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TABLE OF CASES REPORTED AND CITED.

TABLE OF ELECTION CASES REPORTED IN THIS VOLUME.

DIARY FOR JANUARY.

1. Thurs. *Circumcision.* Master and Registrar in Chancery and Clerks and Dep. Clerks of Crown to make returns. Taxes computed from this date.
5. Mon.. Error and Appeal sit. beg. Heir and dev. sit. beg. Co. Ct. Term beg. Municipal elections.
6. Tues.. *Epip.* Xmas Vac. in Chy. ends. Co. of York Winter Assizes begin.
9. Fri. .. Napoleon III. died at Chiselhurst, 1873.
10. Sat. .. Co. Ct. T. ends. Master and Reg. in Chy. and Clks. and Dep. Clks. to pay over fees to Prov. Treas.
11. SUN.. 1*st Sunday after Epiphany.*
15. Thurs. Hamilton Winter Assizes beg. Regs. to make ret. to Co. Treas. under 35 Vic. c. 27, s. 7. Treas. to make ret. to Prov. Treas. under Mun. Act s. 273.
17. Sat. .. Candidates for Atty. to leave articles with Sec. of Law Soc. (35 Vic. c. 21, s. 5.)
18 SUN.. 2*nd Sunday after Epiphany.* Lord Lytton died, 1873.
19. Mon.. 1st Meet. of Mun. Coun. (Exc. Co. Coun.)
20. Tues.. Heir and Dev. Sits. end. Prim. ex. of Stud.-at-Law and Art. Clks.
21. Wed.. Ann. Meet. Electoral Div. Soc. (35 V. c. 32, s. 3.)
23. Fri. .. S.S. *Northfleet* run down and sunk, 1873.
25. SUN.. *St. Paul.* 3*rd Sunday after Epiphany.*
26. Mon.. Law School Examinations.
27. Tues.. Intermediate Examinations (written). 1st Meet. of Co. Councils.
28. Wed.. Intermediate Examinations (oral).
29. Thurs. Exam. for admis. as Atty. Cand. for call to pay fees and leave papers.
30. Fri. .. Exam. for call to bar. Last day for Non-Res. to notify Clk. of Mun. (32 Vic. c. 36, s. 6.)
31. Sat. .. Co. Treas. to furnish Co. Clks. list of lands 3 yrs. in arrs. for taxes. Ry. Co.'s to make ret. of lands in each Mun. (32 V. c. 36, s. 33.) Mun. Clk. to make up N. R. list (do. s. 6.) Co. and City Clks. to make yearly ret. to Prov. Sec. (36 V. c. 48). Coun. to make ret. of debts to Lieut.-Gov. under Mun. Act, s. 274. Exam. for call with honours.

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THE

Canada Law Journal.

Toronto, January, 1874.

A court for the disposal of matrimonial causes has been lately opened in Sydney, New South Wales. The first sitting was a "maiden" one, and a pair of white gloves was presented to the presiding judge.

The judges in England have held a meeting and come to the conclusion that proceedings in Chambers are not to be reported, and it is now understood that the representatives of the Press are to be excluded from the Chambers of all the Courts of Common Law.

Printers seem to have an insuperable objection to giving proper credit to contemporaries for articles republished from their pages. We gave our readers, last month, the benefit of a very learned article on Dumpor's Case, taken from the *American Law Review*, but the name of that very valuable magazine did not appear. We may properly take this occasion to draw attention to this Review, which is one of the best conducted legal periodicals either in England or America.

The President of the United States has nominated the Hon. George H. Williams, at present Attorney General, for the high office of Chief Justice of the Supreme Court. It was thought that this nomination would have been confirmed by the Senate, but there are rumours affecting his personal integrity which, if well founded, may prevent his appointment. Mr. Williams is a little over 50 years of age; commenced official life as Circuit Judge in Iowa; was afterwards Chief Justice of the Supreme Court of the Territory of Oregon; served six years in the United

States Senate, and has been for the last two years Attorney General. He has a high, though not the highest reputation, at the bar.

The English Solicitors are moving to secure an amendment of the law in a matter so obviously demanding amendment as to render it somewhat astonishing that the desired result has not long ago been achieved in England and in Canada. The various law societies there are about forming a scale of charges for payment of conveyancing work by commission on the value of the property in question, with a view to secure its general adoption and its ultimate sanction by statute. The profession in Ontario should unite to secure a similar result, and should not cease from their exertions till unlicensed practitioners are prohibited from drawing instruments relating to the transfer of lands. This would be a boon not only to the profession, but to the public. It is a matter of frequent remark from the bench that many expensive law-suits have originated in the blunders of rustic conveyancers, whose knowledge of legal drafting has come to them by nature. If that man be a fool who has himself for a client, certainly he does not much mend his folly by taking his lay-neighbour as his solicitor. It is now full time that the profession should assert its rights and protect the public from themselves in this matter of irresponsible conveyancing.

We trust we shall not shock the sense of propriety of members of the profession by devoting some space in our columns to the lighter and more entertaining part of legal literature. We shall occasionally mingle with the purely legal what has been called the "literary legal;" in other words that which aims at entertaining more than instructing, in the belief that the dignity of the law does not necessarily mean dullness of the law. In this department we promise that the same severe meditation and conscientious labour will be employed as is spent upon our profoundest articles, and we hope that the severest criticism will see nothing to offend a refined taste, or to wound the feelings of the most susceptible.

We dare to say that, although dryness is supposed to be the special attribute of law, in no association of men is there more wit and humour displayed than in the courts of law. The *jeux d'esprit* of the bench and bar in other countries are carefully recorded, and a most interesting and characteristic collection of witty sayings is thus preserved. Is our legal community deficient in a sense of humour? Are "good things," which are worth preserving, never said in our courts? On the contrary, we confidently affirm that in our own courts the tedium of a trial or argument is constantly enlivened by some *bon mot* or playful sally, from bench or bar, which is worthy of record—the brilliant wit and clever repartee of at least one distinguished present member of the bench (not to speak of many of those who have heretofore meted out justice in Osgoode Hall) has seldom been excelled by the most ready of his brethren in Great Britain. Thinking then, with Sterne, "that every time a man smiles—but much more so when he laughs—it adds something to this fragment of life," we invite our friends to note carefully everything that bears a semblance to a joke in relation to legal matters, and send it to us. It will be received with thanks, and if we recognize therein anything valuable in the line of humour, we shall give it to the world, and we feel sure that the world will be none the worse for reading it.

The following observations of President Grant in his recent message touching the repeal of the bankrupt laws are worthy of being placed on record in our pages, at this juncture, having regard to the agita-

tion during a former session of the Dominion House for a repeal of the Insolvent Act. He says and recommends as follows:

"I have become impressed with the belief that the act approved March 2, 1867, entitled an "Act to establish a uniform system of bankruptcy throughout the United States," is productive of more evil than good. At this time, many considerations might be urged for its repeal, but, if this is not considered advisable, I think it will not be seriously questioned that those portions of said act providing for what is called "involuntary bankruptcy" operate to increase the financial embarrassment of careful and prudent men, who very often become involved in debt in the transaction of their business, and though they may possess ample property, if it could be made available for that purpose, to meet all their liabilities, yet, on account of the extraordinary scarcity of money, they may be unable to meet all their pecuniary obligations as they become due, in consequence of which they are liable to be prostrated in their business by proceedings in bankruptcy at the instance of unrelenting creditors. People are now so easily alarmed as to money matters, that the mere filing of a petition in bankruptcy by an unfriendly creditor will necessarily embarrass and oftentimes accomplish the financial ruin of a responsible business man. Those who otherwise might make lawful and just arrangements to relieve themselves from difficulties produced by the present stringency in money are prevented by their constant exposure to attack and disappointment by proceedings against them in bankruptcy; and, besides, the law is made use of in many cases by obdurate creditors to frighten or force debtors into a compliance with their wishes, and into acts of injustice to other creditors and to themselves. I recommend that so much of said act as provides for involuntary bankruptcy on account of the suspension of payment be repealed."

JUDICIAL AND OTHER SUGGESTIONS FOR THE AMENDMENT OF THE LAW.

I. Where the father of children who had been abducted filed a bill for the purpose, among other things, of ascertaining the place to which they had been removed, and was baffled in his examination of the defendants before a special examiner, by the objection that the answer would tend to render them liable to a criminal prosecution: Spragge, C., in his judgment observed: "I cannot help expressing my strong conviction that the law is not upon a sound footing in this respect; and that it would be in furtherance of justice that the rule with us should be the same as it has been made by statute in some cases in England, that parties and witnesses should be compellable to answer, but that their answers should not be admissible on evidence in any criminal proceedings that might thereafter be instituted against them:" *Keith* v. *Lynch*, 19 Gr. 505.

II. "The conduct of insurance companies, when enforcing rigidly such conditions, has often been complained of by the courts—by reason of the number and nature, and difficulty of the conditions they introduce into their policies; and the time perhaps has come when the Legislature should interfere to stand between them and those they insure, or pretend to insure, in other words, the public, by limiting them to such conditions as the courts shall determine to be reasonable."

"The only way to force upon companies a proper mode of doing business is by the Legislature enabling the courts to prohibit and restrict such conditions:" Per *Wilson, J.*, in *Smith* v. *Commercial Union Ins. Co.*, 33 U. C. Q. B. 90, 91.

III. Having reference to the Registry Act of Ontario, 31 Vict., cap. 20, sec. 67, Hagarty, C. J. C. P., remarks in *Millar* v. *Smith*, 23 C. P., p. 54, as follows: I have no doubt that the Legislature, if their attention were called to it, would correct a very serious effect which this 67th section may have. The intention was evidently to protect an innocent purchaser who had not actual notice when he effected his purchase; but the

section is worded so as to refer the notice to the time of the registration, instead of the time of purchasing or paying his money."

IV. In view of the assembling of the Ontario House during this month, we may here be permitted to call attention to a curious blunder in "amending" the law which has had the effect of wiping out of our statute book that most valuable provision to be found in C. S. U. C., cap. 90, sect. 11, whereby contingent, executory and future interests in land may be seized and sold in execution by the sheriff. This most unfortunate result was blundered into by the following cunning manipulation. The above section was repealed and a new section to much the same effect substituted therefor by 24 Vict., cap. 41, sec. 8. But by 29 Vict., c. 24, sec. 2, the act 24 Vict., cap. 41, was repealed from and after the 31st Dec., 1865; and no subsequent enactment has restored the beneficial provision, to which we have called attention.

THE ADMINISTRATION OF JUSTICE ACT.

