me homesick; and was an emphatic reminder that I was far from home, and among a strange, a singular people. My nostalgia was increased by the absence of anything like the bullying of witnesses. The man in the box was not made to believe that he was regarded as a deliberate perjurer. There seems to prevail here the singular—singular from an American legal standpoint—conviction that a man can be a witness on the other side without necessarily being a liar and a horse thief, and treated accordingly."—*Ex.*

Length of Trials.—A solicitor, says the *Solicitors' Journal*, moved by the recollection of the Tichborne trial, and the seven days' trial of the Penge case, has been at the pains to give, in a letter to a daily journal, an interesting analysis of the principal criminal trials which have taken place during the last fifty years, with a view to ascertain how far they differ, in intricacy, and in the number of witnesses examined, from the trials of the present day. The result of his investigation, as to the earlier trials, says the *Journal*, may be summed up as follows:—

"At Patch's trial, in 1806, for the murder of his partner,—a very intricate case,—there were thirty-three witnesses, and the trial lasted one day. Bellingham's trial, for the murder of Spencer Perceval, in which there were sixteen witnesses and long defence, lasted only one day. Thistlewood's trial, for the Cato-street conspiracy, with forty witnesses, lasted two days. In 1824 occurred Thurtell's trial, at which there were forty-six witnesses—including one who was an accomplice, and who was examined at considerable length, and another who was called in the course of the summing up. The trial lasted two days. In 1828, Corder was tried, a long indictment read, twenty-six witnesses; and the trial lasted one day and a-half. In 1828, Burke's trial took place; a long argument as to the indictment, sixteen witnesses (one of them being an accomplice), and the trial lasted one day. In 1831, Bishop, Williams and May were tried for the murder of the Italian boy; there were forty-one witnesses, and the trial lasted one day. In 1837, Greenacre's case: thirty-five witnesses, two days. In 1839, Frost, for high treason; there were sixty-nine witnesses, one whole day taken up with legal arguments, and the trial lasted seven days. In 1840, Courvoisier: forty-four witnesses, three days; and in the same year, Gould's case: forty witnesses, one day. In 1843, McNaghton's case: several scientific witnesses, forty-seven witnesses in all; two days. In 1845, Tawell: twenty-one witnesses, exclusive of those called to character, two days.

Eloquent Tribute to a Professional Juryman.—There was a pause, and a solemn stillness pervaded the court room when the venerable member of the bar rose to second the resolution. He said: "The deceased was a remarkable personage in the

ranks of professional jurymen. He was an old liner, patient and steady as a clock, determined in opinion, ever ready to assume the cares and responsibilities of the occupation he had marked out for himself in this life. Men are prone to falter and lie out of it if they can, pleading business, measles in the family, much information and prejudice in the case. But he never shirked. When duty called, he was always there, and came as pure and unbiased as a dove. I doubt that we shall ever look upon his like again. Others may emulate his example, and by great experience, devotion to duty and thorough development of talent, rise high in the profession, but who shall take the place of him whose loss we mourn? I knew him long and well. We were friends. Much of my success in life and in pleading at this bar I owe to him. He never forsook a friend in the jury room. When I turn my eyes to that vacant and well worn chair at the end of the front row, I can almost see him as of yore, so calm, so composed, so like a Judge upon the bench. Towards the last, in the infirmities of years, he may have slept much at his post, yet so vast was his experience and intimacy with the requirements of his office, that he discharged his duties without embarrassment, and in a manner to satisfy his own conscience and one side of the contending factions. What more could mortal juryman do? He was not, you may say, a popular man with his colleagues. He had enemies, as every man of decided opinions has. Some one envious of his success. He was, moreover, a stickler. The bent of his mind was toward disagreement. He held his comrades with a steady hand and either brought them round, or there was a dead lock. He was a leader of juries, or he went alone. Hence he incurred disfavour. More than once was his life imperilled in the jury room, but he calmly looked death in the face and hung on to the last. When, on one occasion, a mob of eleven strong men attacked him, and hauled him up to the ceiling several times to persuade him to submit, his unconquerable spirit did not flinch. And then on another occasion, when a similar mob kicked and gagged him, and kept him without food and drink for five long days he was still for the disagreement and triumphed at last. There, if it please the Court, was the virtue of the old school. And all he asked was his per diem.

You take a jury that has sat through a long case of, say, two or three weeks, and that goes out to deliberate as constipated in bowels and ill-tempered in spirit as a sedentery hen; you lock that jury up in a cold and cheerless room, and let the Judge swear in his charge that they shall not get out or have a mite to eat or drink, or a change of socks until they bring in a verdict, and you may wager strong that they will agree, somehow, inside of a week. But when the deceased was among us this was not a safe investment. He was wonderfully constructed, physically and mentally, for protracted hanging. In a cow case, involving $40, he held the jury nine days. One died of privation, and the other ten, emaciated and half insane, had to be carried into the court-room. This, he frequently remarked, was the proudest effort of his life. Disagreement was the characteristic of his existence—in the Squire's office, during a long career as a Coroner's juror, and then for half a century, in the higher walks of justice. He was born to be a juryman; it was his sole aim on earth."

Then the Judge ordered the resolution to be smeared upon the records, and the chair of the departed properly draped.—*Cincinnati Commercial.*

The author of "The Bar" thus depicts Vaughan at the bar:

"Grisly and gruff, and coarse as Cambridge brawn,
With lungs stentorian bawls gigantic Vaughan;
In aspect fearless, and in language bold,
'Awed by no shame—by no respect controlled,'
Straight forward to the fact his efforts tend,
Spurning all decent bounds to gain his end.
No surgeon he, with either power or will,
To show the world his anatomic skill,
Or subtle nice experiments to try—
He views his subject with a butcher's eye,
Nor waits its limbs and carcase to dissect,
But tears the heart and entrails out direct."

Vaughan was made a judge, it was said, by George IV., at the instigation of his favourite physician, Sir Henry Halford, and hence was called a judge by prescription.

Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 41st VICTORIA.

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

George Fergusson Shepley.
William James Clarke.
William Egerton Hodgins.
Jay Ketchum.
Robert Shaw.
Hamilton Parke O'Connor.
William Caven Moscrip.
James Joseph Robertson.

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

Daniel O'Connor.
Joseph Bawden.

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

Graduates.

Alexander Dawson, B.A.
Thomas Dickie Cumberland, B.A.,
William Banfield Carroll, B.A.

Matriculants.

Francis Badgeley William Molson Gilbert Lilly.
Joseph Martin.
J. A. C. Reynolds.

Junior Class.

Hugh Archibald MacLean.
William Burgess.
Louis F. Heyd.
James Foster Canniff.
John Douglas Gansby.
George Corry.
Edmund Wallace Nugent.
Charles Patrick Wilson.
David McArdle.
Thomas Hislop.
William Alex. McLean.
Alexander Joseph Williams.
James Joseph Panton.
William Melville Shoebotham.
James Gamble Wallace.
George Morehead.
William George Shaw.
Robert Patterson.
Harry Hyndman Robertson.
James Alex. Shettle.
Moses McFadden.
Arthur B. Ford.
George Hiram Capron Brooke.

Articled Clerk.

Henry White.

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

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

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

Classics.

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

Mathematics.

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

English.

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

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:

FRENCH.

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

Or GERMAN.

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

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

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

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

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

INTERMEDIATE EXAMINATIONS.

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

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

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

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

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

SCHOLARSHIPS.

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

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

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

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

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