THE

Canada Law Journal.

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CONTENTS.

Some changes are about to be made in the staff in the west wing at Osgoode Hall. It is said that Mr. Grant is to be made Registrar of the Court of Appeal, Mr. Holmstead taking his place as Registrar of the Court of Chancery, and that Mr. R. P. Stephens will be made Referee in Chambers, the business of the Accountant's office being transferred to his department.

We publish on a subsequent page the Rules of the Supreme Court. They have evidently been prepared with great care, and seem to be very complete. One of them provides that an "agent's book" is to be kept, in which all persons practising in the Supreme Court may enter the name of an agent on whom papers may be served, &c. We notice that an enterprising firm takes advantage of this to advise the profession that they are both able and willing to act as such agents. We have no reason to say that they are not the former; that they are the latter is obvious: nevertheless many will choose other firms in preference.

Short-hand reporters are so commonly engaged in important trials in England that the Judges' notes are not so frequently in requisition there as they are here. But as with us some of the judges there are more liberal than others with their notes. The other day Vice-Chancellor Hall allowed both parties leave to apply for copies, though of course at their own expense. Mr. Justice Quain on the other hand, refused to entrust his notes to either parties, but produced them to the court for the purposes of an appeal. He had possibly some good reason, perhaps his notes may have shown something not intended for the public, or were not "presentable," or he may have been suffering from an attack of dyspepsia, or he might have feared that the person asking to see them intended to mutilate them; but however this may have been, the profession doubtless would make their own observations less complimentary to him than to his brother in the Equity Division.

The following is the result of the recent examinations held at Osgoode Hall:

CALLS TO THE BAR.

E. D. Armour.	H. C. Gwyn.
R. G. Cox.	A. R. Lewis.
J. R. Metcalf.	J. W. Frost.

ATTORNEYS ADMITTED.

E. G Patterson, (without oral,)

R. Pearson.	E. D. Armour.
J. Leitch.	A. E. Smythe.
R. G. Cox.	H. Archibald.
T. C. Johnstone.	J. C. Hegler.
E. P Clement.	G. A. Cooke.
W. M. Hall.	D. Lennox.

FIRST INTERMEDIATE EXAMINATION.

D. M. Christie.	F. W. Gearing.
R. W. Keefer.	J. A. M. Aikins.
J. V. Teetzel	J. Fullerton.
Chester Glass	E. W. Scatherd.
H. T. Beck.	W. L. Walsh,

(The above without oral.)

W. Malloy.	J. K. Dowsley
G. T. Shipley.	R. Shaw.
J. A. Wright.	P. C. MacNee.

J. Woodman.

SECOND INTERMEDIATE EXAMINATION.

A. W. Kinsman.	H. Cassels.
A. H. Marsh.	E. D. McMillan.
	E. Campion.

(The above without oral.)

A. C. Galt.	H. J. O'Neil.
T. G. Meredith.	W. M. Sutherland.
J. M. Carthew.	G. P. Hallen.
R. J. Duggan.	J. J. Manning.
L. T. Barclay.	W. J. Hales.

Reference was made, in the *Mercer will case*, to the doctrine of the feudal law, that a child born in wedlock was legitimate, though conceived before marriage. A case was lately decided by Vice-Chancellor Malins (*Re Corlass Estate*, 24 W. R., 204), involving a piece of refinement, wonderfully subtle, modifying this well-established rule. A testator directed the income of one-half of his residuary estate to be paid to his son during his life, and afterwards to his lawful issue. One of the issue was *en ventre sa mère* at the time of the death of the life-tenant, but his parents were not married till after that time, though they did intermarry before the birth of the child. The judge held that the class entitled to the benefit under the will had to be ascertained at the death of the tenant for life; that at that time, though the child was *en ventre sa mère*, yet because of her mother, being then unmarried, the issue could not be called lawful at the period of distribution; and the subsequent marriage before the birth would not so legitimate by retroaction as to entitle the child, after its birth, to share in the residue. This decision strikes us as an unnecessary piece of casuistry. Marriage should be held to legalize the issue born thereafter for all purposes. The decision, carried out to its logical consequences, would involve an inquiry as to the period of conception. It was said in *Doe* v. *Clarke*, 2 H.Bl., 401, that a child *en ventre sa mère* was to be considered as born, for all purposes for his own benefit.

OUR LAW REPORTS.

A report was presented last Term to the Benchers in Convocation, suggesting some important alterations in the arrangement with the Law Reporters. The scheme proposed was only partially adopted. It was decided to increase the salaries of the Reporters of the Queen's Bench and Common Pleas, the former to $1,200 and the latter to $1,000, and to add $400 to that of the Editor-in-Chief, making his salary $2,000. It was also decided (the arrangement with Mr. O'Brien as to the Practice Reports having expired by effluxion of time) to appoint a fourth or supernumerary Reporter, who should report all Practice cases both at Common Law and in Chancery, all Election Cases and County Court appeals, which latter are hereafter to be heard by the Court of Appeal, and probably insolvency appeals, if they are to be brought before that Court. In addition, this gentleman is to be subject to be called on by the Editor-in-Chief to assist the other Reporters when necessary. It is proposed to give him a salary of $800 per annum. In view of the fact that the reports (with the exception of the Practice reports which are up to time) are nearly a year in arrear, owing to the great increase in the work, it was also advised that an ar-

rangement should be made whereby early notes of cases would be published in this journal. This would be a great benefit to the profession. The expense would be very trifling, and we shall be glad to facilitate the arrangement.

The difficulties which encompass the subject of law reporting are very great; it is therefore not surprising that there is much doubt as to the efficiency of the scheme which will be in force when the comparatively unimportant changes above mentioned come into force. These difficulties are so great that some prominent men in the profession advocate leaving it to private enterprise, even though this would seem to be a retrograde movement; whilst others argue in the same direction, when they think of the addition to the fees for certificates. We trust, however, that the importance of the subject will ensure its being treated in a comprehensive manner, with that attention to details which is absolutely necessary, but which it is difficult for busy men, however able, to give, when engrossed by more pressing duties.

ELECTION OF BENCHERS

In the first week of April next will take place, pursuant to 34 Vict. cap. 15, the Election of Benchers of the Law Society. An advertisement in another place gives full particulars as to the time, mode and place of election. It also gives the names of the *ex-officio* Benchers in their order of seniority. Thirty have to be elected by the Bar. Of those who were elected five years ago, only fifteen are on the present list, the remainder having been appointed from time to time, pursuant to the Act, by the remaining Benchers. Those now on the roll are as follows:—

Henry C. R. Becher, Q.C., London.
Kenneth McKenzie, Q.C., Toronto.
Stephen Richards, Q.C., Toronto.
David B. Read, Q.C., Toronto.
John Crickmore, Toronto.
Robert Lees, Ottawa.
M. C. Cameron, Q.C., Toronto.
Daniel McMichael, Q.C., Toronto.
John Bell, Q.C., Belleville.
John D. Armour, Q.C., Cobourg.
Thomas Moore Benson, Port Hope.
D'Alton McCarthy, Q.C., Barrie.
Timothy B. Pardee, Sarnia.
William R. Meredith, London.
James Shaw Sinclair, Goderich.
James Maclennan, Q.C., Toronto.
James A. Henderson, Q.C., Kingston.
Andrew Lemon, Guelph.
John T. Anderson, Q.C., England.
Edward Martin, Hamilton.
Clarke Gamble, Q.C., Toronto.
Thomas Robertson, Q.C., Dundas.
Thomas Hodgins, Q.C., Toronto.
Æmilius Irving, Q.C., Hamilton.
James Bethune, Toronto.
B. M. Britton, Kingston.
J. G. Currie, St. Catharines.
F. Osler, Toronto.
Hector Cameron, Q.C., Toronto.

The selections which the Benchers have from time to time made are, with one exception, unobjectionable, and have shewn that they were actuated by a desire to obtain useful men, and to pay due regard to a representation as to locality; and though, in our opinion, this latter is a matter of small moment, as we should endeavour to get the *best men*, it cannot be entirely overlooked.

It is not probable that there will be any great change in the above list. Mr. Anderson has, we understand, expressed his intention of not returning to Canada, and Mr. Currie has recently put himself without the pale. Many of the local Bars will in all probability make known to their brethren those whom they wish to be their representatives, and should this selection be made in a fair spirit, it will carry great weight with their brethren in other places.

We have heretofore expressed a mis-

giving as to the ultimate effect of the elective system, but the good sense of the profession in the first election, and the care exercised in the selection of those who have from time to time been appointed to fill vacancies, gives good reason to hope that the evil consequences that we feared are still far in the future.

SLANDERING THE JUDGES.

We are sorry to notice an occasional insinuation or assertion, sometimes by a public journal, sometimes by a public speaker, as to the fairness of the conduct of some of our judges. It may be remarked that the occasions on which these occur are when party politics are in some way concerned—the logical deduction being, (if there be any foundation for such insinuations,) that where politics come in, the judges allow their sympathies to get the better of them. We might assume (though it would nevertheless be incorrect to do so), that a journal or a speaker making a statement of this nature either believes it to be true, or, knowing it to be false, makes it with a desire to help some political friend, or for some illegitimate purpose. If believed to be true, the charge should be sifted, so that the public may understand whether or not our Bench is what we all in fact know it to be, "*sans peur et sans reproche*"; or, if known to be false, that the slanderer should be branded as one. The good reputation of the Bench is of no less importance to the public welfare than it is dear to its individual members. It is fortunately so immeasurably above suspicion, that it needs no words of ours to keep it bright; but, owing to the extended power and influence wielded by the press in these days, a careless or reckless statement may by its means do harm that is not intended, and destroy that which cannot easily be built up. Conscious of their own rectitude, and strong in the confidence and high esteem of the Bar and of the intelligent public, our judges can afford to despise all slanders; but neither the Bar nor the public will stand by and see that Bench, of which we are all so proud, maligned, without a protest. Once let an impression get abroad that our judges are not impartial or open to improper influences, then good by to law and order! It is, of course, perfectly competent either for an individual or a journal to criticise sharply the law laid down by a judge; but it is another thing to say (except where the interests of public justice require a plain statement to that effect) that he has been partial in the conduct of a case; and whatever may be the provocation, no man, and especially no professional man, is justified in making either an open or a covert attack upon a judge upon a political platform. A judge moreover from his position is powerless to speak or to write a word in his own defence; and, putting it upon the lowest ground, it is therefore cowardly to attack him. We need not pause to contradict any one of the charges or insinuations to which we now allude; the whole country, including those that made them, know them to be false, in substance and in fact.

A candidate, a lay man, whose election had been set aside, complained recently that justice had not been done him. On another occasion a successful candidate, who is a professional man and the near relative of a late distinguished judge who also had suffered from this kind of slander, under somewhat similar circumstances, unnecessarily and improperly introduced the name of one of the Judges on the Bench into a political discussion, with which the Judge had nothing whatever to do, not only referring to him in a personal offensive manner, but insinuating that he

gave undue weight to the arguments of certain counsel. Subsequently to this a leading daily paper, in referring to an important criminal trial, used the following language: "It was, moreover, manifest throughout the trial, from first to last, that the counsel for the defence had the ear of the Court, while the counsel for the prosecution received what is on all hands admitted to be somewhat harsh treatment." This is not the language that ought to appear in a journal that claims to be a leader of public opinion, and probably would not have been used but that a political party tinge had been improperly and unnecessarily given to the case. It is something remarkable to hear of counsel for the *prosecution* receiving harsh treatment from the Court, except, indeed, where failure of justice is imminent owing to the incapacity of the Crown Counsel. In this case that was not the danger. The fact was, that there really was no evidence worth the name to go to the jury, except the unsupported story of an admitted scoundrel, whose statements were, in a practical sense, not given under the sanctity of an oath; and it was thought by many that a prosecution, which, the moment the case for the Crown was disclosed, was manifestly hopeless, should not have been persevered in with a pertinacity which would have been commendable, or at least unobjectionable, in the defence, but which was not in accordance with what is considered *en régle* in those who prosecute for our Lady the Queen.