On the first day of January there comes into force that most important enactment "The Administration of Justice Act." It will effect great and necessary improvements in the administration of justice in civil cases, and would seem to be the first step towards a more complete system of procedure, enabling suitors to obtain full justice in a direct way from the tribunal to which they resort, unencumbered by needless technicalities, and unembarrassed by questions of jurisdiction.

The "Law Reform Commission," appointed to enquire into the present system, with especial reference to the "fusion," as it is called, of law and equity, were at first disposed, it is believed, to suggest a measure of a partial character, but it was understood that the then administration, in which Mr. Crooks was Attorney General, objected to anything partial or incomplete, and desired immediate and thorough "fusion." A bill with this end in view was prepared by two of the commissioners, and printed as a basis for discussion by the commission. This bill covered a large portion of the work necessary to a complete procedure, but, before the day appointed for the meeting of the commissioners to discuss it, the commission was, for some reason, rescinded.

We think the first view of the commissioners, or of some of them, to effect the desired improvement by gradual changes, was the safer and better course, and it is the one which the present Attorney General, Mr. Mowat, has adopted. A complete change revolutionizing the whole system could not have been made without the greatest embarrassment to the judges and to the profession, and, what is not less important, great loss and inconvenience to suitors. If based entirely on common law views, the chancery judges and practitioners would have been at fault; if the whole common law practice and rules were at once abrogated, and chancery procedure pure and simple, enacted in their stead, the whole business of the courts must necessarily have fallen into the hands of the chancery practitioners at Toronto, and two-thirds of the judges would be at once required to administer an entirely new and unfamiliar code of procedure. And it is obvious that confusion, delay, and an enormous increase in law costs must have followed. Such a change would have been a great evil, and would not long be tolerated by the profession at large.

Mr. Mowat has taken the middle and, as we think, the safer course. He has not ignored the condition of things in the country; he has not lost sight of the fact that, probably, three-fourths of the Bar of Ontario are only exercent in one branch of

procedure, that they have little acquaintance with the details of chancery practice. His act, while correcting some admitted defects in the law, and in procedure, and modelled with a very decided equity expansion, does not disturb the existing tribunals, does not abrogate any existing system, nor unduly favor either; it apparently is designed to familiarise those having the conduct of business in the courts, with the application of equitable doctrines and rules by means of an ordinary common law procedure for the most part; in a word, it is not a revolutionary measure, but a safe reform, educating for a more complete change. No doubt it is in a certain sense experimental, and one quite understands there is more or less repulsion to change in the well ordered legal mind; and with those educated in a particular practice, and familiar with it for many years, a prejudice not unnatural is fostered by the indisposition to enter upon the labour required to master a new one; but we are sure that all whose duty it will be to administer the new law will be willing to encounter what is necessary and disposed to give the new law a fair trial. Its practical value must depend a good deal on such favourable disposition.*

One thing is certain, that the strong and general feeling in favor of radical reform in our system of procedure, will find vent in some way, and if cautious and gradual changes are not accepted large and sweeping ones will be rashly and recklessly urged forward in their stead. We have endeavored, in former numbers, to assist to a proper understanding of some of the leading provisions of the new Act, and, as they come to the test of actual practice, we shall endeavor to keep our readers early advised of the cases and decisions as they occur, for we wish to see the new law fairly tried and candidly judged.

*The English Judicature Act is also entering on trial. A paper recently read before the Metropolitan Law Association, speaking of the Act, says: "It was a great experiment. Whether it will turn out for the next twenty years, until a new race of men are the Bar and the Bench, a blessing or a curse would depend on the temper in which the common law judges interpreted and adopted it." The English Act no doubt works a complete change, and almost wholly in the common law practice, while Mr. Mowat's Act deals with the subject only in part, and in a fairer spirit we think to the practitioners in Ontario; but still there can be small doubt what the result will be if the judges receive it in a captious, hostile spirit.

CURIOSITIES OF LAW.

The island of Jersey has long been notable for its singular system of law and the still more unique manner in which it is administered. Cases occasionally crop up which inform the outside world of the progress of jurisprudence in its insular peculiarity under the presidency of the sage jurists of Jersey. Such was the petition of *The Jersey Bar* heard before the Privy Council and reported in 13 Moo. P. C. C. 263, from which it appears that the six advocates who practiced in the *Cour Royale* objected when the Bar was thrown open by the act of 1859, and in any event claimed compensation for the loss of vested rights. Notwithstanding their exceeding pluckiness in bringing the hardship of the case before the Privy Council, yet they took nothing by the appeal.

There is at present another case pending in appeal before the same august tribunal from the decision of the ten judges of the Royal Court of Jersey. From time whereof the memory of man runneth not to the contrary the jurists of Jersey have been wont once in each year on the opening of the Court of Heritage to dine together in a hotel at St. Heliers. The records of the Court are said to contain entries so far back as the year 1616 regarding dinners "being provided as

theretofore," so that the right by prescription appears to be well founded.

However, this custom does not merit the fine commendation that we can bestow upon a like observance as perpetuated in the borough of Chippenham, Wilts. The Record Commissioners, some years ago, issued circular questions to the municipal corporations of England and Wales requesting various items of information. Among such questions was the following:—"Do any remarkable customs prevail, or have any remarkable customs prevailed within memory, in relation to the ceremonies accompanying the choice of corporate officers, annual processions, feasts, &c., not noticed in the printed histories or accounts of your borough? Describe them, if there be such." Whereunto the response came from the borough of Chippenham: "The Corporation dine together twice-a-year, and pay for it themselves!" *Report of Record Commissioners*: 1837, *p.* 442.

The Jersey jurists claim that Her Majesty's treasury has hitherto defrayed the expense of these judicial revels, and that such liability is by prescription eternal. However, the officer of the Treasury for the last few years has refused to pay, and the landlady of the Royal Yacht Club Hotel commenced her suit for £95 11s., the cost of six dinners, against the Attorney General of the island, the Viscount or Sheriff, and the Queen's Receiver. The ten judges who sat upon the case, being the recipients of the dinners in question, had no difficulty in finding that the defendants were liable for the amount, with costs of suit. The Crown could adduce no evidence of a time when these dinners had not been furnished forth as manifested by the records of the Court, and prescriptive right triumphed. The Attorney General of the Island has appealed to the Privy Council, where this new doctrine of prescription will be fully discussed.

We are able to recall but one authority which the Jersey Bench can possibly cite on the question of prescription, and that will unfortunately make against them. It is to be found in an *Anonymous* case reported in 2 Leon. R. p, 12, which was an action on the case under the statute of Winton (13 Eliz. I. of Winchester), making the men of the Hundred liable to make reparation for a robbery committed within their bounds. And in the course of the case, Manwood, Justice, said: "When I was servant (*serviens ad legem*), to Sir James Hales, one of the Justices of the Common Pleas, one of his servants was robbed at Gadd's Hill within the hundred of Gravesend in Kent, and he sued the men of the hundred upon this statute; and it seemed hard to the inhabitants there that they should answer for the robberies done at Gadd's Hill, because robberies are there so frequent, that if they should answer for all of them they should be utterly undone. And Harris, Serjeant, was of councill with the inhabitants of Gravesend and pleaded for them that *time out of mind, &c., Felons had used to rob at Gadd's Hill and so prescribed;* and afterwards, by award, they were charged."

THE OFFICE OF COUNTY JUDGE IN ONTARIO.

By His Honour James Robert Gowan, *Chairman of the Board of County Judges.*

The office of County Judge in Ontario is one peculiar to this Province, and of great importance—whether regarded in respect to the extended and varied range of subject, or the large powers given to be exercised by the judge, for the most part in a summary manner, and without appeal. The duties of the Local Judge in Upper Canada, at first confined to a single court of civil, and very limited jurisdiction, have been gradually extended by Legislative enactments, so that the

County Judge of the present day presides over six distinct tribunals in his judicial district. And not only this, but the office has been overlaid by multitudinous duties of various kinds, imposed by various Acts of Parliament; and the business proper of the court, which has given the name to the office, now constitutes only an item in the aggregate duties of the judge.

Local Courts were created in Upper Canada shortly after its conquest. Their origin may be dated back as far as 1787. In November, 1791, Upper Canada was separated from Lower Canada, and began to legislate for itself. In 1794 additional courts were organized in Upper Canada, and placed on a better footing, but the jurisdiction of the County Courts, formerly called District Courts, was at first purely local, and their process had no effect beyond the local limits. Now established in every judicial district in the Province, their process, mesne and final, directed to sheriffs and coroners, runs to every part of the Province, and their practice is assimilated to that of the Superior Courts at Toronto, and within their range of jurisdiction, their powers are almost identical. The difference between them and the Superior Courts being a limit in the matter of jurisdiction, and a reduced scale of fees to officers of the court. Their steady growth from the period of their institution may be easily traced in the statutes affecting them.

So also Courts of General Quarter Session took their place in the early judicial establishment of Upper Canada, at first conducted entirely by justices of the peace. When the Judge of the District Court was required to be a Barrister, the conduct of business was handed over to him by the Legislature, he being made standing chairman, *ex officio*, of the Court of Quarter Sessions. These courts nearly resembled courts of Quarter Sessions in England, but while the jurisdiction of the English courts has been gradually reduced and restrained, the jurisdiction of the General Sessions of the Peace in Ontario has been enlarged, or at least recognized as embracing nearly the whole range of offences punishable by indictment; and to it belongs a general jurisdiction in appeal from magistrates' courts in respect to all criminal convictions. Under the law of last session the county judge is now practically the sole judge of the court, for it is provided that the judge alone shall constitute a court or sittings of the General Sessions of the Peace.

A Criminal Court has recently been established—the County Judge's Criminal Court—and of this the judge is sole judge. It is a tribunal conferring new and most important powers, viz.: Without a jury to hear and determine, with some few exceptions, all indictable offences, felonies and misdemeanors, known to the law, save offences punishable with death, but with a right of election to prisoners to be tried by a jury, if they so desire.*

The Division Court system in Ontario answers to the English County Courts. And we anticipated the English system, for what the people of England gained in 1846 by the "Act for the more easy recovery of small debts," the Parliament of Upper Canada granted to the people of this country by the "Division Courts Act" just five years before. The County Judge, or Junior Judge, where there is one, is sole judge of these courts (numbering as many as twelve in some counties, with sittings every two months), and decides both the law and the facts unless in certain cases either party desire a jury.

The jurisdiction of these courts, at first confined both as to range of subject

* A return to the Legislature shews that 80 per cent of prisoners committed by magistrates for trial elected to be tried by the judge without a jury.

and amount, has, by progressive action of the Legislature, been more than doubled in amount, and nearly quadrupled in respect to the whole increase of actions that may be brought in them.

Under the laws relating to Insolvency, the County Judge exercises the most important powers in relation to the issue of attachments against insolvent estates, the examination and discharge of insolvents, and the collection and distribution of their estates.

In still another tribunal the County Judge is sole judge, viz.: the Surrogate Courts. These possess an exclusive jurisdiction in relation to matters and causes testamentary, voluntary and contentious, and in relation to the granting and revoking of probates of wills and letters of administration of the effects of deceased persons, similar to the Probate Court in England. The right of appointing guardians of infants to take care of their persons, and charge of their estates, belongs also to the Surrogate Courts.

Thus in six distinct courts the County Judge is sole judge, and in each and all of these, jurisdiction, both in respect to value and subject matter, has been gradually and steadily on the increase from the time of their institution up to the present—and every session of the Dominion Parliament and of the Local Legislature provides additional work for the local judges.

But, as already mentioned, the duties of the County Judge in Ontario are not confined to his courts. He is the "Judicial, or rather jurisprudential, servant of all work," a most convenient functionary on whom to impose duties requiring knowledge, impartiality and discretion for their due discharge; and for local administration the county judges are conveniently resident all over the Province. The County Judge appointed to office, in addition to the duties then assigned to him by law, no doubt tacitly undertakes to perform to the best of his ability any duties of a judicial character which the Legislature may from time to time impose upon him; but there is certainly no undertaking, if there be a liability to perform business of a non-judicial character. The great accumulation of duties outside the courts, heaped upon County Judges by statute, is no doubt a high Legislative testimony on their behalf—as implying that their work had been, and confidence that it would be well and satisfactorily done—but the fact that extra work done by them costs nothing to the country, may not have been without its weight. However that may be, for many years no session passes without some new and additional work being given by statute to County Judges, without any provision for increased payment.

It is not easy to classify the multitudinous duties made incident to the office of County Judge, but a brief reference, under general heads, may be made, indicating to some extent, their number, character and importance.

AUXILIARY JURISDICTION.

A large share of the duties made incident to the office comes under the head of Auxiliary Jurisdiction—a jurisdiction in aid of the Superior Courts at Toronto. Under this the County Judge may be called upon to hold or conclude the "Assize" business—to try a traverse of inquisition in lunacy—certain issues from the courts of Common Law, as well as from the Court of Chancery, and also to make assessments of damages. Witnesses in Superior Court suits may, in certain cases, be examined before them, as may also judgment debtors as to their debts, &c.—and they are empowered to deal with parties in garnishee proceedings. Moreover they are standing referees of the Superior Courts in matters of account. The County Judge hears and decides on applications in many matters

of the cognizance of the Superior Courts, viz.: For orders for the issue of certain writs, and in suits pending in these courts may order the inspection of documents, may make orders in respect to security for costs, allowance of bail, for particulars of demand or set off, payment of money into court, the delivery and taxation of attorneys' bills, &c. In quo warranto cases under 35 Vict., cap. 36, the evidence upon bribery charged may be taken before him, and in other questions under the same Act, he may be called upon to take the *viva voce* testimony of resident witnesses, and so on application to quash a by-law on the ground of bribery, &c.; and where the writ in a contested municipal election is returnable before a judge of the Superior Courts, he may order the evidence to be taken before the County Judge.

CONCURRENT JURISDICTION.

Under the head of the County Judge's Concurrent Jurisdiction may be put: the powers to hear and make orders as to the issue of writs of *capias*, writs of attachment against absconding debtors, writs of replevin from either of the Superior Courts of Common Law, as to the delivery and taxation of bills of costs and restraining suits therein, &c. They may enquire also as to the wrongful holding of writs, books and papers entrusted to a sheriff's deputy or other officer, and order them to be given up.

The County Judge has also cognizance of offences against the Foreign Enlistment Act. Under the Extradition Act he may issue a warrant for the apprehension of any person charged, and dispose of question raised. Under the Act respecting the prompt and summary administration of criminal justice, he is empowered, if the party consents, to dispose summarily of certain offences. And under the Act respecting the trial and punishment of juvenile offenders, he is authorized to act with all the powers of two justices for conviction, &c. For convenience and avoidance of expense he has authority, too, respecting bailing parties finally committed for trial by justices of the peace in all criminal cases, short of capital offences, upon application to him, being authorized to make the same order touching the prisoner's being bailed or continued in custody as if brought up on a *Habeas Corpus*.

County Judges have concurrent jurisdiction with the judges of the Superior Courts in the of trial contested municipal elections.

SPECIAL AND PECULIAR JURISDICTION.

The most extensive head of the County Judge's duties outside the business proper of his courts is the original, Special and Peculiar Jurisdiction conferred by numerous Acts. This branch would admit of several sub-divisions, but some indication of its range and importance is all that it is designed to give in this paper, so that a brief reference will suffice.

Under the jury law the County Judge has important duties in receiving and examining jurors' books, selecting jurors to serve for each year, seeing that proper lists are made out and transcribed into jury books, and examining and certifying the lists prepared from the selection made for use during the year.

Under the school law he is specially empowered to deal with the wrongful detention of books, papers, chattels, or moneys belonging to school sections, with adequate powers to punish delinquents. He is required to act with nominees of the council to determine complaints as to school sections, their formation, alteration, &c., and by-laws and resolutions respecting them.

He decides, as sole judge, all matters in difference between teachers and trustees. He investigates complaints respecting school trustee elections, confirms or sets aside and orders a new election, and

has power to deal with returning officers at such elections, acting partially, &c.

In cases of malfeasance of corporate officers he is required to make investigations as occasion arises.

The decision of disputes where wardens of adjoining counties are unable to agree respecting the maintenance of boundary lines, belongs to him.

If toll roads are in his county, and it is alleged that they are out of repair, he examines summarily into the matter, being invested with authority to act, in correction of the default.

Where persons refuse to deliver up public lands on the application of the Commissioner of Crown Lands, the County Judge may order the issue of process to give possession.

Where lands are required for a telegraph line, &c., he also makes orders as to the delivery of possession of them, and may take evidence as to, and determine the value of such lands.

And also where Railway Companies require land, and the owner is absent or unknown, the County Judge has important powers as to the determination of the value thereof and ordering possession either before or after the value is determined.

The County Judge has also power as to the conviction, fine and imprisonment of persons improperly withholding sheriffs' books, &c.: for enforcement of award in cases of dispute between masters and workmen: as to taking accounts, making enquiries and directing sales of the estate and interest charged with lien of mechanics. In respect to adverse claims for goods made upon carriers and other bailees, where the value does not exceed $200, he is required to exercise interpleader powers for their determination.

In respect to alleged lunatics, the County Judge is required to examine and pronounce on their state of mind, to make order as to their maintenance, or direct an issue in respect thereto, to make enquiries as to their estate, and sanction the sale of it when necessary.

A most important and onerous branch of his jurisdiction is in respect of the partition and sale of real estate; and the duties of the County Judge as "real representative" are frequently of a very difficult and laborious character.

To save the expense of resorting to the Superior Courts, a jurisdiction in ejectment was also given to the County Judge, as between landlord and tenant (it falls under this head). Trials under the Overholding Tenants' Act commonly involve as much time as the trial of an issue in ejectment, and the disposal of difficult questions of law and fact.

Under the recent Act for the improvement of water privileges, new and very large powers are granted to the County Judge, in the interests of material progress, viz: as to the entry on adjoining lands on application of the owner of water privileges, and to enable their utilization. Surveys and levels are to be made and taken under his direction, plans are prepared, and he makes orders respecting the matter.

Under the election laws he may require the clerk of the municipality to produce the assessment rolls and voters' lists before him, and upon a judicial examination may order corrections to be made in same.

In case of default by the clerk of a municipality respecting the voters' list the judge is required to examine into the matter, and summarily make order to enforce the completion and delivery of the list.

It will be noticed that the subjects under this head, Special and Peculiar Jurisdiction, are in nearly every case given to the County Judge for his sole adjudication; but it is not thought necessary to give a distinct head to subjects falling within the exclusive jurisdiction of the

local judge, a critical analysis of the several duties not being attempted.

APPELLATE JURISDICTION.

The appellate jurisdiction of the County Judge is exercised partly at the sessions, and partly at chambers, according to the matter and nature of the appeal. He determines all cases of appeal against summary convictions by justices of the peace, hears and determines appeals under the assessment law from the several Courts of Revision, numbering from ten to forty, according to the extent of his judicial district. His duties herein are most important, and his jurisdiction is exclusive and final—the particular points need not be mentioned—suffice it to say, that the right of parties to be placed on the roll, the capacity in which they are to appear there, the nature of the property assessed, and the under or over assessment, speaking in general terms, are all grounds of appeal; and incidentally is determined the qualification of voters under the franchise law; this last a duty given to judicial officers, Revising Barristers, appointed in England for the sole purpose.

In connection with assessment appeals, undoubtedly the most important one of all is that from the equalization made in assessment rolls of the several municipalities in the county. Upon these the County Council, an elective body representing ing every part of a county, and numbering sometimes as many as forty three Reeves and Deputy Reeves, make what the Legislature designed should be a fair and just equalization; but from local prejudices or irregular considerations, equalizations made were not always accepted as just and fair towards certain municipalities, and the Legislature gave them an appeal to the local judge, and intrusted him with the correction of what might be found unjust, conferring upon him the unrestricted power to equalize the whole assessment of the county, as in his opinion might be just. This has been found to be a most delicate, as well as a distasteful and onerous duty, involving very extended enquiries. But it appears the Legislature could see no other way to give cheap redress to municipalities aggrieved, and the local judge is found a convenient medium.

Appeals are also given to the County Judge in respect to by-laws of a municipality for deepening streams, draining property, &c.; from assessments made upon real property benefited by improvements proposed in a municipality; from the decision of fence viewers on conflicts as to line fences and water courses; and under the recent drainage Acts, several matters are made subjects of appeal to him.

MINISTERIAL DUTIES.

In cities, and in towns having a police magistrate, the County Judge is constituted one of the Board of Police Commissioners, having the appointment and dismissal of the men constituting the police force, the fixing of the remuneration, the regulation of their duties, and the general management and supervision of the whole force. This mixed duty may be placed under this head, but the mere ministerial duties of the Judge are few—chiefly confined to the administration of oaths to officers, taking bail in civil cases, and in regard to books for registry offices.

POWER OF APPOINTING ARBITRATORS.

The County Judge's duties as to the appointment of arbitrators are found in various statutes relating to Railways, Joint Stock Company roads, Toll roads, Municipalities, Drainage Works, respecting Traction Engines, and under the provisions of the Act providing for cases where the Governor in Council dissolves certain companies.