The most recent breach of decency in this matter is the language which is reported, in a local paper, to have been used by a member of Parliament at a recent election meeting in the Niagara District, where this person seconded a resolution, expressing sympathy with, and renewed confidence in one Mr. Neelon, who had been disqualified by Mr. Justice Gwynne, for personal bribery and corruption. The speaker is reported to have said: "If we had had an impartial judge at the late election protest trial, Capt. Neelon would not have been disqualified." Mr. Gwynne's judgment, as is well known to the profession, was on this part of the case unanimously confirmed by the Court of Appeal. All men may not know that the opinions of this wholesale slanderer, although he is a barrister and a Bencher of the Law Society, as to what is right and proper in professional matters, is not—for reasons with which he is quite familiar—of the smallest moment; but it is of moment that such language has been used by one of whom strangers only know that he is entitled to put M.P. after his name, and was once Speaker of the House of Assembly of Ontario. It is outrageous that a whole Bench of Judges, whose characters are as far above suspicion as this gentleman's is beneath contempt, should be impudently maligned for political purposes.

What is everybody's business is generally nobody's; and it may be that no official notice will be taken of this speech. It may be that one who, it is said, is in imminent danger of having his name struck off the roll of solicitors for not paying over clients' moneys, will be excused for his recklessness in the matter we have referred to; but we doubt whether the true policy is not either to insist upon an ample apology, or to erase his name from a roll which, we trust, contains a large majority of those who are prepared to uphold the dignity of the Bench and the respectability of their order.

UNANIMITY OF JURY VERDICTS.

Mr. Hallam, in his "Middle Ages," speaks of "the grand principle of the Saxon polity, the trial of facts by the country," and expresses the hope that

Englishmen may never swerve from that principle, "except as to that preposterous relic of barbarism, the requirement of unanimity."

This "relic of barbarism" has lately been the subject of discussion in the Ontario Assembly. A bill was introduced, the substance of which was, that in civil actions the jury might, after the absence of one hour, return a verdict of eleven of their number; after an absence of two hours, a verdict of ten; and after an absence of three hours, a verdict of nine: and that in any of these cases, the verdict so rendered should have the same effect as a unanimous one. This is not the first time an attempt has been made in the Ontario House to make such an innovation in the jury system. The House treated the proposals with more deference than on a former occasion, but it is not yet prepared for the change, and rejected the bill.

There is no institution which invites attack more than the jury, and at the same time there is no institution which the majority of legislators are so timorous of meddling with. Many sagacious thinkers have strongly pronounced against the rule of unanimity; and it is generally felt that, as Professor Christian says, if the jury system had been established by the deliberate act of the Legislature, no such rule would have formed a part of it. Still, the antiquity of the jury and its acknowledged usefulness, lead men to look with alarm even upon changes in its mode of operation. From an early period, it has been the custom to leave the decision of disputed facts to twelve men chosen indifferently from the community; and with this the custom has grown up of requiring these twelve men to agree before they can render a decision. What experience has sanctioned, as really valuable in this system, is the appeal to a competent number of unprofessional persons. There is nothing essentially useful in the custom, which has no parallel in any other institution, that the entire tribunal should be forced into holding, or the semblance of holding, the same opinion.

It will be observed that the change proposed by the bill referred to was not intended to extend to criminal cases. Such a limitation was a wise and proper one. In a criminal trial the evidence is either sufficiently clear, one way or the other, or it is involved in doubt. If the latter, that principle of our law, founded on considerations of mercy, that the prisoner should not be convicted where a substantial doubt of his guilt exists, should be allowed due weight. If then there is not unanimity amongst the jurors, if a minority of them are not prepared to find the prisoner guilty, it is consonant with the principles of our criminal law that the opinions of that minority should not be deprived of their influence in the prisoner's favour. The hesitating minority is analogous to the doubt of which the individual juryman is directed to give the prisoner the benefit. But in civil cases considerations of this sort have no place, and the opinion is gaining ground that it is not only unnecessary, but injurious, to require twelve men to agree, or appear to agree, in order to settle a dispute in a law court. A bare majority of one suffices to enact a law which may be fraught with the most tremendous results to an empire. How absurd it seems that a decision as to rights, which do not affect the interests of more than two private individuals, and that perhaps to the most trivial extent, should require the undivided assent of the full tribunal.

The principal ground put forward by the advocates of the bill in the Ontario House, was that under the present system there is a frequent failure of justice owing to the discharge of juries unable to agree. We are inclined to

think this evil somewhat overrated. An appeal to experience will probably show that amongst the great number of cases tried, say in one year, by juries, the proportion of those in which no verdict is returned is very small indeed. The authority of Chief Commissioner Adam, a man who made jury-trial in Scotland his special study for twenty years, is valuable on this point. He says that during the twenty years that he presided at jury-trials at Scotland, only one instance happened of a jury separating after being inclosed for several hours, without agreeing on their verdict. Instances in our own courts are more numerous, but accurate observation would show that they are of less frequent occurrence than is imagined.

The cases which are probably numerous are those in which through the obstinacy of a minority, of one man perhaps, an unjust compromise has been made between the jurors. One of the Ontario members in the recent debate expressed the true evil of the present system, when he reminded the House that the effect of it is too often to compel a juror, sworn to render a verdict in the sight of God according to his conscience, to trifle with his oath by the surrender, or ostensible surrender, of his convictions. Those in favour of the change believe that it will result in a more honest expression of the true opinion of a large majority of the jury than is practically obtained by the present system.

The antiquity of the jury is always appealed to by those who deprecate any meddling with its sacred details. The fact is, that it is when we go back to the origin of the jury that we find the justification for such a change as that in question. As the mover of the bill pointed out, the circumstances under which unanimity came to be required in early days have ages ago ceased to exist. Mr. Forsyth, Q. C., has examined the whole question of the origin of the jury, with much industry and research. His explanation of the origin of the rule requiring unanimity, a rule which he does not hesitate to condemn, is apparently the correct one. He completely disposes of the tradition which represents the jury as being the invention of the Saxon Alfred. The jury cannot be discovered in the form in which we know it prior to the reign of Henry II. The Grand Assize, a tribunal for the settlement of questions affecting the title to land, which was fully developed in the reign of that monarch, and the trial of criminals by invoking compurgators, seem to be the germs out of which our present jury system grew. In trials of these sorts it was necessary to obtain the agreement of twelve men, but not necessarily of the first twelve selected. Dissentients were rejected and jurors added till the necessary unanimity was attained. Moreover, as is well known, the early jurors were nothing but witnesses. From various analogies, the number of twelve came to be looked upon as the necessary number of witnesses to establish the credibility of an accused person, or the existence of certain facts. In a primitive age opinions prevailed as to the quantity of evidence necessary to lead to a decision which more enlightened ages have rejected. For instance, for a long time three or more witnesses were required for the attestation of a will. We are now content with two. So with these juror witnesses, no smaller number than twelve would satisfy the suspicious minds of lawyers in those ignorant times.

The only argument advanced against the principle of the bill in question, which might appear at first sight entitled to weight, was, that the effect of allowing a verdict of nine, ten, or eleven jurors to be equivalent to a unanimous verdict, would

be to increase the number of applications for new trials. It was assumed that the verdict of the majority would not carry the same moral weight as that of the twelve, and that the result would be such dissatisfaction as to lead to an increase in the number of motions for new trials. The unsuccessful litigant might possibly be comforted by the fact, that the whole twelve were against him, but it almost always leaks out, that one or more were of a different way of thinking, so that even this comfort is practically denied him. But the question whether a new trial should be moved for, does not depend upon the feelings of a suitor. It depends upon his means, and the advice of counsel. The judges would not be influenced by the fact that three men on the jury had differed from the remaining nine; neither would counsel, and they are supposed to interpret the views which the judges will be likely to hold.

A similar law has been in force in the Province of Quebec since the time of George III., and we are informed on good authority that it has been found to answer well.

Some seventeen years ago, Hon. James Patton introduced, in the old Legislative Council of Canada, a Bill somewhat similar to that we have been considering. When referring to it at that time, in the pages of this journal, we deprecated any change in the system, especially in view of a then recent alteration in the jury law, and of the too great impatience for change in the legislation of the country, and suggested delay, that the subject might be more fully discussed. There has since then been no lack of impatience, but there has been some useful discussion, and the feeling in favour of doing away with the necessity for unanimity is much stronger now than when Mr. Patton first broached the subject.

The time has come for a careful consideration of this question, and that in the interest of the whole jury system. The arguments of the present day in favour of the change not only seem to us to outweigh those against it, but there is the additional consideration that some such change would seem desirable to prevent violent hands being laid upon an institution which we deem of too great value to be put in jeopardy.

We have not the least sympathy with those whose avowed object is to get rid of juries altogether. Such persons overlook entirely the great political value of the institution. In giving litigants the choice between trial by jury or by a judge alone, we have gone as far as we ought to go in *that* direction. But we ought not to be afraid of effecting improvements in the jury system, when it is clear that an improvement can be made. We ought to perfect the system in every detail, so that it may be enabled to command popular reverence for all time.

THE SUPREME COURT.

The following are the Rules made by the Judge of the Supreme Court, providing for the procedure in that Court:—

Appeals.

1. The first proceeding in appeal in this Court shall be the filing in the office of the Registrar of a case, pursuant to section 29 of the Act, certified under the seal of the court appealed from.

2. The case, in addition to the proceedings mentioned in the said section 29, shall invariably contain a transcript of all the opinions or reasons for their judgment delivered by the judges of the court or courts below, or an affidavit that such reasons cannot be procured, with a statement of the efforts made to procure the same.

3. The case shall also contain a copy of any order which may have been made by the court

below, or any judge thereof enlarging the time for appealing.

4. The Court or a Judge thereof may order the case to be remitted to the court below, in order that it may be made more complete by the addition thereto of further matter.

5. If the appellant does not file his case in appeal with the Registrar within *one month* after the security required by the Act shall be allowed, he shall be considered as not duly prosecuting his appeal, and the respondent may move to dismiss the appeal pursuant to sec. 41 of the Act.

6. The case shall be accompanied by a certificate under the seal of the court below, stating that the appellant has given proper security to the satisfaction of the court whose judgment is appealed from, or of a judge thereof, and setting forth the nature of the security, to the amount of $500, as required by the 31st section of the said Act, and a copy of any bond or other instrument by which security may have been given shall be annexed to the certificate.

7. The case shall be printed by the party appellant, and twenty-five printed copies thereof shall be deposited with the Registrar for the use of the judges and officers of the court.

8. The case shall be in demy quarto form. It shall be printed on paper of good quality, and on one side of the paper only, and the type shall be small pica leaded, and the size of the case shall be *eleven inches* by *eight and one-half inches*, and every tenth line shall be numbered in the margin. An index to the pleadings, depositions and other principal matters shall be added.

9. The Registrar shall not file the case without the leave of the court or judge if the foregoing order has not been complied with, nor if it shall appear that the press has not been properly corrected, and no costs shall be taxed for any case not prepared in accordance with this order.

10. Together with the case, certified copies of all original documents and exhibits used in evidence in the court of first instance, are to be deposited with the Registrar, unless the production shall be dispensed with by order of a Judge of this court; but the court or a judge may order that all or any of the originals shall be transmitted by the officer having the custody thereof to the Registrar of this court, in which case the appellant shall pay the postage for such transmission.

11. Immediately after the filing of the case, a notice of the hearing of the appeal shall be given by the appellant for the next following session of the Court as fixed by the Act, or as specially convened for hearing appeals according to the provisions thereof, if sufficient time shall intervene for that purpose, and if between the filing of the case and the first day of the next ensuing session there shall not be sufficent time to enable the appellant to serve the notice as hereinafter prescribed, then such notice of hearing shall be given for the session following, the then next ensuing session.

12. The notice convening the Court under section 14 of the Act for the purpose of hearing election or criminal appeals or appeals in matter of *habeas corpus* or for other purposes shall, pursuant to the directions of the Chief Justice or Senior Puisne Judge, as the case may be, be published by the Registrar in the *Canada Gazette* and shall be inserted therein for such time before the day appointed for such special session as the said Chief Justice or Senior Puisne Judge may direct, and may be in the form given in Schedule A to these rules appended.

13. The notice of hearing may be in the form given in Schedule B to these rules appended.

14. The notice of hearing shall be served at least *one month* before the first day of the session at which the appeal is to be heard.

15. Such notice shall be served on the Attorney or Solicitor who shall have represented the respondent in the Court below, at his usual place of business, or on the booked agent or at the elected domicile of such Attorney or Solicitor at the city of Ottawa, and if such Attorney or Solicitor shall have no booked agent or elected domicile at the city of Ottawa, the notice may be served by affixing the same in some conspicuous place in the office of the Registrar, and mailing a copy thereof prepaid to the address of such Attorney or Solicitor in sufficient time to reach in due course of mail before the time required for service.