MISCELLANEOUS DUTIES.

The duties of a general character not appearing to fall aptly under any of the foregoing heads, are found all over the statute book, and embrace a variety of subjects, *e. g.*, making orders allowing married women to convey their real estate when the husband does not join in the deed. The examination and approval of the securities of several officers connected with the administration of justice, declaration of officers as to fees, the auditing accounts connected with criminal justice; under the Registry Act, in respect to plans, compelling witnesses to prove deeds, and taking proof where a witness is dead or out of the Province; respecting the enforcement of estreats, and respecting debtors in gaol, allowance for support of insane, binding minors, &c.

No analysis has been made of the duties of the County Judge under Mr. Attorney General Mowat's very valuable Act of last session, as it does not come into force till the 1st day of January, but it may be mentioned, merely, that under "the Administration of Justice Act of 1873," enlarged Equity powers are granted to the Judges of the County Courts, and in certain cases a summary jurisdiction is given to them to enquire into, and set aside conveyances of land fraudulently made by judgment debtors, and to order such land to be sold to satisfy the executions against it.

In the foregoing, no attempt is made to exhaust the subject under each head, nor is anything more designed than to present in brief outline, the several duties of, and made incident to, the office of County Judge in Ontario. It is submitted that what is set down is sufficient to shew that there is no exaggeration in the statement that the County Judge is used by the Legislature as a jurisprudential servant of all work, a most convenient functionary on whom to impose duties requiring knowledge, impartiality, and discretion for their due discharge in the locality, that additional duties are every year imposed upon him, while the confidence so largely shown finds no expression in added remuneration for additional work imposed on the local Judge.

SELECTIONS.

THE LAW RESPECTING BAIL.

The practice at present prevailing of taking or requiring bail by prisoners on remand for trial is one that requires reform. Instances occur almost daily in which there is a manifest difference in the amount of security required as bail, when the offence and the circumstances are the same. This necessarily causes dissatisfaction with this branch of the administration of justice.

By the ancient common law all crimes, felonies, and misdemeanors were bailable. This was altered by the Statute of Westminster, 6 Edw. 1, c. 9. It would appear that before that time sheriffs and bailiffs, who then acted as our justices of the peace, had been in the habit of letting out prisoners charged with grave offences on bail; but by this Act they were inhibited from doing so in treason, murder, and all cases of aggravated felony; they were still allowed to admit to bail "such as be indicted of larceny," that is, indicted before the sheriffs and bailiffs, or in cases of light suspicion or petty larceny that amounted not above the value of 12d. The Statute further provided that the sheriff should take sufficient security, or be otherwise answerable himself, and ends with these remarkable words: "And if any withhold prisoners replishable after that they have offered sufficient security, he shall pay a grievous amerciament to the king; and if he take any reward for the deliverance of such, he shall pay double to the prisoner, and also shall be in the great mercy of the king." There was a distinction between a prisoner mainprizable and bailable. The statutes affecting the former are 27 Edw. 1, St. 1, and 3 & 4 Edw. 3 c. 2. The justices mentioned in these Acts were justices of assize, not justices of the peace. The "bones gentz et loialx en chescun countee a garder la pees" were not then assigned; the sheriffs and bailiffs acted as magis-

trates. By 1 & 2 P. and M. c. 13, however, "an Act touching bailment of persons," the duties of justices of the peace in taking bail were clearly recognized and regulated, provisions were made for the observance of the Statute of Westminster, and that bail in many cases should only be granted before two justices of the peace in open session instead of as theretofore had been the practice, but giving power to justices and coroners in the city of London and County of Middlesex, and in other cities, boroughs, and towns corporate in England and Wales to let to bail "felons and prisoners in such manner and form as they had been heretofore accustomed," and the said Act "or anything to the contrary notwithstanding." The other old statutes relating to bail were 23 Hen. 6, c. 9, and 3 Hen. 7, c. 3. The state of the law continued virtually the same from that time down to 11 & 12 Vict. c. 42; but from the records of history it is clear that justices of the peace and judges generally had been in the habit of requiring such heavy bail before persons in custody were released as to be prohibitory, and the beneficence of common law in favour of freedom was by a pretence set aside. This was one of the grievances so justly complained of during the reigns of the two last Stuarts, and as a consequence a clause was inserted in the Declaration of Rights, our modern Magna Charta, to the effect that excessive bail should not be required. The next statutory interference with the law of bail was, as above stated, by the 11 & 12 Vict. c. 42, which provides (sect. 23) that where any person shall be brought before a justice of the peace charged with certain felonies, which are mentioned, "or with any misdemeanor for the prosecution of which the costs may be allowed out of the county rate," such justice of the peace "*may*," in his discretion, admit such person to bail, &c.; and it further provides that where any person shall be charged before any justice of the peace with any indictable misdemeanor, other than of the kind before mentioned, such justice "*shall*" admit him to bail in the manner provided by that section, the result being that in accepting or refusing bail the question raised is not the gravity of the misdemeanor, but the mere fact whether the costs of prosecution are payable out of the county rates. This, as might be supposed, leads to many anomalies; for instance, under the game laws—statute 9 Geo. 4, c. 69, s. 9, is very severe against the game offence where three or more persons are in pursuit of game at night, assaulting keepers, &c., and the punishment may be sixteen years' penal servitude, yet as the prosecution for this offence is not paid out of the county rate, bail is compulsory. On the other hand, in a game law prosecution under the Larceny Consolidation Act of 1861, s. 17, the object of which was to make the taking of hares and rabbits a misdemeanor, costs for prosecution are payable out of the county rates, and therefore it is in the discretion of the justice to refuse or accept bail as he pleases. Other instances could be named in which the same anomalous power is left in the hands of committing magistrates. This calls for alteration. Great injustice is sometimes done by a refusal of bail, and no reasonable person could defend a hard and fast line based on such an arbitrary and absurd distinction as the fact whether the costs of a prosecution are payable or not out of the county rate. We have shown that by common statute law every misdemeanor was bailable, as it ought to be; but, now, if an offence against the Highway Act were committed, which is a misdemeanor, and if a true bill was found and the costs for prosecuting it were payable out of the county rates, it would lie in the discretion of the justice to refuse bail. Of course, in all cases where bail is refused, there is an appeal to a judge at chambers; but this is a costly proceeding, and as the class of persons who are brought before magistrates are, as a rule, poor and indigent, it is impossible for them to avail themselves of such a right. This clause in Jervis's Act is unfortunate. We do not wish to depreciate the two consecutive statutes called after the Chief Justice, or facilities they have given in properly conducting indictments and the administration of justice in summary convictions; but, at the same time, their tendency has been to abridge liberty in some most important particulars. Much might be said of the manner in which they have deprived the poor man of one of the most sacred rights of Englishmen, an appeal to a jury; but that is beyond the present inquiry. Another bad effect arises from this state of the law. Many justices

have no idea what is reasonable bail. Bail which is in effect excessive, if not prohibitory, is often required, not from any wish to evade the law, but from ignorance. The large amounts one sees asked for are really repugnant to the whole spirit of our law. In 2 Hale, 125, it is laid down that the proper bail in felony should be for the principal never less than £40, and for sureties £20 each. By the statute 3 Car. 2, c. 2, s. 3, it is provided that the official before whom the prisoner shall be brought, "shall discharge said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties in any sum according to their discretion, having regard to the quality of the prisoner and the nature of the offence." It must be remembered that when Hale wrote all felonies were capital crimes, and although money has decreased in value since, the above sums are what might reasonably be required from working men, or the class ordinarily brought up at petty sessions; a less amount of course should be required in misdemeanors. The judgment of Lord Denman in *Reg.* v. *Badger*, 4 Q. B. 470, goes very fully into the law and duties of justices in questions of bail, and is well deserving the attention of every one whose position requires him to act in cases of this description.—*Law Times.*

DEFECTIVE LEGISLATION.

We noticed last week a paper read by Mr. Holland, at a Social Science Congress, on the framing of Acts of Parliament. We have now received a print of what may be called a fellow to it, namely, a paper entitled "Some suggestions as to the means of improving the framing and passing of Acts of Parliament," by the President of the Incorporated Law Society, Mr. F. H. Janson. Mr. Janson quotes from the opinions expressed by the judges of the Court of Queen's Bench, in the case of *Solomon* v. *Isaacs*, which we noticed particularly at the time they were uttered, censuring severely as they did the system of incorporation and repeal. The paper contains also illustrations of bungling legislation in the case of the Public Health Act of last year, which in the power it confers upon the rural sanitary authority refers to five distinct classes of Acts. "My own inclination," says Mr. Janson, in concluding his paper, "would point to the constitution of a board of official draftsmen, to whom at an early stage all bills should be referred; and who should possess similar authority to that exercised by the Chairman of Committees of the House of Lords in regard to private Bills; whose duty it would be to see that each Bill was at all events consistent in itself, and calculated to carry out its ostensible objects, and who should be authorized, in case of need, to alter it accordingly. If it should undergo any further change in either House, I would propose that it should be again referred to this board for final consideration and settlement before the third reading; and I think that such board should have some power to stop the passage of a Bill which at its last stage was still manifestly defective. The employment of experts in the art of drawing would insure more precision, and, what is much needed, greater condensation of language. All this would of course tend to delay legislation; but Acts of Parliament must be passed with more deliberation if they are to be free from the defects complained of, and worthy of the august assembly from which they emanate. At present no one is responsible for their being accurate in diction or capable of working, and the consequences are those which I have endeavoured to point out, and which I think it will hardly be disputed, call loudly for 'the amending hand.'"—*Law Times.*

SOLICITOR AND CLIENT—PRIVILEGE.

The circumstances under which a solicitor cannot be compelled to disclose his client's address were discussed by James, L. J., in *Ex parte Campbell, In re Cathcart*, 18 W. R. 1056, L. R. 5 ch. 703. In his lordship's view, if a solicitor knows where his client is from some source other than the confidential statement of the client himself, made *sub sigillo confessionis* for the purpose of obtaining the solicitor's professional advice and assistance, the solicitor cannot protect himself on the ground of his client's privilege; and in such a case it is immaterial that he gained his knowledge of his client's residence solely in consequence of being his legal adviser. If, however—we continue to state his lordship's view—

the client is in hiding, or is concealing his residence, and the solicitor is in a position to say that he only knows his client's residence because the client had communicated it to him confidentially as his solicitor for the purpose of being advised by him, then the client's residence is a matter of professional confidence.