16. There shall be kept in the office of the Registrar of this Court a book to be called "The Agents Book," in which all Advocates, Solicitors, Attorneys and Proctors practising in the said Supreme Court may enter the name of an agent (such agent being himself a person entitled to practice in the said court) at the said city of Ottawa, or elect a domicile at the said city.

17. In case any respondent who may have been represented by attorney or solicitor in the Court below, shall desire to appear in person in the appeal, he shall immediately after the allowance by the court appealed from or a judge thereof of the security required by the Act, file

with the Registrar a suggestion in the form following:—

"A. vs. B."

"I, A. B., intend to appear in person in this appeal."

(*Signed*). A. B.

18. If no such suggestion shall be filed, and until an order shall have been obtained as hereinafter provided for a change of solicitor or attorney, the solicitor or attorney who appeared for any party respondent in the court below shall be deemed to be his solicitor or attorney in the appeal to this court.

19. When a respondent has appeared in person in the court below he may elect to appear by attorney or solicitor in the appeal, in which case the attorney or solicitor shall file a suggestion to that effect in the office of the Registrar, and thereafter the notice of hearing and all other papers are to be served on such attorney or solicitor as hereinbefore provided.

20. A respondent who appears in person may by a suggestion filed in the Registrar's office, elect some domicile or place at the city of Ottawa, at which all notices and papers may be served upon him, in which case service at such place of the notice of hearing and all other notices and papers shall be deemed good service on the respondent.

21. In case the respondent shall have appeared in person in the court appealed from, or shall have filed a suggestion pursuant to rule 17, shall not, before service, have elected a domicile at the city of Ottawa, the notice of hearing may be served by affixing the same in some conspicuous place in the office of the Registrar.

22. Any party to an appeal may on an ex parte application to a Judge obtain an order to change his attorney or solicitor, and after service of such order on the opposite party, all services of notices and other papers are to be made on the new attorney or solicitor.

23. At least *one month* before the first day of the session at which the appeal is to be heard, the parties appellant and respondent shall each deposit with the Registrar, for the use of the court and its officers, *twenty-five* copies of his factum or points for argument in appeal.

24. The factum or points for argument in appeal shall contain a concise statement of the facts, and of the points of law intended to be relied on, and of the arguments and authorities to be urged and cited at the hearing, arranged under the appropriate heads.

25. The factum or points for argument in appeal shall be printed in the same form and manner as hereinbefore provided for with regard to the case in appeal, and shall not be received by the Registrar unless the requirements hereinbefore contained, as regards the case, are all complied with.

26. If the appellant does not deposit his factum or points for argument in appeal within the time limited by order 23, the respondent shall be at liberty to move to dismiss the appeal on the ground of undue delay, as provided for by section 41 of the Act.

27. If the respondent fails to deposit his factum or points for argument in appeal within the said prescribed period, the appellant may set down or inscribe the cause for hearing ex-parte.

28. Such setting down or inscription ex parte may be set aside or discharged upon an application to a judge in chambers sufficiently supported by affidavits.

29. The factum or points for argument in appeal first deposited with the Registrar shall be kept by him under seal, and shall in no case be communicated to the opposite party until the latter shall himself bring in and deposit his own factum or points.

30. So soon as both parties shall have deposited their said factum or points in argument in appeal, each party shall, at the request of the other, deliver to him *three* copies of his said factum or points.

31. Appeals shall be set down or inscribed for hearing in a book to be kept for that purpose by the Registrar at least *one month* before the first day of the session of the court fixed for the hearing of the appeal.

Hearing.

32. No more than two counsel on each side shall be heard on any appeal, and but one counsel shall be heard in reply.

33. The court may in its discretion postpone the hearing until any future day during the same session, or at any following session.

34. Appeals shall be held in the order in which they have been set down, and if either party neglect to appear at the proper day to support or resist the appeal the court may hear the other party and may give judgment without the intervention of the party so neglecting to appear, or may postpone the hearing upon such terms as to payment of costs or otherwise as the court shall direct.

35. All orders of this court in cases of appeal shall bear date on the day of the judgment or decision being pronounced, and shall be signed by the Registrar.

Adding Parties to the Appeal.

36. In any case not already provided for by the Act, in which it becomes essential to make an additional party to the appeal, either as appellant or respondent, and whether such proceeding becomes necessary in consequence of the death or insolvency of an original party, or from any other cause, such additional party may be added to the appeal by filing a suggestion as nearly as may be in the form provided for by section 43 of the Act.

37. The suggestion referred to in the next preceding rule may be set aside, on motion, by the Court or Judge thereof.

38. Upon any such motion the Court or a Judge thereof may, in their or his discretion, direct evidence to be taken before a proper officer for that purpose, or may direct that the parties shall proceed in the proper court for that purpose to have any question tried and determined, and in such case all proceedings in appeal may be stayed until after the trial and determination of the said question.

Motions.

39. All interlocutory applications in appeals shall be made by motion, supported by affidavit to be filed in the office of the Registrar before the notice of motion is served. The notice of motion shall be served at least *four clear days* before the time of moving.

40. Such notice of motion may be served upon the solicitor or attorney of the opposite party by delivering a copy thereof to the booked agent or at the elected domicile of such solicitor or attorney to whom it is addressed at the City of Ottawa. If the solicitor or attorney has no booked agent or has elected no domicile at the City of Ottawa, or, if a party to be served with notice of motion has not elected a domicile at the City of Ottawa, such notice may be served by affixing a copy thereof in some conspicuous place in the office of the Registrar of this Court.

41. Service of a notice of motion shall be accompanied with copies of affidavits filed in support of the motion.

42. Upon application supported by affidavit and after notice to the opposite party, the Court or a Judge thereof may give further reasonable time for filing the printed case, depositing the printed factum or points of either party, and setting down or inscribing the appeal for hearing, as required by the foregoing rules.

43. Motions to be made before the Court are to be set down in a list or paper, and are to be called on each morning of the session before the hearing of appeals is proceeded with.

Appeals to be deemed out of Court for delay.

44. Unless the appeal is brought on for hearing by the appellant within *one year* next after the security shall have been allowed, it shall be held to have been abandoned without any order to dismiss being required, unless the Court or a Judge thereof shall otherwise order.

45. The foregoing rules shall be applicable to appeals from the Exchequer Court of Canada, except in so far as the Act has otherwise provided.

Criminal Appeals.

46. The foregoing rules shall not, except as hereinbefore provided, apply to criminal appeals, nor to appeals in Habeas Corpus.

47. In the case mentioned in the next preceding rule no printed case shall be required, and no factum or points for argument in appeal need be deposited with the Registrar, but such appeals may be heard on a written case, certified under the seal of the Court appealed from, and which case shall contain all judgments and opinions pronounced in the Court below.

48. In criminal appeals and in appeals in cases of Habeas Corpus, and unless the Court or a Judge shall otherwise order, the case must be filed as follows :—

1. In appeals from any of the Provinces other than British Columbia, at least *one month* before the first day of the session at which it is set down to be heard.

2. In appeals from British Columbia at least *two months* before the said day.

49. In cases of criminal appeals and appeals in matters of Habeas Corpus, notice of hearing shall be served the respective times hereinafter fixed before the first day of the general or special session at which the same is appointed to be heard ; that is to say :—

1. In appeals from Ontario and Quebec, *two weeks.*

2. In appeals from Nova Scotia, New Brunswick, and Prince Edward's Island, *three weeks.*

3. In appeals from Manitoba, *one month.*

4. In appeals from British Columbia, *six weeks.*

Election Appeals.

50. The foregoing rules are not to apply to appeals in controverted election cases.

51. In such election appeals the party appellant shall deposit with the Registrar such sum as shall be required for printing the record or so much thereof as a judge may direct to be printed at the rate of thirty cents per folio of one hundred words.

52. The Registrar shall cause *twenty-five* copies of the said record to be printed in the same form as hereinbefore provided for the case in ordinary appeals for the use of the court and its officers, and also *twenty* additional copies, *ten* of which are, upon his request, to be delivered to the appellant free of charge, and *ten* to the respondent upon payment of thirty cents for every folio of one hundred words in the record so printed.

53. The factum or points for argument in appeal in controverted election appeals shall be printed as hereinbefore provided in the case of ordinary appeals.

54. The points for argument in appeal or factum in controverted election cases shall be deposited with the Registrar at least *three days* before the first day of the session fixed for the hearing of the appeal, and are to be interchanged by the parties in manner hereinbefore provided with regard to the factum or points in ordinary appeals.

55. In election appeals a judge in chambers may, upon the application of the appellant, make an order dispensing with the printing of the whole or any part of the record, and may also dispense with the delivery of any factum or points for argument in appeal. Such order may be obtained ex parte, and the party obtaining it shall forthwith cause it to be served upon the adverse party.

Fees.

56. The fees mentioned in Schedule C to these orders shall be paid to the Registrar by stamps to be prepared for that purpose.

Costs.

57. Costs in appeal between party and party shall be taxed pursuant to the tariff of fees contained in schedule D. to these orders.

58. The Court or a Judge may direct a fixed sum for costs to be paid in lieu of directing the payment of costs to be taxed.

59. The payment of costs, if so ordered, may be enforced by process of execution in the same manner and by means of the same writ according to the same practice as may be in use from time to time in the Exchequer Court of Canada.

60. Contempts incurred by reason of non-compliance with any order of the Court other than order for payment of money may be punished in the same manner and by means of the same process and writs and according to the same practice as may be in use from time to time in the Exchequer Court of Canada.

Cross Appeals.

61. It shall not under any circumstances be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends upon the hearing of an appeal to contend that the decision of the Court below should be varied, he shall, within the time specified in the next rule, or such time as may be prescribed by the special order of a judge, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not in any way interfere with the power of the Court on the hearing of an appeal to treat the whole case as open, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

62. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall be *one month's* notice.

63. A respondent who gives a notice pursuant to the last two preceding rules shall, before or within *two days* after he has served such notice, deposit a printed factum or points for argument in appeal with the Registrar as hereinbefore provided as regards the principal appeal, and the parties upon whom such notice has been served, shall within *two weeks* after service thereof upon them, deposit their printed factum or points with the Registrar, and such factum or points shall be interchanged between the parties as hereinbefore provided as to the principal appeal.

Translations.

64. Any judge may require that the factum or points for argument in appeal of any party shall be translated into the language with which such judge is most familiar; and in that case the judge shall direct the Registrar to cause the same to be translated, and shall fix the number of copies of the translation to be printed, and the time within which the same shall be deposited with the Registrar, and the party depositing such factum shall thereupon cause the same forthwith to be printed at his own expense, and such party shall not be deemed to have deposited his factum until the required number of the printed copies of the translation shall have been deposited with the Registrar.

65. Any judge may also require the Registrar to cause the judgments and opinions of the Judges in the Court below to be translated, and in that case the judge shall fix the number of copies of the translation to be printed and the time within which they shall be deposited with

the Registrar, and such translation shall thereupon be printed at the expense of the appellant.

Payment of Money into Court.

66. Any party directed by any order of the Court or a Judge to pay money into Court must apply at the office of the Registrar for a direction so to do, which direction must be taken to the Ottawa branch or agency of the Bank of Montreal and the money there paid to the credit of the cause or matter, and after payment the receipt obtained from the bank must be filed at the Registrar's office.

Payment of Money out of Court.

67. If money is to be paid out of Court, an order of the Court or a Judge must be obtained for that purpose, upon notice to the opposite party.

68. Money ordered to be paid out of Court is to be so paid upon the cheque of the Registrar, countersigned by a Judge.

Formal Objections not to prevail.

69. No proceeding in the said Court shall be defeated by any formal objection.

Extending or abridging time.

70. In any appeal or other proceeding the Court or a Judge may enlarge or abridge the time for doing any act, or taking any proceeding, upon such (if any) terms as the justice of the case may require.

71. The Registrar is to keep in his office all appropriate books for recording the proceedings in all suits and matters in the said Supreme Court.

72. In all cases in which any particular number of days not expressed to be clear days, is prescribed by the foregoing rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless such last day shall happen to fall on a Sunday, or a day appointed by the Governor-General for a public fast or thanksgiving, or any other legal holiday or non-juridical day, as provided by the Statutes of the Dominion of Canada.