The recent case of *Heath* v. *Creelock*, L. R., 15 Eq. 257, seems to fall within this latter description. It came before the court on an application by the plaintiffs that the defendant's solicitor should disclose the address of their client. The defendant was a trustee who had acted fraudulently and gone abroad. He was defending the suit; and the plaintiffs, being desirous of serving notice of a *subpœna ad testificandum* upon him personally, made the present application.

The principal authorities adduced in support of the motion were *Ramsbotham* v. *Senior*, and *Burton* v. *Earl Darnley*, 17 W. R. 1057, L. R. 8 Eq. 576, in note. In both these cases the whereabouts of wards of court was being concealed for the purpose of keeping them out of the reach of the court, or of the guardian appointed by the court; and it was held by Vice-Chancellor Malins that a solicitor is not at liberty, in consequence of any privilege of the client, to conceal any fact which may enable the court to discover the residence of its wards. It is plain that these cases afforded no support to the present application.—*Solicitor's Journal.*

CONTINGENT FEES.

The New York *Daily Register* cautions its readers against the lawyer who contracts for contingent fees as follows:

"Beware of the lawyer who induces you to go to law on a contingency. He is not to be trusted, because he violates his obligations to his profession. It is far better for a client to pay as he goes, and more honorable to the lawyer to receive just compensation for the labor done than to wager his fees upon the chances of success. Of all vices which have tended to degrade the Bar that of contracting to conduct a legal proceeding for a contingent fee is the worst. So strong is the feeling against this practice, in some localities, that any one who resorts to it is ostracised by the profession, and cut off from his privileges as a lawyer.

It is not only wrong in principle, and against good morals, but it is unjust to client and counsel. It is unjust to counsel, because when he fails to recover he obtains no consideration for his professional services, no matter how great or valuable; and unjust to clients, because of the exhorbitant charges made if success crowns the lawyer's efforts. We are inclined to think that the decline in professional honor, which is so manifest, may be more accurately measured by the prevalence of this vice than by any other means. It is the fruitful source of corruption; it induces extraordinary and unprofessional efforts to gain a cause; when success waits on the effort, its effect is to raise the spirits to a dangerous height and to create a false pride. But when a failure crowns the efforts of the overtasked brain, a degree of self-abasement, humiliation and disappointment follow, which are fatel to one's integrity. Along the path of the profession how many tire and fall by the way, because of their over-estimate of their own powers, and their willinginess to gamble on their success. Patience must have her perfect work if success is to be won."

CANADA REPORTS.

ONTARIO.

NOTES OF RECENT DECISIONS.

Easter Term, 1873.

QUEEN'S BENCH.

Steele v. Hullman.

Married Women's Property Act of 1872—*Sec.* 8 *retrospective.*

Declaration on a contract by plaintiff to build a house for defendant alleging completion and non-payment.

Plea, that the making the contract and the contracting of the debt was before the "Married Women's Property Act of 1872," and that at that time defendant was, and still is the wife of T. H.

Replication, that the debt was the separate debt of the defendant, and was contracted for her own benefit, and in respect of her separate use.

Held, plea good, and following *Merrick* v. *Sherwood*, 22 C. P. 467, that the Married Women's Act, sec. 8, is retrospective.

Semble, that the right to sue given by 35 Vict., ch. 16, sec. 8, is a mere matter of procedure and imposes no new liability on married women.

Alexander v. Toronto & Nipissing Railway Company.

Railway Co.—Negligence—Contract—Limiting liability.

Declaration under C. S. C. ch. 78, by the administrator of A, alleging that A was lawfully on the platform at a station on defendants' railway, and defendants so negligently managed and drove an engine and carriages loaded with timber along the line near said station, that a piece of timber projecting from said carriage, struck and killed the said A.

Plea, that A was a newsboy in the employ of C. & Co., vending papers on defendants' trains under an agreement between C. & Co., and defendants, which agreement provided that defendants should carry C. & Co., their newsboys and agents on their said trains, and should not be liable for any injury to the persons or property of said C. & Co., their newsboys or agents, whether occasioned by defendants' negligence or otherwise. *Held*, plea good without alleging that A was a party to or aware of this agreement.

Quære, if such a contract is to be considered as made with the person carried, and if so, as to the effect of his being an infant.

Tighe v. Wilkes.

Slander—Demurrer—Special Damage.

Declaration that the plaintiff was and is a clergyman of the Church of England, and that the defendant falsely and maliciously spoke and published of him in relation to his said profession, "he will get drunk, I have seen him drunk," meaning thereby that the plaintiff was an unfit and improper person to exercise his said calling, whereby the plaintiff was injured in his good name, and shunned by divers persons. No averment of special damage.

Held, on demurrer, that declaration bad.

COMMON PLEAS.

Clayton v. Great Western Railway Company.

Railway Co.—Obligation to fence—Liability.

H., the owner of land crossed by defendants' railway, let to G. under a verbal lease for three years a certain piece of it, near to but not immediately adjoining the railway, there being a small strip intervening. There was no fence along the line of the railway, but the defendants had erected in lieu thereof, at the express wish of the owner, by whom it was considered sufficient, a fence at right-angles to the railway, running to a pond, across which the owner had planted a row of willows, with which he alleged a fence would interfere, the small strip being between the pond and the railway. It appeared that G. had received the plaintiff's horse to pasture, and on account of the water in the pond being low, the horse got out of the pasture field round the fence, and thence across the small strip to the railway, where it was injured.

Held, that the fence having been built, as it was, at the express wish of the owner, by whom it was considered sufficient, and who in fact objected to one along the line of the railway, the plaintiff claiming through him could not recover.

COMMON LAW CHAMBERS.

Elliott v. Northern Assurance Company.

Revision of taxation after costs paid.

[Master's Office, Q. B., Dec. 15th, 1873.]

The bill of costs in the cause having been taxed by the local master, the plaintiff paid the amount taxed without protest.

Held, that he still was entitled to a revision of taxation before the master at Toronto.

Costs of demurrer books.

[Wilson J., Dec. 1st, 1873.]

After issue joined on demurrer, but a month before Term, plaintiff prepared demurrer books. The case was subsequently referred to arbitration, costs of the pleadings, etc., to be costs in the cause.

Held, that the preparation by the plaintiff of the demurrer books was reasonable, and that he must be allowed costs of the same on taxation as part of the necessary proceedings in the cause before the reference.

CHANCERY CHAMBERS.

Quantz v. Smelzer.

Answer of a co-defendant filed without authority.

[The Referee, November 15th, 1873.]

Two defendants moved to set aside a notice of hearing, and to strike the cause out of the list, on the ground that the answer of some co-defendants had been filed without authority from them, and therefore the litigation might be reopened by them.

Held, that the parties whose names were improperly used were the only persons who could move to set aside proceedings.

The defendants whose names had been so used subsequently moved to set aside the proceedings. The application was adjourned by the Referee before the Judge (V. C. Blake) at the hearing, who ordered the cause to be struck out with costs.

Campbell v. Campbell.

Interim alimony.

[The Referee, November 25th, 1873.]

The question whether the plaintiff has been guilty of adultery cannot be raised in opposition to an application for interim alimony.

Wilson v. Wilson.

Interim alimony.

[The Referee, November 26th, 1873.]

The fact that the defendant is willing to take back the plaintiff to live with him is no answer to an application for interim alimony.

IRISH REPORTS.

COURT OF COMMON PLEAS.

THE GALWAY ELECTION PETITION.
TRENCH v. NOLAN, AND NOLAN v. TRENCH.

Taxation of costs of Election Petition—Fees to counsel—Expenses of witnesses not certified by the Registrar—Expense of obtaining copies of short-hand writers' notes of the evidence—Retainers.

Where, on taxation of costs of an election petition the Master disallowed a general retainer to the senior counsel, and cut down the fees on their briefs, it was held that he had no right to interfere with the discretion of the attorney acting *bona fide* for the interest of his client.

Several witnesses, who had not obtained a certificate from the Registrar, were paid their expenses by the petitioner. The Master disallowed this item, but the Court reversed his decision.

Sums paid to short-hand writers, for copies of the notes taken of the evidence, should be allowed.

[May, 4-9, 1873. Ir. L. T., Oct. 11th, 1873.]

This was an appeal by the petitioner against the decision of the taxing master, in taxing the bill of costs in the matter of the Galway election petition. The respondent also appealed against certain items which the master had allowed. A retaining fee of £10 10s. had been given to both the senior counsel for the petitioner. One of these retainers the master disallowed altogether, the other he cut down to £5 5s. On the brief to the two senior counsel a fee of 150 guineas was paid. Twenty guineas a day refresher, and five guineas consultation fees, were paid. A consultation was held every day during the trial which lasted fifty-seven days. The master allowed only one senior counsel, cut down his fee to 100 guineas, cut down the refreshing fee to fifteen guineas, and the consultation fee to two guineas, and allowed only forty-five consultations. The petitioner charged £474 for attending short-hand writers, obtaining their notes of the evidence, and briefing the same to counsel. This item the master disallowed. Some of the witnesses who attended to give evidence were not examined; to these the registrar refused to give a certificate. The master refused to allow the sums paid to these witnesses. Against the disallowance of all these items the petitioner appealed. The respondent objected to allowing so many consultations as forty-five; also, that the registrar had not given his certificate to witnesses till after the expiration of the judge's term of office as a judge on the rota, and that, consequently, he had no power to give a certificate, and without it the witnesses could not get their expenses. Some of the witnesses were summoned to sustain a charge of treating. This charge was not sustained at the trial, and the judge in his judgment only found the respondent guilty of undue influence. The respondent contended that the expenses of all those witnesses who were called to sustain the charge of treating should not have been allowed by the master. At the desire of the Court both the appeals were taken together.

Armstrong, Serjeant (with him *Murphy*, Q.C., and *Bewley*), for the petitioner.—This application is made under 31 & 32 Vict., c. 125, sec. 41, which provides that, all costs, charges of and incidental to the presentation of a petition under that Act, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by that Act otherwise provided for, shall be defrayed by the parties to the petition. The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client are taxed in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed. The retainers to counsel, would have been allowed in the taxation of Chancery costs. To secure the services of counsel before proceedings have been actually instituted, it was necessary to give a general retainer. By the bar rules, not less than ten guineas can be given as a general retainer. This was a very exceptional case, and petitioner was entitled to secure the services of such counsel as he saw fit. The master, in allowing for the service of subpœnas, laid down a rule that two names must be inserted on each subpœna. It was necessary for us to serve subpœnas with only one name inserted, for had the names of others appeared on the subpœna, the witnesses would have been warned of the fact, and would have removed themselves, so as to render service impossible. The master should have allowed us for these subpœnas, which we only made use of when absolutely necessary. As to these short-hand writers' notes, they have been frequently allowed: *Clark* v. *Malpas*, 31 Bev., 554; *Malins* v. *Price*, 1 Phill., 590. The taxing-master in England has informed the master that costs for short-hand writers' notes are allowed. It was most useful to counsel in this case. It would have caused great delay and consequent expense if counsel had been obliged to take down notes of the evidence. As to the expenses of witnesses, some were called whom it turned out not to be necessary to examine. It was very uncertain what amount of proof would be required for some

facts, and when these facts had once been proved we would not have been justified in taking up the time of the Court in piling proof upon proof. But we should have been most negligent had we not had these witnesses at hand to call if necessary. The expenses of the witnesses should have been allowed. It is objected on the other side that the registrar did not give his certificate till after the judge's term of office as an election judge had expired, and that he, consequently, had no power; we think he had. But the words of the Act directing the certificate are not negative, and the certificate is not a condition precedent. In England the registrar's certificate is not considered necessary. As to the fees allowed to counsel, considering the magnitude of the case, they were reasonable and should not have been cut down.