73. If it happens at any time that the number of judges necessary to constitute a quorum for the transaction of the business to be brought before the Court is not present, the judge or judges then present may adjourn the sitting of the Court to the next or some other day, and so on from day to day until a quorum shall be present.

Computation of Time.

Vacations.

74. There shall be a vacation at Christmas, commencing on the 15th December and ending on the 10th of January.

75. The long vacation shall comprise the months of July and August.

Interpretation.

76. In the preceding rules the term "A Judge" means any Judge of the said Supreme Court, transacting business out of court.

77. In the preceding rules the following words have the several meanings hereby assigned to them over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such instruction, that is to say :—

(1) Words importing the singular number include the plural number, and words importing the plural number include the singular number.

(2) Words importing the masculine gender include females.

(3) The word "party" or "parties" includes a body politic or corporate, and also Her Majesty the Queen and Her Majesty's Attorney-General.

(4) The word "Affidavit" includes affirmation.

(5) The words "The Act" mean "The Supreme and Exchequer Court Act."

Dated this seventh day of February A. D., 1876.

Certified,
Robt. CASSELS,
Registrar S. C. C.

SCHEDULE A.

Dominion of Canada.

The Supreme Court will hold a special session at the City of Ottawa on the day of 187 for the purpose of hearing causes and disposing of such other business as may be before the court (*or* for the purpose of hearing Election appeals, criminal appeals, *or* appeals in cases of *habeas corpus*, *or* for the purpose of giving judgments only, *as the case may be.*)

By order of the Chief Justice
or
By order of Mr. Justice

(*Signed*)
R. C.
Registrar.

Dated this day of 187

SCHEDULE B.

Form of Notice of Hearing Appeal.

In the Supreme Court. }
}

A. B., Appellant, and C. D., Respondent.

Take notice that this appeal will be heard at the next session of this Court to be held at the City of Ottawa, on the day of 187

To

Dated this day of 187

Appellant's Solicitor or Attorney,
or
Appellant in person.

SCHEDULE C.

Tariff of Fees to be paid to the Registrar of the Supreme Court of Canada.

On entering every appeal.....	$10 00
On entering every judgment, decree or order in the nature of a final judgment	$10 00
On entering every other judgment, decree or order.....	$2 00

In other matters the fees shall be regulated by the Tariff in force in the Exchequer Court of Canada in actions of the first class, and in every case not thereby provided for, the fees to be paid shall be in discretion of the Registrar, subject to revision by the Court or a judge.

SELECTIONS.

THE BETTING QUESTION.

It has often been observed that a period of national laxity generally succeeds to a period of national puritanism. The state of English morals after the Restoration, and the state of French morals after all necessity for hypocrisy had been removed by the death of Louis XIV., are instances of the truth of the remark. And the converse holds good also. It is very probable that we owe a great part of the outcry which, during the course of the last thirty or forty years, has, in certain quarters, been continually raised against every specie of betting, to the inordinate height to which the passion of gambling was carried at the time of the Regency. However that may be, that the outcry exists is clear, nor does it proceed only from the mouths of would-be moralists, from our pulpits, or from the pages of religious magazines. The legislature has shown a vigilant activity in the matter, and has passed in the present reign a series of progressively restrictive statutes on the subject (8 & 9 Vict. c. 109; 16 & 17 Vict. c. 119; 17 & 18 Vict. 38; 37 & 38 Vict. c. 15); and these statutes, though penal, have been construed strictly against "betting men" by the Courts.* It is our object in the following pages to show, as concisely as possibly, that in spite—perhaps because—of the extreme care bestowed on this question by our Parliament and by our Judges, it stands at present on a by no means satisfactory footing, and for this purpose it will be, in the first place, necessary to give a brief historical sketch of the development of the law concerning wagers and bets.

Originally, then, all such transactions, when not contrary to public policy, were deemed valid at common law.† The first two statutes on the subject were the 16 Car. II. c. 7, and the 9 Ann. c. 14, which, read together as being *in pari materiâ*, form the foundation of the law as to gaming or wagering as it at present exists, and upon examination of these enactments, and of the cases in which they have come under discussion, it appears plain that they were directed merely against "fraudulent and excessive gaming," their object being to put down betting on "credit or ticket," except for trifling amounts. The Courts of the time, however, appear in interpreting them to have laboured under more than ordinary difficulty. On the 9 Ann. c. 14, in particular, the cases, of which there are many, are most conflicting.‡

* See *Shaw* v. *Morly*, L. R. 3 Ex. 137; *Bows* v. *Fenwick*, 43 L.J.N.S. M.C. 107; *Eastwood* v. *Millar*, Ib. 139; *Haigh* v. *The Town Council of Sheffield*, L.R. 10, Q.B. 102; and *Oldham* v. *Ramsden*, 32 L.T. Rep. N.S. 825, which, however, went off on a technical point.

† *Sherbon* v. *Colebach*, 2 Vent. 175; *Jones* v. *Randall*, Cowp. 39; *Earl of March* v. *Pigot*, 5 Burr. 2803; See also *Da Costa* v. *Jones* (Chevalier d'Eon's case), Cowp. 729; and *Applegarth* v. *Colley*, 10 M. & W. 723.

‡ *Barjeau* v. *Walmsley*, 2 Stra. 1214; *Robinson* v. *Bland*, 1 W. Bl. 234, and see the decisions collected in the judgments of Rolfe, B., *Applegarth* v. *Colley*, 10 M. & W. 731.

They were accordingly followed, though at a protracted interval, by the 5 & 6 Wm. IV., c. 41, which, pursuing the principal of the two previous Acts, and still striking at the credit system, provides (s. 1.) that securities given for gaming debts shall be deemed to have been made for an illegal consideration (*Hill* v. *Ayling*, 20 L.J., Q.B. 171). After the passing of this statute the law may be shortly stated to have stood thus: All contracts for money won at play were void, but where money had been deposited in the hands of a stake-holder to await the event of a game or race, that transaction, not being a credit one, was not regarded as without the pale of the law. "We must assume (it was said in the judgment in *Applegarth* v. *Colley*, sup. 732, 3), that at all events since the passing of the 5 & 6 Wm. IV., c. 41, the statute of Anne must be taken to avoid all contracts for money won at play. . . But we are of opinion that money deposited in the hands of a stake-holder before a game is played or a race run, to be handed over to the winner, is precisely that sort of transaction that the legislature, supposing that the parties were to engage in play at all, meant to encourage and not to prohibit. It is in no fair sense gaming upon credit or ticket. It is, in fact, the only sort of gaming for ready money which the nature of the case admits. The legislature most wisely thought that they might with comparative safety trust persons to play for money if payment of all losses were made at the time and on the spot, and not deferred to a future occasion."

And here a short digression may be allowed. It will be seen that up to a very recent date the law looked favourably upon those how deposited their stakes and unfavourably upon those who betted on credit. The precise opposite is now the case, and the distinction at present drawn between those who bet on the ready-money system and those who bet on credit—the different measure dealt out to those professional agents, without whose assistance it is perfectly obvious that the general public could never lay a wager at all, and those amateur gamblers who simply bet among themselves—appears to us to form the most curious phase of this question. The reason propounded for the diversity calls to mind that pretty reason given by Shakespeare's fool, why the seven stars are no more than seven—because they are not eight. Ready-money betting is ready-money betting, and therefore it is immoral and dangerous, and must be put down. Now, whether political and judicial law-makers belong as a rule to the class of men who are said to be so learned as to have lost their common sense, is more than we will venture to affirm, but certainly it seems difficult for plain reason to see how a wager which, when made on the simple faith and credit of the parties entering into it, is perfectly innocent and harmless, can become wrongful and injurious when a deposit is made by one of them of his portion of the stakes. Surely most men would say that the fact of a person's making such a deposit is a proof of his *bona fides*, and a guarantee that he is betting no more than he can afford to put in hazard. But the opponents of the public agent say, with the Irishman, that the reciprocity is all on one side. The backer puts down his money, but the layer does not. This objection, if objection it be, applies to all cases where money is entrusted to an individual, or a commercial firm, or a public company, without a reciprocal security being exacted. How is it, for example, that we pay premiums to an insurance office without insisting upon having, on our side, some pledge that the sum which we expect to receive on the happening of a certain contingency, shall be paid over to us or our representatives? It is because the bare fact of the insurance office existing and plying its business as such, raises a presumption of its solvency and responsibility. The same remark applies to the case of the public betting-agent. There he is carrying on his trade, and the presumption is that he is safe. Besides, before trusting him with our money we may make all enquiries that prudence may dictate, and if it be said that in the case of a company, we have the security of the directors' names, it is answered that experience has amply demonstrated that such security is by no means in every case more reliable than that afforded by the presumption which may be reasonably drawn from the fact of a betting-house being in existence with nothing

known against it—namely, that it is in a state of solvency.

To resume. The ready-money transactions above alluded to, though favoured by previous enactments, did not escape the 8 & 9 Vict. c. 109, of which the well-known 18th section provides that "All contracts or agreements, whether by parol or in writing, by way of gaming and wagering, shall be null and void, and that no suit shall be brought or maintained in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made." This statute was followed up by those aimed at "betting-houses" and "betting-agents," which we have already enumerated (16 & 17 Vict. c. 119, &c., &c.), and which are too familiar to need any comment. On the whole, we think that the general effect of the group of statutes passed from the year 1845 to the year 1873, may be stated with sufficient accuracy for our purpose, thus :— (1) All instruments made for the purpose of securing gambling debts are null and void as between the parties.* (2) The amount won on a bet is never recoverable, either where the bet was made on credit or where the money was deposited. (3) Parties betting in certain places and under certain circumstances reprobated by the law, are made liable to various penalties prescribed by the statutes made in that behalf.

Now upon this state of the law we should wish to make a few remarks, premising that in what follows we would be understood chiefly to refer to turf-bets, the only species of gambling indeed which has ever been (properly speaking) popular amongst us. It cannot be denied that in spite of these enactments, race meetings are being multiplied continually throughout the country, from which fact we may fairly draw the inference that public interest in racing and betting (as inseparable, we submit, therefrom) are increasing in the same ratio. Whenever one of the great historical races is about to be brought to an issue, all other topics—political, social and literary—are banished from the thoughts and mouths of the general public. The journals are full of the pedigrees, performances and prospects of the favourites, and with details of the state of the betting-market with respect to their various chances. It is difficult to conceive how people have come to maintain that betting is intrinsically a wrongful act. Common sense must surely take the same view of the matter as we have seen was taken by the common law, that there is nothing to reprobate in a wager when untainted by trickery or fraud. Those who put their ban on betting merely as betting—who dislike it on what they are please to call moral grounds—though their arguments are more candid and more consistant than those used by certain other objectors, to whom we shall presently allude, can only be regarded by the man of the world with feelings of surprise. They are Ascetics (using the word in Bentham's sense), and their conduct can only fitly be compared to that of those fanatical Precisians, who, during the Commonwealth period, shut up theatres and destroyed works of art, simply because they afforded amusement and pleasure to the people. But, it is said, that although this may be so, yet the indirect consequences of betting are most injurious. It leads to idleness and improvidence. Is this so? We must not here allow our judgment to be misled by the contemplation of exceptional cases of men who have ruined themselves on the turf. Such cases exist, just as cases of men who have been crushed by commercial speculation exist, but the clamour that arises when they come under the notice of the public proves their rarity. Prodigals and weak-minded persons are to be met with in every walk of life, and no Act of Parliament can endow them with prudence and wisdom, but the question may be asked, who, amongst reasonable men, ever expected to make a living by backing horses, or who, in the overwhelming majority of

* In *Bubb* v. *Yelverton*, L. R. 9, Eq. 471, it was apparently doubted by Lord Romilly, M.R., whether a gambling debt secured by bond might not be recoverable. It may also be noticed that in this case Sir R. Palmer (Lord Selborne) *arguendo*, quoted a host of cases to show that "a wagering contract is not illegal, and a security given for it is only voluntary," (*Fitch* v. *Jones*, 5 E. & B., 238 ; *Hill* v. *Fox*, 359, &c., &c.

cases, bets more than he can well afford to lose, although it must be allowed that the present law puts a premium on dishonesty? Then again, it is both unfair and illogical to say, (as is said whenever the police find a sporting paper and a greasy note-book in the pocket of an offender), that betting tempts men to embezzle or to thieve. Want of money tempts them to do so. Their ill-gotten gains may sometimes be employed in betting; they are doubtless sometimes employed in a worse manner, and it is absurd to think that the number of crimes of this nature is swelled by the practice of betting any more than by the inducements of sloth, of avarice, or of lust.