Butt, Q.C., (with him *Exham*, Q.C., and *Martin*), for respondent.—The general principles on which this case should be decided are laid down in *The Southampton case*, L. R. 5 C. P. 178. All the costs which were reasonably incurred in the ordinary course of business should be allowed. Would these costs have been allowed in equity? Would a solicitor be allowed to give a general retainer by which he was entitled to the services of counsel in every cause he might engage in? If this be allowed in this case there is no reason why it should not be allowed in every Nisi Prius case. The putting one name on the subpœnas was a case of extra precaution. Had it been allowed the master have looked into each case to see whether such a course was necessary there. As to the fees to counsel, and the consultation fees, that is a question of amount. In the *Tamworth* case and the *Penryn* case, L. R. 5 C. P. 181, only 100 guineas were allowed to senior, and 75 guineas to junior counsel. As to the consultations they were allowed for forty-five days. The master should only have allowed them where it was necessary for the purposes of the case. Consultations were allowed even where counsel were speaking. In the *Southampton* case it was held that consultations should be held from time to time when different points and phases of the case are developed. As to the short-hand writers' notes, the short-hand writer is provided by the Act of Parliament for the convenience of the House of Commons and the Attorney-General, not of the parties. The cases cited on the other side are inapplicable. "The rule, as stated in *Malins* v. *Price*, only applies to an issue, and the reason is that the counsel engaged in law are not the same as those in equity, and it is consequently necessary to instruct the equity counsel of what took place at law; but on an appeal the counsel are assumed to have notes on their briefs of what took place below:" *Smith* v. *Earl of Eppingham*, 10 Beav. 382. There was a third counsel in this case whose duty it was to take down the notes of the evidence. The proper person to inform counsel is the counsel himself: *Croomes* v. *Gore*, 1 H. & N. 14. The certificate of the officer is necessary under 31 & 32 Vict., c. 125, sec. 34. It is the fault of the parties themselves if they do not take out the certificate. The certificate is meant as a defence against the witness. As to the charges of treating, the case failed altogether, but yet the expenses of the witnesses on this point were allowed. Some exception should have been made.

Murphy, Q.C., in reply.—The *Tamworth* and *Penryn* cases were of the most ordinary description. But in the *Southampton* case, where there was more difficulty, the master was held wrong in not having exercised more liberality. The true principle is that as between party and party there is to be a certain scale of taxation, and as between attorney and client there is to be an extension of these allowances. This is subject to some limitation, and is confined to such costs as may have been reasonably incurred: *Doe d. Ryde* v. *Mayor of Manchester*, 12 C. B. 474. As to the consultations, they were held by advice of counsel, and where an attorney gets a direction from counsel it is always taken into the consideration of the Court: *Foster* v. *Davies*, 8 L. T. N. S. 626.

KEOGH, J.—The general principles upon which we should proceed in this case are clearly laid down by Bovill, C.J.—"It is impossible to lay down with exactness any rule upon the subject, but generally it would seem that all such costs should be allowed as a solicitor would ordinarily incur in the conduct of his client's business, excluding those extraordinary costs which may have been occasioned either by the default of the client, as by his incurring a contempt, or by his express instructions to employ an unusual number of counsel. It appears to us that the parties entitled to their costs under the orders, were entitled to an indemnity for all costs that were reasonably incurred by them in the ordinary course of matters of this nature, but not to any extraordinary or unusual expenses incurred in consequence of over-caution or over-anxiety as to any particular case, or from consideration of any special importance arising from the rank,

position, wealth, or character, of either of the parties, or any special desire on his part to ensure success. We think also that such extraordinary costs as an attorney would not be justified in incurring without distinct and special instructions from his client, ought not to be allowed, nor the costs of purely collateral proceedings, upon which a party has failed, nor those which may have been occasioned by his default, negligence, or mistake :" *Southampton* case, L. R. 5 C. P. 182. I will first take the petitioner's notice and his objections to the taxation. The first item of importance contained in the affidavit of Mr. Concannon, the petitioner's agent, was the retainers to counsel. The petitioner retained two leading counsel, giving them each ten guineas before the petition was filed, in order to secure their services. There was much discussion on the principle of these retainers. We cannot see the principle on which the master took five guineas off one, and allowed no retainer to the other counsel. I think there is some doubt as to whether this retainer did not retain the services of the counsel for life. We were referred to the rules of the bar which were adopted at a meeting of the bar held on May 3rd, 1864, and by them it appeared that a fee of five guineas was sufficient to retain any member of the bar for a particular court or circuit where he ordinarily practised, but the retaining fee to retain a counsel in every case was understood and there laid down to be ten guineas. This is necessary to retain a counsel before a suit is instituted. This jurisdiction did not exist at all at the time these rules were passed. These inquiries are almost invariably held in a remote part of the country. We do not think that this retainer comes at all within the descriptive particulars "court or circuit where the member of the bar usually practised," and, therefore, we think that the attorney for the petitioner was perfectly justified in securing the services of these counsel, whom he, in the exercise of his discretion, thought necessary for the proper conduct of his case, and he was quite entitled to give them ten guineas each. We are of opinion that this item should be allowed, and we will send it back for re-taxation. The next item is the case laid before the senior counsel to advise proofs. Twenty guineas were paid for this, which was cut down by the master to fourteen guineas; we cannot see on what principle. If there ever was a case, the magnitude and importance of which justified a liberal payment to counsel, this was one. It was not a very large fee, but the master has reduced it. It is a question of principle, of grave and great importance, not only to the bar, but to the public; it is conceded that the attorney for the petitioner was acting for the benefit of his client, and that being conceded, I think it of the last importance to the public that when a solicitor thinks fit to give a proper remuneration to a counsel, his authority should not be treated with levity and set aside. I think no taxing-master, whether of this or any other court, can be as good a judge as a respectable solicitor acting *bona fide* for his client. He has the means of knowing what is just to the bar, taking into account the merit of the counsel he thinks fit to employ. We think this was a most proper fee, both in amount and principle. As to the item of the subpœnas, which is an item of very considerable magnitude, we see no reason to doubt the statement of Mr. Concannon, that it would be dangerous to serve subpœnas with more names than one. But it is stated by the master that there was an agreement that subpœnas should be allowed for each two witnesses; the matter was quite in his discretion and we decline to interfere.

As to the item of fees on the briefs of counsel, I apply all I said before to this. 150 guineas were given to each of the leading counsel; bu this was cut down. I will again refer to the judgment of Bovill, C.J., in the *Southampton* case. The first question argued there was as to the fees allowed to the leading and junior counsel. "If these fees were allowed as being a uniform standard allowance without reference to the particular case, we think this course would be wrong, and that the master ought to exercise his judgment in each case, but at the same time we see no objection to the master adopting such a scale as average for ordinary cases." This was an extraordinary case. The master allowed 100 guineas as the usual fee. He should have exercised his discretion. There should be no uniform rule in a case of such magnitude. As to the consultation fees and refreshers, we do not think they should have been reduced, but we decline to interfere with the discretion of the master as to the number of consultations. As to the short-hand writers' notes, nothing delays the case so much as taking down the evidence. The machinery for taking down the evidence by means of short-hand writers, was provided by the Legislature. During the whole of this case there was constant reference made to the short-hand writers' notes which were in the possession of counsel, and after all this are we to come to the conclusion that short-hand writers are not to be paid

for by the parties? We think they should be paid for, but not as charges for brief, but specifically what was paid for them should be allowed, and the attorney's expenses incident to procuring them. It was said that three counsel were allowed, and that they should take down the notes. I think when a counsel is in a case he should act as counsel and not as a mere note-taker. As to the expenses of the witnesses, the registrar's certificate is not indispensable, the master should allow all witnesses, *bona fide* summoned, no matter whether examined or not. We think the party is not bound to examine every witness he summons. As to the objection that the registrar did not give his certificate till after the judge's term of office had expired, our previous decision renders it unnecessary to decide this point, but we have doubt that the registrar could give his certificate even now. As to the application of the respondent, to reduce the taxation of the master, one of the items was to disallow the fees paid to counsel for daily consultations where it did not appear that difficult points or unexpected complications had arisen during the trial. If that was so the master would have had to have re-tried, not only the Galway election petition, but also have decided what matters required consultations. As to the witnesses who were examined to prove treating, the report of the judge was generally against the respondent, and we decline to go behind that.

Morris, and Lawson, JJ., concurred.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS FOR MAY, JUNE AND JULY, 1873.

(*From the American Law Review.*)

Abandonment.—*See* Insurance, 3.

Action.—*See* Costs, 1; Executors and Administrators, 1; Frauds, Statute of, 2; Innkeeper.

Administration.—*See* Executors and Administrators; Marshalling Assets.

Advertisement.—*See* Auction.

Agency.—*See* Principal and Agent.

Alimony.

The court can allow permanent alimony upon a petition filed after decree of divorce.—*Covell* v. *Covell*, L. R. 2 P. & D. 411.

Amalgamation.—*See* Company, 3.

Anticipation.

W., who had a power of appointment over a fund subject to a trust to herself for life without power of anticipation, executed the power in favor of her mother. Subsequently she purported to execute the power in favor of her husband, who was enabled, by depositing the appointment as security, to obtain advances from the plaintiff. *Held*, that the plaintiff was not entitled to impound the income of said fund during the life of W.—*Arnold* v. *Woodhams*, L. R. 16 Eq. 29.

Appeal.—*See* Tender.

Appointment.

A testator devised property in trust for A. for life and after A.'s death upon trust for A.'s children or some of them, as A. should by deed or will appoint. A. by will appointed a sixth of said property in trust for each of her six children living at the testator's decease for life, remainder to be held upon such trusts and for such purposes as each child should by will appoint, with limitations over in default of such appointment. *Held*, that A.'s power of appointment was well executed.—*Slark* v. *Dakyns*, L. R. 15 Eq. 307.

See Anticipation; Lien, 2; Power, 1; Priority; Settlement.

Attorney.

By statute, notice of appeal must be signed "by the person giving the same or by his attorney." A notice of appeal signed by a clerk of the appellant's attorney, with authority of the appellant, *held*, valid.—*Regina* v. *Justice of Kent*, L. R. 8 Q. B. 305.

Auction.

Advertising a sale by auction does not amount to a contract with any one who may act upon the advertisement, that there will be a sale.—*Harris* v. *Nickerson*, L. R. 8 Q. B. 286.

See Vendor and Purchaser, 1.

Award.—*See* Specialty Debt.

Bank.—*See* Lien, 2.

Bankruptcy.

1. A plea that the plaintiffs' claim on a contract, giving them a fraudulent preference, must aver that proceedings in liquidation had begun or were imminent when the contract was entered into.—*McKewan* v. *Sanderson* L. R. 15 Eq. 229.

2. When a person had been adjudicated insolvent upon his own petition in Australia, upon a question whether a fund belonged to the insolvent in England, the court refused to consider whether claims allowed in Australia had been there properly proved.—*In re Davidson's Settlement Trusts*, L. R. 15 Eq. 383.

3. By statute all goods in the possession, order, or disposition of a bankrupt trader by consent of the true owner, of which goods the bankrupt is reputed owner, are property of the bankrupt divisible among his creditors. Certain butts of whiskey were sold by C. in Liverpool, and delivery orders sent to the purchaser, and a warrant stating that C. held said butts to the order of the purchaser, who was to pay a warehouse rent. It was shown

to be the custom of the spirit trade of Liverpool for a purchaser to allow his goods to remain in the vendor's warehouse after they had been paid for, until required by the purchaser for use. *Held*, that said custom excluded the presumption that said butts belonged to C., and that they did not pass to his trustee in bankruptcy.—*Ex parte Watkins, In re Couston*, L. R. 8 Ch. 520.

4. The bankrupts owe P. a certain cash balance at the time of their bankruptcy. Bills in part-payment had been accepted by the bankrupts and negotiated by P. and proved by the holder. P. had accepted also bills for the bankrupts for a consideration which had failed, and the bills were in the hands of third parties who had proved them. *Held*, that P. could only prove for the cash balance less the amount of the bills given in part-payment thereof.—*Ex parte, Macredie. In re Charles*, L. R. 8 Ch. 535.

5. H. agreed to supply steam-power to S. for driving looms for twenty-one years at a certain rent for each loom payable in advance. The agreement might be terminated at H.'s option in case of bankruptcy of S. S. subsequently assigned the benefit of his agreement to W. H. then mortgaged his mill, containing the steam-power, and the mortgagee took possession and refused to supply W. with steam-power; and, in consequence, W. was obliged to pay a certain increased rent for steam-power. H. became bankrupt. *Held*, that said agreement was not unilateral, and that the damages were capable of being estimated and could be proved in the bankruptcy proceedings.—*Ex parte Waters. In re Hoyle*, L. R. 8 Ch. 563.

See LIMITATION; PARTNERSHIP, 2; TROVER.

BEQUEST.—*See* APPOINTMENT; CHARITY; CLASS; CONDITION; EVIDENCE; LIMITATION; TRUST; UNDUE INFLUENCE; VESTED INTEREST.

BILL IN EQUITY.

The plaintiffs brought a bill to restrain the defendants from issuing a prospectus of a limited company to be formed to carry on auction and land-agency business. The bill alleged facts showing that said prospectus was calculated to make the public believe that said business of the defendants was the business carried on by the plaintiffs' well-known firm. The bill then stated that one of the defendants had been committed for trial on the charge of attempting to defraud by false checks; and that a correct report of the trial appeared in the *Times*, a copy of which was annexed; that the money in respect of which said charge was made was subsequently paid by a relative and said prosecution abandoned. *Held*, that the bill was scandalous.—*Christie v. Christie*, L. R. 8 Ch. 499.

See DISCOVERY, 1.

BILLS AND NOTES.

Declaration upon a bill of exchange payable four months after date. Plea traversing acceptance. *Held*, that under said plea the defendant might show that the original date of the bill had been altered to a later date.—*Hirschman v. Budd*, L. R. 8 Ex. 171.

See BANKRUPTCY, 4.

BLANK.—*See* CLASS.

BOND.—*See* PRINCIPAL AND SURETY.

CANCELLATION.—*See* WILL, 7.

CARGO.—*See* FREIGHT; LIEN, 1.

CARRIER.

By agreement between the defendant railway and the G. N. Railway it was provided that there should be a complete interchange of traffic from all parts of one company to all parts of the other, the stock of the two companies being treated as one stock; and that the two companies should aid each other in every possible way as if the whole concerns of both companies were amalgamated. The G. N. Railway received a cow from the plaintiff to be conveyed to S., a place upon the defendant's line, under a contract which provided that the G. N. Railway should not be liable for injury caused by the kicking, plunging, or restiveness of the cow. On arriving at S., the defendant's porter began to unfasten the railway truck to let the cow out, but was warned by the plaintiff not to do so. The cow was let out into a cow-pen, jumped out of the pen, and was killed. *Held*, first, that the action was rightly brought against the defendant, as under the above agreement it was either partner with the G. N. Railway Company or the latter company was acting as agent of the defendant in making said contract with the plaintiff; and, secondly, that the defendant was liable for want of reasonable care in delivering said cow, notwithstanding the terms of said contract; and that, as a matter of fact, the defendant's porter was guilty of negligence in letting the cow out of the truck as above.—*Gill v. Manchester Railway Co.*, L. R. 8 Q. B. 186.

See RAILWAY.

CHARITY.

A testator devised certain houses to a corporation "for this intent and purpose, and upon this condition," that it should yearly distribute £8 in certain charities; and he directed that the rest of the profits of the houses should be bestowed upon repairs; and in case the corporation should leave any of these things undone, then the testator's next of kin were to enter and hold the houses upon the same condition. At the testator's death the annual value of the property was £95. 4, and its present was £330. In 1790, over 200 years after the date of the will, the corporation purchased land adjoining the devised premises, and the two estates were thrown together and built over, and now formed one set of premises. *Held*, first, that the whole of said increased annual value was applicable to charitable purposes; secondly, that said land purchased by said corporation belonged to it, and that there must be a separation and division of the two pieces of land, or an apportionment of the rents arising therefrom.—

Attorney-General v. *Wax Chandlers' Co.*, L. R. 6 H. L. 1; s. c. L. R. 5 Ch. 503; L. R. 8 Eq. 452; 4 Am. Law Rev. 463; Am. Law Rev. 293.

CHARTER-PARTY.—*See* CONTRACT, 2.

CLASS.

Bequest "unto each of my four nieces, , the daughters of my deceased brother, Y., the sum of £500." Y. had five daughters at the date of the will and of the death of the testator. *Held*, that the above blank did not affect the general rule, and that said five children took £500 each as members of a class.—*McKechnie* v. *Vaughan*, L. R. 15 Eq. 289.

CODICIL.—*See* LEGACY, 4; WILL, 5, 6, 8.

COMMON CARRIER.—See CARRIER.

CONDITION.

A testator bequeathed £17,000 to F., provided F. relinquished, within six months after attaining twenty-one, all his interest under his father's marriage settlement. In case of neglect the legacy to be reduced to £12,000, and £5000 to fall into the residue. F. was ignorant of the legacy until more than six months after his attaining twenty-one, but subsequently relinquished his interest under said settlement. *Held*, that as neither ignorance, illness, nor neglect would excuse performance of said condition, said £5000 fell into the residue.—*In re Hodges' Legacy*, L. R. 16 Eq. 92.

See LEGACY, 6; VENDOR AND PURCHASER, 2.

CONFUSION.—*See* CHARITY.

CONSTRUCTION.—*See* APPOINTMENT; ATTORNEY; BANKRUPTCY, 3; CHARITY; CLASS; CONDITION; CONTRACT; EVIDENCE; INSANITY; LEGACY; LIMITATION; POWER, 1; RESERVATION; UNDUE INFLUENCE; USES, STATUTE OF.

CONFLICT OF LAWS.—*See* MARSHALLING ASSETS.

CONTRACT.

1. V. accepted an offer of marriage from F. subject to the approval of her (V.'s) father. The father assented and wrote to F., stating: "V. being my only child, of course she will come into the possession of what belongs to me at my decease." The mother of F. wrote to V.'s father concerning his settling £4000 upon F., and the father wrote in reply that he could not take that sum from his business, but that he had made a will leaving all his estate to V. for life, remainder as she should by will appoint; he added: "It has been my intention, in the event of the marriage taking place, to make a similar will in accordance with the facts, and of course I should settle my property on my daughter absolutely and independent of her husband, or in other words, in strict settlement. I will take care that my property shall be properly secured upon her and her children after her death." The marriage took place. V.'s father married again, and made a will giving certain property to his wife. *Held*, that the said letters of V.'s father amounted to a contract to settle whole of the property of which he died seized or possessed upon V. in strict settlement.—*Coverdale* v. *Eastwood*, L. R. 15 Eq. 121.

2. The defendant chartered a vessel in France with a stipulation that the vessel should proceed with a cargo of hay to London; the cargo to be taken from the vessel *alongside*. Before the charter-party was entered into, it had been made illegal to land hay from France in Great Britain. On learning this the defendant, after some delay, received the hay from alongside the vessel in the Thames into another vessel and exported it. *Held*, that, as there was no intention to violate the law when the contract was made, and as the law was not in fact violated, the contract was not void; and that the defendant was therefore liable for said delay or demurrage.—*Waugh* v. *Morris*, L. R. 8 Q. B. 202.

See AUCTION; BANKRUPTCY, 5; CARRIER; FRAUDS, STATUTE OF, 1; FREIGHT; INFANT; INSURANCE, 2; RAILWAY, 1; TRUST.

CONTRIBUTORY.—*See* COMPANY, 4.

COPYRIGHT.

By statute copyrighted prints must be engraved with the name of the proprietor. The plaintiff's engravings were marked "Rock & Co., London." *Held*, that the proprietor's name was sufficiently set forth on said engravings. *Rock* v. *Lazarus*, L. R. 15 Eq. 104.

CORPORATION.—*See* WRIT.

COSTS.