These so-called objections, then, must fall to the ground. But even supposing there be anything in them and others of a similar nature, which are occasionally urged, we imagine that the force of the few observations we are about to make would not be diminished in the slightest degree. Were we to admit at once that betting is an evil, we should be compelled also to admit that in this country it appears to be a necessary evil. We have already given our reasons for holding this opinion, and if it be correct, and the question be asked how, under the circumstances, should we regard this betting question?—we take the answer to be obvious. We should regard it as we regard the drinking question, and as our French neighbours regard the question of prostitution—not as a subject from which the law should, with mock modest, turn her head, but as one to be by her carefully watched over and regulated. Anybody who has paid the slightest attention to the matter will, we venture to say, grant that all attempts to suppress betting in this country must be futile. But we do not wish to deny that some sort of legal supervision might be advantageously exercised. On the contrary, we are of opinion that it is from the want of it that an evil accrues, with which betting is, in many cases, justly chargeable—though by no means to the extent supposed by some. We mean the prevalence of fraud, cheating or trickery in betting transactions. It was this, and this alone, that was discountenanced by the common law and struck at by the early statutes. Indeed, even now there is nothing illegal in the making or paying of a bet pure and simple.* But wagers are now placed altogether without the pale of the law, and no principal in a gaming transaction can sue in the courts of this country in respect of it, whatever the merits of his case may be. It is, we imagine, to this legal prudery—a prudery only incident, it may be noticed, to the old age of the law on this subject—that the prevalence, greater or less, of fraud in these transactions, is chiefly owing. Bring them within the pale of the law, and immediately you strip from them all secrecy, which is the cloak of fraud. The press would have its eye on them—public opinion would be in a position to operate on them. Surely there would be greater hope of reclaiming the lax notions of morality unfortunately entertained by some of those who are in the habit of betting, if the law were to say, "Where a man is bound in honour and conscience, God forbid that a court of law should say the contrary. . . Honour and conscience ought to bind every man in point of law,"* than if it were to continue to hold the language it now holds:—"You have made a bet—which is wrong; you have lost that bet—which is more wrong; but now you refuse to pay that bet—which is most wrong—and you shall have the protection of the law;" for to refuse to give a remedy to a creditor is of course to protect the debtor. It is not the way, we take it, to discourage a thief, to turn your head away and tell him that you will take no notice whatever of his nefarious practices.

We would suggest, then, upon the whole, that seeing that Englishmen will bet, supervision, and not suppression, of gaming transactions should be attempted by our legislature. Betting-houses and betting-agents might be allowed to exist here (under checks and safeguards as strict as may be deemed expedient), rather than driven to establish themselves (without any checks or safeguards at all, as they do now) elsewhere. And

* *Johnson* v. *Lansley*, 12 C. B., 468, and see the other cases quoted by Sir R. Palmer, *arguendo*, in *Bubb* v. *Yelverton*, sup.; *Rosewarne* v. *Billing*, 33 L.J., C.P. 55; *Bubb* v. *Yelverton*, (Lord Charles Kerr's claim), 24 Law Rep. 822.

* Per Bathurst, J., *Turner* v. *Vaughan*, 2 Wils. 539.

so with bets made by individuals *inter se*. Permit them to be recovered by process of law, and then, were a fraudulent, unfair, or improper transaction to come before the courts, we can see no good reason why they should not be able to deal with it, in this, as in any other case. Perhaps, after all, the chief reason why the courts have regarded gambling cases, as they are called, with antipathy, is because they think that if in any way encouraged an undue proportion of such cases would be brought before them. Even if this were likely to occur, it is imagined that part of the duty of our judges is to superintend the social life of the people, but as a matter of fact, there is really no danger of such a state of things arising, and for very obvious reasons. No better would resist payment unless he had a good defence to the claim, for to do so would be to ruin his credit and social position at once and for ever. And it is clear, on the other hand, that in the vast majority of betting transactions no points of intricacy or delicacy can arise.

It was thought by some that this question would have formed a subject of discussion in the last Session of Parliament, and although that has not happened, the time must soon come for it to be carefully and comprehensively reviewed by the Houses. We hope that then the unequal pressure of a great portion of the enactments now obtaining will be noticed, and that some return to the ancient common-sense doctrine of the law on wagers and bets may be attempted, of which we should have the less fear if we could feel certain that our law-makers, bearing in mind the fact that all Englishmen are conservative where their pastimes are concerned, and the length of time during which racing and betting have gone hand in hand as twin national institutions, would also reflect seriously on the proposition laid down by a great modern thinker,* that "A philosophy of laws and institutions not founded on a philosophy of national character is an absurdity."

—*Law Magazine.*

* John Stuart Mill.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

FAGAN v. WILSON.

Transmission of depositions—Certified copies.

Held that sec. 193 of C. L. P. Act permits the transmission of certified copies of depositions; an application to transmit the originals was therefore refused.

[Jan. 12, 1876.—MR. DALTON.]

W. R. Mulock applied for an order to transmit original depositions to the clerk of assize, to be used as evidence in a case then pending.

The ground on which the application was made was that certified copies of depositions were not admissible as evidence under C.L.P. Act s. 193, which enacts that "examinations and depositions certified under the hand of the judge, or other officer or person taking the same, shall without proof of the signature be received and read in evidence." Reference was made to an unreported case in which it was said that STRONG, J., had held that this section did not permit the use of certified copies as evidence. The same view is taken in the note in Harr. C. L. P. Act p. 270.

MR. DALTON—The object of the section seems to have been simply to provide that depositions should be admissible as evidence at a trial, without reference to the question whether they were originals or not. It is greatly to be desired that there should be an authoritative decision on the point. In my opinion it would be quite sufficient to produce the certified copies at the trial. In *Flett* v. *Perrins*, L. R. 3 Q. B. 536, an examined copy of answers to interrogatories was received in evidence in a different suit from that in which they were originally taken. I must refuse the order.*

Order refused.

[* Mr. Harrison in his note says: "The meaning cannot be that office copies given out should be certified by the judge, or other officer or person, taking the *same*; for the officer takes the original examination or depositions, and not office copies." The wording of the section seems conclusive that the learned annotator and Mr. Justice Strong, were correct in their view. It might be desirable to permit certified *copies* to be used, but the section as it stands does not seem to contemplate it. EDS. L.J.]

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR AUGUST, SEPTEMBER, AND OCTOBER, 1875.

From the American Law Review.

ACCUMULATION.—*See* ANNUITY, 1.

ACT OF GOD.

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

ADEMPTION.

A testator bequeathed "all my shares or stock in the Midland Railway Company" to trustees upon certain trusts, and bequeathed his railway estate to others. At the date of his will the testator possessed £1,000 stock in said company, but afterwards transferred it to certain bankers by way of security for a loan made by them to one S., who gave the testator an undertaking to re-transfer the stock within three months. At the testator's death the stock had not been re-transferred; and subsequently the bankers sold it, and applied it to the payment of S.'s debt. S. paid £500 stock into court, but was unable to pay more. *Held*, that the trustees, and not the residuary legatee, were entitled to said £500 stock.—*Bothamley* v. *Sherson*, L. R. Eq. 304.

ADVANCEMENT.—*See* HUSBAND AND WIFE, 1.

AGREEMENT.—*See* CONTRACT; FRAUDS, STATUTE OF.

ANNUITY.

1. A testator gave all his real and personal estate to trustees upon trust, so to vest his real estate in the Court of Chancery, and place his personal estate under its control, that both should be administered by said court. The testator then directed that certain annuities should be paid from the rents and profits of his real and personal estate, and that, subject to such annuities, the income of the trust estate should be accumulated at compound interest until the decease of the last survivor of said annuitants, or during such portion of such surviving annuitant's life as the rules of law should permit; and that on the decease of such survivor, all the trust estate and its accumulations should be applied by said court in the purchase of land to be conveyed to G. and his heirs. *Held*, that, for the period which might elapse after the expiration of twenty-one years from the death of the testator to the death of the surviving annuitant, there was intestacy. G. was not entitled, during the life of the surviving annuitant, to the trust funds subject to the annuities.—*Talbot* v. *Jevers*, L. R. 20 Eq. 255.

2. A testator devised his estate to trustees upon trust to pay the income for the benefit of his wife and his daughter and son, and directed that, upon his youngest child attaining twenty-one, the trustees should invest a sufficient sum to secure the receipt of the annual sum of £50, which should be paid in instalments, as the dividends were received, to his wife; and, subject thereto, the trustees were to divide the whole of the trust estate in equal shares among the testator's children; and, upon the death of the wife, the amount invested to secure her annuity was to be divided in like manner among the children. The income of the whole fund did not amount to £50 a year. *Held*, that the widow was not entitled to have the deficit in the income made good from the principal.—*Michell* v. *Wilton*, L. R. 20 Eq. 269.

APPROPRIATION OF PAYMENT.

On Dec. 11, the plaintiffs paid over to W., their banker at Southwell, £900 in notes, and eight bills of exchange, amounting to £1,522; total, £2,422. This sum was paid under specific instructions to W. that it was for the express purpose of meeting certain acceptances for £2,230, payable at R.'s, a banker in London, on Dec. 12. On Dec. 11, W. forwarded said bills and £500 in notes and two other small checks, total £2,121, with a letter in printed form debiting R. with this sum, and crediting him with £849, which he was directed to pay. Under the head of "Advice of drafts" were described the plaintiff's acceptance for said £2,320. R. received W.'s letter on Dec. 12, and on Dec. 14 W. stopped payment. R. then refused to pay the amounts due on the plaintiff's acceptances, but retained said bills and notes sent to him by B. *Held*, that as between the plaintiffs and R. there was no appropriation of the bills and notes to the acceptances, and that R. was entitled to retain said bills and notes without meeting the acceptances.—*Johnson* v. *Robarts*, L. R. 10 Ch. 503.

BANK.—*See* HUSBAND AND WIFE, 1.

BANKRUPTCY.—*See* SALE; VENDOR AND PURCHASER, 2.

BEQUEST.—*See* REDEMPTION; ANNUITY; DEVISE; LEGACY; VENDOR AND PURCHASER, 1.

BILL OF LADING.

The defendants bought from M. all the ore in a mine in Spain, to be shipped by M. on ships to be chartered by the defendants or by him. The ore was to be paid for by bills against bills of lading, or on the execution of a charter, and on a certificate that there wa

enough ore in stock to load the vessel chartered. On being so paid for, the ore was to be the property of the defendants. Payments were made exceeding in amount the price of all the ore shipped and to be shipped in all the vessels chartered and not loaded. M. loaded the T., one of the chartered vessels, with ore; but he took bills of lading making the shipment to be by one S., and the cargo deliverable to S.'s order. The bills of lading were properly signed by the captain of the vessel, as, by the charter, he was to sign the bills as presented. S. was a fictitious person, and M. indorsed S.'s name and then his own on the bill of lading, and then pledged it to the plaintiffs. *Held*, that the plaintiffs were entitled to the cargo.

In a second case the above defendants brought an action upon a charter-party against the shipowner for not delivering a cargo of said ore which was on board a vessel chartered for carrying the ore as stated in the first case. This charter-party did not authorize the captain to sign bills of lading as presented, but under it the cargo was to be delivered to the plaintiffs in this action. The above-mentioned M. handed bills of lading in the form mentioned in the first case, and the captain signed them. M. then indorsed them to G., to whom the captain delivered the cargo. *Held* by (Bramwell and Cleasby, B.B., Kelly, C.B., dissenting), that the shipowner was not liable for not delivering the cargo to the plaintiffs. —*Gabarron* v. *Kreeft*; *Kreeft* v. *Thompson*, L. R. 10 Ex. 274.

See Charter-Party, 1.

Bills and Notes.—*See* Appropriation of Payments; Lien.

Charter-Party.

1. The owners of a ship chartered her to the plaintiffs, and that charter-party contained a stipulation that the master should sign bills of lading for weight of coal put on board, as presented to him by charterers, without prejudice to the charter-party. By mistake, the master signed bills of lading for 30 tons of coal more than were actually taken on board. The owners paid the value of the 30 tons to the consignees. *Held*, that the owners were not estopped by the charter-party from showing that the total amount of the coal specified in the bills of lading was not actually put on board, and that they were, therefore, not bound to pay the value of said 30 tons to the consignees, and were, therefore, not entitled to recover it from the charterers.—*Brown* v. *Powell Coal Co.*, L. R. 10 C. P. 562.

2. The defendants chartered the plaintiff's vessel, "freight to be paid in cash, loading and discharging the ship as fast as she can work, but a minimum of seven days to be allowed merchants, and ten days above said lying-days, at £25 per day." *Held*, that "lying-days" meant working-days, and did not include a Sunday. The vessel got into dock at 8 A.M., on Wednesday, and discharged all day; and began again on Thursday, at 4 A.M., and finished at 8 A.M. All the lay-days were consumed at the port of loading. *Held*, that the fraction of a day counted as a whole day, and that the charterers must pay two days' demurrage.—*Commercial Steamship Co.* v. *Boulton*, L. R. 10 Q. B. 346.

See Bill of Lading.

Check.

A. being indebted to the plaintiff, gave him a check payable to his order. The plaintiff indorsed the check, and crossed it with the name of the L. Banking Company; after which it was stolen, and passed into the hands of B., a *bona fide* holder for value. B. deposited the check in his own bank, which presented it to the defendant's bank, where it was paid. By statute, the holder of an uncrossed check may cross it with the name of a banker; and in such case the banker upon whom the check is drawn shall not pay it to any other than the banker whose name is so crossed. *Held*, that plaintiff was not entitled to recover. The statute did not give the plaintiff any right of action against the defendant.—*Smith* v. *Union Bank*, L. R. 10 Q. B. 291.

Company.

1. Shares of a company were, in pursuance of an *ultra vires* resolution of the board of directors, transferred to A., a director in trust for the company. B., a director, came to the meeting after the proceedings were begun, and he denied all knowledge thereof. C. was not present at the meeting, but was present at a subsequent meeting at which the minutes of the previous proceedings were formally approved. *Held*, that A. was entitled to contribution from the directors, who concurred in the resolution, for calls that he had paid, and that B. must contribute, but not C.—*Ashurst* v. *Mason* L. R. 20 Eq. 225.

2. The directors of a company were authorized to borrow money; to issue debentures for the purpose of securing the repayment of, or raising of, money borrowed; and to exercise and do all such powers, acts, deeds, and things which the company might exercise and do. *Held*, that the directors had power to issue debentures at a discount—*In re Anglo-Danubian Steam Navigation & Colliery Co.*, L. R. 20 Eq. 339.

Condition.

Devise to J. on condition that he never sells the land out of the family. *Held*, that the condition was valid.—*In re Macleay*, L. R. 20 Eq. 186.

Construction.—*See* Ademption; Annuity; Appropriation of Payments; Charter-Party, 1; Contract; Devise; Grant; Lease; Legacy; Limitations, Statute of; Partnership; Vendor and Purchaser, 1.

Contract.

The defendant sold the plaintiff 5,400 tons of iron, delivery to begin by January 15, and to be completed May 15, 1873. In the event

of the plaintiff's ships not being ready within fourteen days, notice being given, then the payments to be made against wharf warrants for each 500 tons slacked and being to buyer's order, the defendant undertaking to put free on board when the vessel was ready. If the defendant exceeded the time for delivery, he was to pay 7s. 6d. per week by way of fine. Delivery was made during May, June, July, and August, and was completed in September, 1873. *Held*, that the fine must be calculated from May 15, 1873.—*Bergheim* v. *Blaenavor Iron Co.*, L. R. 10 Q. B. 319.

See Bill of Lading; Charter-Party, 1; Damages, 2; Limitations, Statute of; Partnership; Railway, 2.

Contribution.—*See* Company, 1.

Conviction.

The appellant was convicted for negligently injuring the respondent in driving his carriage against the latter. He was again convicted on the same facts and under another statute for an assault on the respondent. *Held*, that the first conviction was a bar to the second.—*Wemyss* v. *Hopkins*, L. R. 10 Q. B. 378.

Copyhold.—*See* Devise, 1.

Covenant.—*See* Lease.

Criminal Law.—*See* Conviction; Infancy.

Custom.—*See* Lien.

Damages.

1. The plaintiff owned certain building-land, and also land upon which he had built a reservoir. A railway company took the building-land. By statute, in estimating the compensation for the land taken, the arbitrators were to take into consideration the damage occasioned by severance from other lands of the owner, or otherwise injuriously affecting such other lands. The arbitrator, being of opinion that the land taken would have been inevitably covered with mills which would have been supplied with water from said reservoir, allowed compensation for the plaintiff's loss of the sale of the water from his reservoir to the mills which would thereafter be built. *Held*, that such compensation was properly awarded.—*Ripley* v. *Great Northern Railway Co.*, L. R. 10 Ch. 143.

2. K. was the owner of land on each side of a highway, the soil of which also belonged to him, subject to the right to use and maintain the road. The natural surface of the ground formed a valley which the road crossed on an artificial embankment. K., who wished to tunnel the embankment, employed the plaintiff to do the work. The defendants, a waterworks company, had laid their pipes along said road in accordance with powers conferred by statute. The plaintiff proceeded with his work, and, after tunnelling the embankment, found that one of the defendants' pipes was leaking, and notified the defendants thereof. After some time, the leak was stopped; but the plaintiff was delayed by the leak, and put to expense. *Held*, that the plaintiff could not maintain an action for damages done to K.'s property, although he had in consequence lost money under his contract with K. *Held*, also, that even if K. would have been indictable for a nuisance to the way, nevertheless his partial obstruction of the way would not render his whole proceedings so illegal as to prevent him from recovering damages for a wrong.—*Cattle* v. *Stockton Water Works*, L. R. 10 Q. B. 453.

See Lease, 1; Libel; Vendor and Purchaser, 3.

Deed.—*See* Escrow; Grant.

Delivery.—*See* Escrow.

Demurrage.—*See* Charter-Party, 2.

Deposit.—*See* Vendor and Purchaser 2.

Devise.

1. Devise of freeholds and copyholds to A. and B. upon trust during the life of C. to receive and pay the rents to C., or otherwise to permit him to receive them; and, after the decease of J., the estates were devised to the heirs of the body of C. The testator nominated A., B. and C. executors of his will. *Held*, that C. took an estate-tail in the freeholds, and the equitable life-estate in the copyholds.—*Baker* v. *White*, L. R. 20 Eq. 166.

2. A testatrix gave her real and personal estate to her husband for life, and after his death "to be divided amongst my five children, share and share alike; and if any of my children should die without issue, then that child or children's share shall be divided, share and share alike, among the children then living; but if any of my children should die leaving issue, then that child (if only one) should take its parent's share; if more than one, to be divided equally amongst them, share and share alike." One of the five children, all of whom survived the tenant for life, died leaving children. *Held*, that her share went to her children. Another child died childless. *Held*, that her share went to the three surviving children of the testatrix.—*Olivant* v. *Wright*, L. R. 20 Eq. 220.

3. A testatrix gave all her estate, both real and personal, to M., for her sole use during her lifetime, and after her death to her children, in equal parts: in case M died leaving no issue, the whole of the property to go to the next of kin. M. had one child, who died before M. On the death of M., her husband claimed said real estate. *Held*, that, as a vested interest was given to the child of M., the words "leaving no children" must be read, "having had no children;" and that therefore the plaintiff was entitled to said real estate.—*Treharne* v. *Layton* L. R. 10 Q. B. (Ex. Ch.) 459.

See Ademption; Annuity; Condition; Legacy; Vendor and Purchaser

Directors—*See* Company.

Disentailment.—*See* Estate Tail.

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Distress.—*See* Rent.

Easement.—*See* Grant, 2.

Ejectment.—*See* Lease.

Eminent Domain.—*See* Damages, 1.

Entry.—*See* Lease.

Equity.—*See* Injunction; Specific Performance; Voluntary Settlement.

Escrow.

Delivery of a deed to the solicitor of a grantee does not necessarily convert the instrument from an escrow to a deed.—*Watkins* v. *Nash*, L. R. 20 Eq. 262.

Estate-Tail.

Four children were entitled to joint-estates for life, remainder to them and a fifth child in tail, with cross-remainders in tail between them. A., one of the four children, executed a disentailing deed of his estates-tail. The fifth child subsequently died without issue. *Held*, that A's fifth share, together with his fourth share in the share of the child who died, were effectually disentailed.—*Tuffnell* v. *Borrell*, L. R. 20 Eq. 194.

Estopel.—See Charter-Party, 1.

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

Fraud.—*See* Bill of Lading.

Frauds, Statute of.

The plaintiff entered into an agreement with the defendant, dated Oct. 4, 1871, to let the defendant a public-house at £160 per annum; the defendant to have the right to require a twenty-eight-years' lease at a rent of £100, upon payment of £1,200; and in case the tenant should, after the granting of the lease, sell the business for a larger sum than £1,200, the excess was to be divided between the plaintiff and defendant. It was subsequently verbally agreed that £800 only should be paid on the granting of the lease; that the term should be thirty-two years, and the rent £105; and that several covenants, burdensome to the defendant, should be omitted. A lease with these variations from the agreement was signed April 4, 1873. The defendant sold the lease for £2,500, and refused to share the surplus over £1,200. The jury found that there was no abandonment of the written agreement, except so far as it was varied by the written lease. *Held*, that the lease put an end to the written agreement; and that if it was the intention of the parties to retain the agreement concerning the division of the bonus, it was not in writing so as to satisfy the statute of frauds. *Quære*. whether, if there had been anything in writing showing that the lease was a mere *substitution* for the agreement, the action might not have been maintained.—*Sanderson* v. *Graves*, L.R. 10 Ex. 234.

Good Will.—See Lease, 1.

Grant.

1. R., a tenant for life of a house, leased it to A. for ten years, expiring Nov. 13, 1864; and again to B. for a term expiring Nov. 13, 1874. On Nov. 10, 1864, R., by deed, "granted, demised, and leased to B., his executors, administrators, and assigns," the house, "to have and to hold the house hereby demised unto B., his executors, administrators, and assigns, from Nov. 13, 1874, for the term of the aforesaid R., for the term of his natural life. *Held*, that there was a grant *in præsenti* of the life-estate, notwithstanding the words of the *habendum*.—*Boddington* v. *Robinson*, L. R. 10 Ex. 270.

2. The defendant owned a cottage and stable called "Roseville," abutting upon a public way, and also of a farm called "Rose-Cottage Farm," abutting upon the same highway, and having a private way which passed by the Roseville stable. H. leased Roseville of the defendant for ten years, and built a hay-chamber over the stable, with openings on a side of the stable which abutted on said private way. The defendant gave H. permission to use the private way (which was not demised to H.) for his hay-carts, and H. so used it for ten years. At the expiration of said lease, the defendant conveyed Roseville to the plaintiff, "together with all ways, and rights of way, liberties, privileges, easements, advantages, and appurtenances to the messuage, &c., appertaining, or with the same now or heretofore demised, occupied, or enjoyed or reputed as part or parcel of them, or any of them, or appurtenant thereto." *Held*, that the right to use the private way as aforesaid passed to the plaintiff.—*Kay* v. *Oxley*, L. R. 10 Q. B. 360.

Habendum.—See Grant, 1.

Husband and Wife.

1. M., who was in failing health, transferred his bank account to the joint names of himself and his wife, and requested the bank to honour any checks drawn either by himself or his wife; and he remarked at the time that the balance of the account would belong to the survivor of himself and his wife. The wife drew all the checks, which were duly paid, and the proceeds applied in payment of household and other expenses. M. died, leaving a considerable sum standing to the credit of the account. *Held*, that the transfer was not intended to be a provision for the wife, but simply a mode of conveniently managing M.'s affairs; and that the widow was therefore not entitled to the fund. *Marshal* v. *Crutwell*, L. R. 20 Eq. 328.

2. Money and furniture were settled upon a married woman to her separate use. As the furniture from time to time wore out, she replaced it with new furniture bought with the income of her separate property. The new furniture was seized by the sheriff upon an execution against the husband. *Held*, that in equity the new furniture belonged to the wife.—*Duncan* v. *Cashin*, L. R. 10 C.P. 554.

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Infancy.

The prisoner was convicted of having "unlawfully taken an unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father." The girl was in fact only fourteen, but looked much over sixteen; and she told the prisoner that she was eighteen, and the prisoner believed her. *Held*, (by Kelly, C.B., Cleasby, Pollock, and Amphlett, BB., and Grove, Quain, and Denman, JJ.,—Bett, J., dissenting), that the conviction should be affirmed.—*The Queen* v. *Prince*, L. R. 2 C.C. 154.

Injunction.

The lessee of a theatre sublet certain boxes in the theatre to the plaintiff, together with egress and regress to and from the boxes during all such nights as the theatre should be open for the exhibition of any opera or entertainment off or upon the stage, except balls and masquerades; reserving to the lessor the right to enter to repair and clean. Subsequently, and at a time when no theatrical performances were going on, the lessor leased the theatre to Moody and Sankey for religious meetings and for this purpose boarded over the plaintiff's boxes. The plaintiff prayed an injunction. *Held*, that inasmuch as the boarding was only temporary, and would be removed before the operatic season began, and did not injure the boxes, an injunction would not be granted.—*Leader* v. *Moody*, L. R. 20 Eq. 145.

Landlord and Tenant.—*See* Lease; Rent.

Lease.

1. The plaintiff held a public-house under a lease from the defendant, containing a proviso, that, at the expiration of the term, all such sums of money as could be procured for the good will of the business of a licensed victualler in respect of said premises should belong to the plaintiff. At the expiration of the lease, the defendant claimed an increased rent, and a sum by way of premium. The plaintiff refused these terms; and the premises were leased to one B. at an increased rent, and a premium of £1,300, for a fourteen-years' lease. Nothing under the name of good will was paid by B. It was found by an arbitrator that the rent reserved was a sufficient rental for the premises without any bonus, apart from the special value which the premises possessed owing to the old and successful business which had been carried on there by the plaintiff; and also that the good will of the plaintiff would, if belonging to the defendant, have been worth over £1,300. *Held*, that the proviso had been broken; and that, in determining the value of the good will, the arbitrator was not to be guided absolutely by the fact that £1,300 had been paid by B. as premium, and that he was to consider the increased value of the good will by reason of the general improvement of the locality.—*Llewellyn* v. *Rutherford*, L. R. 10 C. P. 456.

2. An agreement for an under-lease was made between a lessee and the defendant, containing, among others, the following terms: The lease to contain an extract of the covenants in the original lease, and the proposed lease not to be sold, or any portion of the property underlet, without the consent in writing of said under-lessor. The original lease contained a proviso for re-entry in case of breach of covenant; but there was no covenant against underletting. The defendant underlet, and his lessor entered, and brought ejectment. *Held*, that the plaintiff was properly nonsuited, as he had no right of entry under said agreement for breach of covenant not to underlet.—*Crawley* v. *Price*, L. R. 10 Q. B. 302.

See Frauds, Statute of; Injunction Rent.

Legacy.

Bequest of residue in trust to pay the interest half-yearly "to pay my sons C. and J. equally for their natural lives, and at their death the principal to be divided equally between the children of the said C. and J." *Held*, that "at their death" meant "at the death of each respectively;" and that, therefore, the children of C. were entitled at his death to one-half the principal.—*Wills* v. *Wills*, L. R. 20 Eq. 342.

See Ademption; Annuity; Devise.

Libel.

Declaration that the defendants falsely and maliciously printed and published the plaintiffs' names under the heading "First meeting under the new Bankruptcy Act," meaning thereby that the plaintiffs had become bankrupt. In fact, the plaintiffs' names were inserted by mistake under the above heading, instead of under the heading "Dissolution of Partnerships." The jury found that the publication was libellous, and gave damages £50. The defendants moved for arrest of judgment on the ground that the declaration disclosed no cause of action, and for a new trial because of excessive damages. The court refused the motions.—*Shephcard* v. *Whitaker*, L.R. 10 C. P. 502.

Lien.

A. contracted with B. to buy a certain quantity of rails, the contract containing the following stipulation. "Payment to be made by buyer's acceptance of seller's drafts at six months' date against inspector's certificate of approval, and wharfinger's certificate of each 500 tons being stacked and ready for shipment." The wharfinger's and inspector's certificate were, as they were signed, delivered to A. in exchange for his acceptances of bills at six months, which bills B. negotiated. The plaintiff advanced A. money against three of said wharfinger's certificates. A. became insolvent, and his acceptances were dishonoured. The rails were still in B.'s hands. The plaintiff filed a bill, in which he claimed a lien for his advances on the rails mentioned in his certificates; and he alleged, that, according to the custom of the iron trade, said wharfinger's certificates were in fact warrants; and he prayed an injunction restraining B. from

parting with said rails without first satisfying his lien. *Held*, that the acceptances were only payment conditional upon their being honoured; and that, upon their being dishonoured, B.'s lien upon the iron revived, and that the negotiation of the bills made no difference. Also that the wharfinger's certificates were not warrants or documents of title; and that the fact that money was lent upon their being pledged to the lender could not affect the vendor's lien.—*Gunn* v. *Bolckow, Vaughan, & Co.*, L. R. 10 Ch. 491.

Limitations, Statute of.

The plaintiff, a married woman, advanced £20 to the defendant during the lifetime of her husband. In 1867, after the husband's death, the defendant gave the plaintiff an I. O. U. for the amount. The I.O.U. was not paid; and the defendant, being pressed by the plaintiff, wrote in 1871, "It is totally out of my power to liquidate the whole, or even part, of the claim. I am in the anticipation of a better position; and, should I be successful, the claim shall have my first consideration. Meanwhile I shall be pleased to pay a reasonable interest on the amount. The claim has not been forgotten by me, and shall be liquidated at the earliest opportunity possible." And again, in 1871, the defendant wrote, "I can assure you, at present it is utterly out of my power to do anything. I am willing to endeavour to pay it [the debt] off by easy instalments; or I am willing to pay you any reasonable interest to let the matter remain for the present." The plaintiff brought an action in 1874 for money lent, with a count upon a promise to pay in consideration of the plaintiff's forbearance to sue. *Held*, that said letters constituted a fresh promise, for which the forbearance to sue until 1874 formed sufficient consideration.—*Wilby* v. *Elgee*, L. R. 10 C. P. 497.

Lord's Day.

1. The defendants, an incorporated company, were the owners of a building used as an aquarium. There was a room used as a museum, wherein were illuminated microscopes; and there was a reading-room and a dining-room, conservatories and a café. The building was open to the public on payment of an entrance fee of 6d. On Sunday evening, sacred music was played; and the fish were fed at stated hours. Catalogues, guide-books, and programmes of the museum, animals, &c., were sold in the building. Food, wine, and spirits were sold to the visitors. *Held*, that the aquarium was a "place used for public entertainment or amusement."—*Terry* v. *Brighton Aquarium Co.*, L. R. 10 Q. B. 306.

2. In a second action, the facts were the same as in *Terry* v. *Brighton Aquarium Co.*, except that it was stated that the reading-room was used on week days only; and the statements, as to a band playing sacred music on Sunday evenings, and as to newspapers and illuminated microscopes being provided in the building for the amusement of visitors, were omitted.—*Held*, that the aquarium was a "place used for public entertainment or amusement."—*Warner* v. *Brighton Aquarium Co.*, L. R. 10 Ex. 291.

Maintenance.—*See* Trust.

Married Woman.—*See* Husband and Wife; Trust.

Master and Servant.—*See* Principal and Agent; Trespass.

Mortgage.

W., a solicitor, and the acting trustee of a settlement, lent C., a client of his, £2,000 upon a mortgage of a certain estate, the deeds of which were duly delivered to W. Subsequently W. fraudulently delivered the title-deeds to C., who deposited them with his bank as security for advances. The bank informed C. that a solicitor's certificate of title was necessary: whereupon C. referred the bank to W. The bank sent the deeds to W., who certified that C. had a good title, and received a fee from the bank. W. became bankrupt, and the above facts were discovered. C., and afterwards W., died. The surviving trustee and the beneficiaries brought a bill against the bank, praying a declaration that the plaintiffs were first morgagees, and for delivery of the title deed. *Held*, that the bank had no constructive notice of the first mortgage, and was a mortgagee for value without notice of the first mortgage.—*Waldy* v. *Gray*, L. R. 20 Eq. 238.

Negligence.

1. The defendant railway was obliged by statute to carry all carriages, &c., upon its lines, upon payment of certain tolls; and, in fact, received between twenty thousand and thirty thousand foreign trucks weekly. One G. hired trucks from a waggon company, which was to keep the trucks in repair. One of these trucks arrived at Peterborough on the defendant's line, and was there examined by a person in the defendant's employ, and found to have a spring broken, and a part of the woodword cracked. The waggon company put in a new spring without unloading the truck, but did not repair the crack in the wood. The truck was then carried forward and broke down, owing to an old crack in the axle which had not been discovered, and the plaintiff was injured. The jury found that the defect in the axle would have been discoverable upon fit and careful examination; that it was not the duty of the defendant to examine the axle by scraping off the dirt, and so minutely examining it that the crack would have been seen; and that it was the defendant's duty to require from the waggon company some distinct assurance that the truck had been thoroughly examined and repaired. Verdict for defendant, with leave to the plaintiff to move for a verdict for the plaintiff for an agreed sum. *Held*, that, the plaintiff was entitled to a verdict.—*Richardson* v. *Great Eastern Railway Co.*, L. R. 10 C. P. 486.

2. The plaintiff, who had sent a heifer by the defendants' railway to the P. station, assisted with the assent of the station-master, in shunting the car in which was the heifer,

on to a siding, and while so doing was injured by the defendants' negligence. *Held*, that, as the plaintiff was on the siding with the consent of the station-master, that is, of the defendants, the defendants were liable.—*Wright* v. *London and North-Western Railway Co.*, L. R. 10 Q. B. 301.

See Act of God ; Damages, 2 ; Railway. 2 ; Trespass.

Notice.—*See* Mortgage.

Nuisance.—*See* Damages, 2.

Partnership.

The plaintiff and defendant agreed that an underwriting account should be carried on under the following conditions : That it should be carried on in the name of the defendant only ; that policies, losses, and averages should be settled by the defendant, or by the plaintiff as his agent ; that the plaintiff should apply the whole or such part of his time to the business as should be required for conducting the same ; that proper accounts of the business should be kept by the plaintiff, he obtaining such assistance from time to time as he should find necessary ; that the plaintiff should be paid a salary of £150 yearly, by half-yearly payments ; that the profits, after deducting all expenses, should be divided between the defendant and plaintiff, the former receiving four-fifths, and the latter one fifth ; but, if in any year the business should be carried on at a loss, such loss should be borne by the defendant only ; and that if, after any year's division of profits, any unexpected claim should be made against the said parties, they should advance and pay their respective proportions thereof; nevertheless, so that the plaintiff should not be called upon to pay any greater sum in respect of the business of any year than the sum he should have received as his share of the profits for such year. *Held*, that under the agreement the plaintiff was not a partner.—*Ross* v. *Parkyns*, L. R. 20 Eq. 331.

Payment.—*See* Lien.

Perpetuity.—*See* Annuity, 1.

Principal and Agent.

The defendant was chairman of a meeting at which there was a disturbance, during which the defendant said, "I shall be obliged to bring those men to the front who are making the disturbance. Bring those men to the front." The plaintiff, who was making no disturbance, was seized by a man with a white ribbon in his coat, and two policemen, and dragged over some benches to the front part of the gallery, and injured. *Held*, that there was no relation of master and servant, or principal and agent, between the defendant and the officers, and that the words spoken by the defendant did not authorise the officers to assault the plaintiff ; and that the defendant was therefore not liable.—*Lucas* v. *Mason*, L. R. 10 Ex. 251.

See Mortgage ; Partnership ; Trespass.

Railway.

1. A railway rated as land within a statute laying a tax.—*The Queen* v. *Midland Railway Co.*, L. R. 10 Q. B. 389.

2. The plaintiff was in charge of certain sheep to be sent from A. to C. A ticket was issued to the plaintiff by the North British line containing the following terms : "If it is desired that any person accompanying the live stock shall be allowed to travel in the same train as the stock without paying a fare, he must travel at his own risk, and must either sign this in token that he agrees to travel at his own risk, or must pay fare : 'I agree to travel at my own risk without paying any fare, and accept a free pass, subject to the following conditions,—that the holder exonerates the company from all responsibility for injury to himself, however occasioned, on the journey for which it is issued.'" The plaintiff did not sign the ticket, and was not asked to do so. The North British line goes no farther than B. ; but from B. the cattle-trucks, in which was the plaintiff, were attached to a train of the defendants, and sent along their line to C., under traffic arrangements with the North British line. After leaving B., the plaintiff was injured by the defendants' negligence. *Held* that the plaintiff was in the same position as if he had signed said ticket, and that the terms of said ticket extended to all risks, connecte with the journey from A. to C., which the plaintiff might meet with as a passenger ; and that the North British Railway was authorised to contract with the defendants to carry the plaintiff from B. to C., and that the defendants were therefore not liable.—*Hall* v. *North-Eastern Railway Co* , L. R. 10 Q. B. 437.

See Negligence.

Redemption.—*See* Ademption ; Annuity.

Rent.

When a landlord distrains for rent, he cannot bring an action for rent so long as he holds the distress, although the distress is insufficient to satisfy the rent.—*Lehain* v. *Philpott*, L. R. 10 Ex. 242.

Recission of Contract.—*See* Sale.

Resulting Trust.

A woman transferred stock she had received from her deceased husband into the joint names of herself, her daughter, and her daughter's husband. She received the dividends on the stock until her death, which took place after her daughter's death. *Held*, that there was no resulting trust, and that the husband was therefore entitled to the stock.—*Batstone* v. *Salter*, L. R. 10 Ch. 431, s. c. L. R. 19 Eq. 250.

Sale.

On Dec. 1, S. committed an act of bankruptcy ; and on Dec. 3 a petition for adjudication was filed and served. On Dec. 5, S. purchased wool at auction, and was allowed to take the wool without paying for it, as the seller supposed S. to be solvent. Dec. 14, S.

was adjudicated bankrupt; and on Dec. 21, the seller, who had first heard of the bankruptcy proceedings on Dec. 19, gave notice that he rescinded the contract on the ground of fraud, and demanded to have the wool returned. *Held*, that, as it did not appear that S. purchased the wool without any intention of paying for it, the trustee was entitled to the wool.—*Ex parte Whittaker*; *In re Sackleton*, L. R. 10 Ch, 446.

See Bill of Lading; Contract; Vendor and Purchaser, 1.

Set-off.

A debt due to an administrator in his own right may be set off against a sum due from the administrator in respect of the next of his kin's share of the intestate's estate.—*Taylor* v. *Taylor*, L. R. 20 Eq. 155.

Ship.—*See* Bill of Lading; Charter-Party.

Solicitor.—*See* Escrow; Mortgage.

Specific Performance.

In a suit for specific performance of a contract to purchase a colliery, it appeared that the income of the colliery was not so large as it was stated to be. Upon the circumstances of the case, it was decreed that the purchase-money be reduced by sum bearing the same proportion to the difference between the actual and the stated income as the contract price bore to the stated income.—*Powell* v. *Elliott*, L. R. 10 Ch. 425.

See Voluntary Settlement.

Statute.—*See* Check; Infancy; Lord's Day.

Stock.—*See* Resulting Trust.

Sunday.—*See* Lord's Day.

Tax.—*See* Railway 1.

Tort.—*See* Trust.

Trespass.

The defendant was seated on the box of his carriage, by the side of his groom, who was driving. The horses became frightened and ran, and the groom begged the defendant to leave their management to him; and the defendant, accordingly, did not interfere. The horses came to a corner, and the groom endeavoured to help them in turning; but they fell, and struck the plaintiff, who was on the pavement on the farther side of the street into which the horses were turning. The jury found that none of the parties were guilty of negligence. *Held*, that the groom, by turning the horses in the direction of the plaintiff, was not guilty of trespass, inasmuch as he did not drive the horses against the plaintiff, but the horses struck the plaintiff in spite of the groom.—*Holmes* v. *Mather*, L. R. 10 Ex. 261.

See Principal and Agent.

Trust.

Bequest of an annuity of £100 charged on real estate to S., a married woman with separate property, in trust to pay and apply the annuity in her discretion for the benefit of J. during his life, and for his advancement, maintenance, or support, or otherwise for his benefit, and without being responsible or answerable for any of the moneys so laid out, or the exercise of the discretion so vested in the trustee as to the mode and extent of expending and laying out the same. *Held*, that S. was not entitled to any part of the £100 for her own use; but that there could be no decree against her separate property for a tort committed by her in the misapplication of the trust fund.—*Wainford* v. *Hayl*, L. R. 20 Eq. 321.

See Resulting Trust.

Ultra Vires.—*See* Company.

Vendor and Purchaser.

1. A testator devised all his real and personal estate to trustees upon trust out of the proceeds of the personal estate, or if and so far as the same should be insufficient, out of the proceeds of his real estate, to pay his debts; and as to a property called Essex Lodge, to permit his widow to occupy the same during widowhood, and, after her second marriage or death, to sell the same. The debts were all paid from the personal estate. With the consent of the widow, the lodge was subsequently ordered to be sold, and a contract entered into accordingly. The purchaser objected to the title. *Held*, that the trustees could not pass a valid title.—*Carlyon* v. *Truscott*, L. R. 20 Eq. 348.

2. An agreement was made for the sale of certain real estate, and the purchaser made a deposit. There was no agreement as to the forfeiture of the deposit in case of the contract failing through the purchaser's default. The purchaser became bankrupt, and the trustee in bankruptcy disclaimed the contract, and demanded the repayment of said deposit. *Held*, that the vendor was entitled to the deposit.—*Ex parte Barrell*; *In re Parnell*, L. R. 10 Ch. 512.

3. Land was bid off at auction to the defendant, who paid a deposit. One of the conditions of sale was, that, should the purchaser fail to comply with certain other conditions, his deposit-money should be forfeited to the vendor, who should be at liberty to resell; and if the price which should be obtained by the second sale should not be sufficient to cover the amount bid at the first sale, and all the expenses incidental to the first sale, the deficiency should be paid by the purchaser at the first sale. The defendant insisted on being present at the execution of the deed of conveyance by the vendor, whose mind had at one time been affected. This was refused, and the defendant declined to complete the purchase. The jury found that it was not reasonable to insist on the presence of the vendor at the completion of the purchase. There was no resale. *Held*, that the purchaser had no absolute right to insist upon the presence of the vendor at the completion of the purchase; but that whether it was a reasonable requirement or not, was a question for the jury in each case; and that the vendor was entitled to recover the auctioneer's and solicitor's charges for the abortive sale, and to retain the deposit-money.—*Essex* v. *Daniell*, L. R. 10 C. P. 538.

See Grant, 2; Voluntary Settlement.

Vis Major.—*See* Act of God.

Voluntary Settlement.

W. executed by indenture a voluntary conveyance of land; and the grantee covenanted that he would cause to be built upon the land such a dwelling-house as he should think fit. Subsequently W. contracted to sell the land to the plaintiff, who brought a bill for specific performance. *Held*, that, as the indenture contained no power of re-entry or penalty enforcing the covenant of the grantee, there was nothing binding in his contract, and the indenture was therefore a mere voluntary settlement; and that the plaintiff was entitled to a decree for specific performance.—*Rosher* v. *Williams*, L. R. 20 Eq. 210.

Warrant.—*See* Lien.

Water.—*See* Act of God.

Way.—*See* Grant, 2.

Wharfinger's Certificate.—*See* Lien.

Will.

1. A testator bequeathed certain leasehold houses in trust for his children. After his death, it was found that the description of one of the houses on the second page of the will was struck through with a pen, the testator's name being written above the alteration. On the last page of the will a clause was interlined, giving said house to testator's wife. After the signatures of the testator and the witnesses was a memorandum, stating, "In No. 2 page, No. 1, W. Terrace [the above house] is struck out for the benefit of my dear wife." This memorandum was signed by the testator, and duly witnessed. *Held*, that the memorandum sufficiently referred to the interlineation on the last page of the will, and probate was granted to the will with the obliteration and interlineation.—*In the Goods of Treeby*. L. R. 3 P. & D. 242.

2. A testatrix requested two witnesses to sign a paper for her, but did not say that the paper was her will, or that she had signed it; and the witnesses did not see her signature on the paper. There was not a complete attestation-clause, but only the words, "witness my hand this 28 May, 1873." Probate was refused on the ground of insufficient attestation.—*Fischer* v. *Popham*, L. R. 3 P. & D. 246.

3. Two wills were prepared for two sisters. By mistake, the deceased signed the will prepared for her sister. The wills were nearly, but not quite identical. Probate refused.—*In the Goods of Hunt*, L. R. 3 P. D. 250.

See Ademption; Annuity; Condition; Devise; Legacy; Vendor and Purchaser.

Words.

"*Die leaving issue.*"—See Devise, 2.

"*Die without issue.*"—*See* Devise, 2.

"*Land.*"—*See* Railway, 2.

"*Leaving no issue.*"—*See* Devise, 3.

"*Lying-Days.*"—*See* Charter-Party, 2.

"*Place used for public entertainment or amusement.*"—*See* Lord's Day.

"*Their Death.*"—*See* Legacy.

COURT OF APPEAL.

ORDERS AS TO COUNTY COURT APPEALS.

February 25th, 1876.

Appeals from County Courts shall be heard at the sittings of the Court of Appeal next after the giving of the decision appealed from, unless otherwise ordered by the Court of Appeal or a Judge thereof.

The appellant shall set down the appeal for hearing, by delivering to the Registrar of the Court of Appeal, at least fourteen days before the sittings at which the matter is to be heard, four appeal books for the use of the Judges of the Court of Appeal. Such appeal books shall, if written, be written on brief paper, and on only one side of the paper; and if printed, shall be printed on good paper, on one side of the paper only, and in demy-quarto form, small pica type leaded. And each book shall contain a copy of the pleadings, evidence, and other matters which have been certified by the Judge of the Court appealed from, together with the appellant's reasons of appeal. The copy, certified by the Judge in pursuance of the statute, may be accepted as one of the four appeal books, if it complies with the above mentioned requisites.

The appellant shall at least eight days before the sittings at which his appeal is to be heard, serve the respondent with notice of the setting down of the appeal, and with a copy of his reasons of appeal.

Unless the foregoing rules are complied with, the appeal shall not be heard, unless the Court shall, on application made upon two days' notice to the respondent, otherwise order.

The costs to be taxed and allowed upon appeals from County Courts shall be on the same scale as heretofore allowed upon appeals to the Courts of Queen's Bench and Common Pleas.

W. H. DRAPER, C. J.
GEO. W. BURTON, J.
C. J. PATTERSON, J.
THOMAS MOSS, J.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Michaelmas Term, 39th Victoria.

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law :

No. 1342—Kenneth Goodman.
Thomas Horace McGuire.
George A. Radenhurst.
Edwin Hamilton Dickson.
Alexander Ferguson.
Dennis Ambrose O'Sullivan.

The above gentlemen were called in the order in which they entered the Society, and not in the order of merit.

The following gentlemen received Certificates of Fitness :

Thomas C. W. Haslett.
Angus John McColl.
Dennis Ambrose O'Sullivan.
Daniel Webster Clendenan.
George Whitfield Grote.
Charles M. Garvey.
Albert Romaine Lewis.

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

Graduates.

No. 2585—Goodwin Gibson, M.A.
John G. Gordon, B.A.
Walter W. Rutherford, B.A.
William A. Donald, B.A.
Thomas W. Crothers, B.A.
John B. Dow, B.A.
James A. M. Aikins, B.A.
William M. Reade, B.A.
Edmund L. Dickinson, B.A.
Charles W. Mortimer, B.A.

Junior Class.

Robert Hill Myers.
William Spencer Spotton.
William James T. Dickson.
William Elliott Macara.
James Alexander Allan.
Walter Alexander Wilkes.
William Andrew Orr.
Alfred Duncan Perry.
James Hartey.
Herbert Bolster.
John Patrick Eugene O'Meara.
Charles Augustus Myers.
Charles Crossbie Going.
David Havelock Cooper.
Emerson Coatsworth, Jr.
William Pascal Deroche.
Frederich Wm. Kittermaster

Articled Clerk.

John Harrison.

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

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

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

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

That the subjects and books for the first Intermediate Examination shall be :—Real Property, Williams: Equity, Smith's Manual ; Common Law, Smith's Manual ; 'Act respecting the Court of Chancery (C. S. U. C. c. 12), C S. U. C. caps. 42 and 44, and amending Acts.

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

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

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

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

That the subjects for the final examination of Articled Clerks shall be as follows :—Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the final examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining certificates of fitness and for call are continued.

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

1*st year.*—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and amending Acts.

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.