1. Where A. has been subjected to a suit for unliquidated damages through the default of B., who declines to intervene, and judgment has been rendered against A., the right of A. to recover from B. the costs of defending such action depends upon whether it was reasonable in A. to defend such a suit, a question to be left to the jury.—*Mors-le-Blanch* v. *Wilson*, L. R. 8 C. P. 227.

2. Rule for a new trial, "costs to abide the event." *Held*, that the "event" was the event of the trial as to the ground on which the verdict was set aside.—*Jones* v. *Williams*, L. R. 8 Q. B. 280.

CRIMINAL LAW.—*See* EMBEZZLEMENT; INDICTMENT; LARCENY.

CUSTOM.—*See* BANKRUPTCY, 3.

DAMAGES.

The plaintiff carried on business in a warehouse held on long lease, and next to a free dock on the Thames. The dock was filled up under certain embankment acts, and the plaintiff's premises thereby permanently injured with reference to the uses to which he or any owner might put them. *Held* (by KELLY, C. B., BLACKBURN and ARCHIBALD, J. J., and BRAMWELL, B.; CLEASBY B., dissenting), that the plaintiff was entitled to compensation. See Land Clauses Consolidation Act, 8 & 9 Vict. c. 18, § 68.—*McCarthy*

v. *Metropolitan Board of Works*, L. R. 8 C. P. (Ex. Ch.) 191 ; s. c. L. R. 7 C. P. 508 ; 7 Am. Law Rev. 508.

See Bankruptcy, 5 ; Prescription ; Railway ; Reservation ; Specialty Debt.

Deed.

A letter of orders under the seal of a bishop is not a deed.—*Regina* v. *Morton*, L. R. 2 C. C. 22.

See Reservation ; Uses, Statute of.

Demurrer.—*See* Discovery, 1 ; Frauds, Statute of, 1.

Deviation.—*See* Insurance, 1.

Devise.

1. A testator gave the residue of his estate in trust "for my nephews and nieces living, and the issue of any of my nephews and nieces dead before me." The testator had brothers and sisters, but no nephews and nieces, but there were several nephews and nieces of his wife. *Held*, that the wife's nephews and nieces were entitled to the gift. —*Sherratt* v. *Mountford*, L. R. 15 Eq. 305.

2. Judgment in *Allgood* v. *Blake*, reported in English Digest of last number of Am. Law Rev., affirmed in 8 Ex. (Ex. Ch.) 160.

3. A testator devised a certain estate to his son J. for life, remainder to J.'s children in fee, "and in case my son J. shall depart this life without leaving lawful issue" such estate "equally between my sons G. and R. in the same manner as the estates hereinafter devised are limited to them respectively ; subject nevertheless to the proviso hereinafter mentioned, in case my son J. should leave a widow." The testator then devised certain other estates to G. and R. in identical terms. Then followed this proviso : "Provided that in case any or either of my said sons shall depart this life leaving a widow, then I give the premises so specifically devised to such one or more of them dying, unto his widow" for life. R. died unmarried. G. died leaving a widow, who claimed a life estate in the moiety of R.'s estate, which had come to G. *Held*, (reversing judgment of Ex. Ch., which reversed judgment of C. P.), that said widow was entitled to a life-estate in said moiety of R.'s estate.—*Giles* v. *Melsom*, L. R. 6 H. L. 24 ; s. c. L. R. 6 C. P. (Ex. Ch.) 532 ; L. R. 5 C. P. 614 ; 6 Am. Law Rev. 294 ; 5 *ib.* 478.

See Charity ; Class ; Condition ; Evidence ; Limitation ; Trusts ; Undue Influence ; Vested Interests.

Discovery.

1. Bill by reversioner against tenants holding under an expired lease and underlease, alleging that the defendants were in wrongful possession of certain land, and that they had in their possession documents which would show that said land was included in said lease and underlease, and praying discovery, and also alleging collusion between the defendants to defeat the plaintiff. Demurrer overruled. —*Brown* v. *Wales*, L. R. 15 Eq. 142.

2. The court refused to order a solicitor to disclose the address of his client who had absconded, for the purpose of enabling the plaintiff to serve upon the client a *subpœna duces tecum*.—*Heath* v. *Crealock*, L. R. 15 Eq. 257.

3. A plaintiff will not be compelled to produce documents relating to his title, and which he swears do not contain anything supporting the defendant's title or case to the best of the plaintiff's knowledge, information, and belief. Nor correspondence between the plaintiff and his predecessors in title and their solicitors, having reference to questions connected with the matters in dispute in the case. —*Minet* v. *Morgan*, L. R. 8 Ch. 361.

See Interrogatories ; Patent, 1.

Domicile.

The oath of the person whose domicile is in question as to his intention to change his domicile is not conclusive. Discussion of the question of domicile.—*Wilson* v. *Wilson*, 2 P. & D. 435.

Drunkenness.—*See* Will, 7.

Easement.—*See* Damages ; Prescription.

Election.—*See* Parliamentary Law.

Embezzlement.

The captain of a barge, while in the exclusive service of the owner of the barge, took a cargo which the owner had forbidden him to carry, and never accounted for the freight. *Held*, that said captain was not guilty of embezzlement, as he did not receive said freight "for, or in the name or on account of his master," under 24 and 25 Vict. c. 96, § 68.—*Regina* v. *Cullum*, L. R. 2 C. C. 28.

Equity.—*See* Jurisdiction ; Limitations, Statute of ; Mistake ; Power, 2 ; Settlement, 3 , Unconscionable Bargain ; Vendor and Purchaser, 1.

Estoppel.

The plaintiff, the executor under a will, gave notice of the existence of the will to the defendant, the executor under a previous will, and entered a caveat. Before contentious proceedings the plaintiff withdrew the caveat, stating to the defendant that he did not intend to prove the last executed will, and that he was willing that administration under the first executed will should be granted to the defendant. Subsequently the plaintiff obtained a citation calling upon the defendant to bring in the administration, and he filed his declaration setting forth the last executed will. *Held*, that the plaintiff was not estopped from maintaining the action.—*Goddard* v. *Smith*, L. R. 3 P. & D. 7.

See Limitation.

Evidence.

A testator gave legacies to J. B., N. L., and J. D. C. W., curates of the T. Church. At the time of the testator's death, said first two persons, together with a third person, were curates of said church ; but said J. D. C. W. never had been a curate of the church. *Held*, that evidence to show that it was not the testator's intention to give a legacy to said W. was inadmissible.—*Farrer* v. *St.*

Catharine's College, Cambridge, L. R. 16 Eq. 19.

See Domicile; Libel; Railway, 2; Will, 3, 5.

Executors and Administrators.

1. Executors carried on the testator's business as authorized by him. The plaintiff alleged that he had become a creditor since the testator's decease, and, on behalf of himself and all other creditors of the testator, prayed for general administration of the testator's personal estate, for a receiver, and for accounts, without suggesting insolvency of the estate. *Held*, that the plaintiff's remedy was by action at law.—*Owen* v. *Delamere*, L. R. 15 Eq. 134.

2. A married woman died intestate in 1856. Her husband was last heard of in Australia, in 1853. The court refused administration to the woman's next of kin without citing the husband or his representatives.—*In the Goods of Nicholls*, L. R. 2 P. & D. 461.

3. The court refused to pass over the widow in appointing an administrator to an intestate's estate, although the widow had been separated by judicial decree from her husband, by reason of her cruelty.—*In the Goods of Ihler*, L. R. 3 P. & D. 50.

See Estoppel; Marshalling Assets; Will, 2, 5.

Expectant Heir.—*See* Unconscionable Bargain.

Fact, Mistake of.—*See* Company, 3.

False Representations.—*See* Frauds, Statute of, 2.

Fraud.—*See* Anticipation; Limitations, Statute of.

Frauds, Statute of.

1. The plaintiff agreed to purchase land of A. He then verbally agreed to assign the contract to B. upon certain conditions. Subsequently the plaintiff assigned said contract to B., leaving out said conditions at B.'s request. B. paid a deposit to A. according to the terms of said contract, and then repudiated said conditions, and the plaintiff filed a bill to have said assignment set aside. *Held*, that said assignment was but machinery subsidiary to and for the purposes of the verbal agreement, and that any use of it inconsistent with said agreement was fraudulent. Also that the bill was not demurrable for want of an offer to repay to B. the deposit he had paid A.—*Jarvis* v. *Berridge*, L. R. 8 Ch. 351.

2. The plaintiff, being the customer of a bank, requested the bank to make inquiries concerning the credit of R. The manager of the bank wrote to the manager of a banking company inquiring R.'s standing. G., the manager of said company, wrote a reply, signed by G. as manager, in which he knowingly made false representations as to R.'s credit, in consequence of which the plaintiff supplied R. with goods, for which the plaintiff was never paid. The plaintiff sued R. and W., the registered public officer of the company. *Held*, that G.'s signature was the signature of the company; that the representation as to R.'s credit was a representation of the bank: that, according to the custom found by the jury, it must be intended that G.'s answer was sent, not merely for the use of said bank, but for the benefit of the customer on whose behalf said inquiry was made; that the company was liable for the false representations of G. made in the course of conducting the company's business, and that in an action of tort both R. and W. might be sued jointly.—*Swift* v. *Winterbotham*, L. R. 8 Q. B. 244.

Freight.

The defendant shipped upon the plaintiff's vessel petroleum to be delivered at Havre, and to be taken out within twenty-four hours after arrival, or pay £10 a day demurrage. The authorities at Havre refused to permit the petroleum to be landed, and it was taken by direction of the ship's broker to Honfleur and Trouville, but permission to land was there also refused. The vessel then returned to Havre and transhipped the petroleum into lighters hired by G., but being obliged to reship it by the authorities, sailed back to London. *Held*, that whether there was an entire execution of the contract or not, there was such an execution as could be effected consistently with the incapacity under which the cargo labored; the plaintiff was therefore entitled to freight. Also, that, as the master had been obliged to take the petroleum out of the harbor of Havre, and had carried it back to London, the plaintiff was entitled to return freight, demurrage for detention while travelling to Honfleur and Trouville, and the necessary incidental expenses, and that there was a lien for the several charges.—*Cargo ex Argos*, L. R. 4 Ad. & Ec. 13.

See Insurance, 3; Lien, 1.

Guarantee.

F. gave a guarantee to a bank to continue in force until six months after notice to the bank under the hand of F. *Held*, that the guarantee was determined upon notice to the bank of the death of F.—*Harris* v. *Faucett*, L. R. 15 Eq. 311.

Husband and Wife.—*See* Settlement, 1, 3.

Illegal Intention.—*See* Contract, 2.

Illegitimacy.—*See* Legacy, 3.

Indictment.

1. The prisoner was indicted for setting fire to a stack of straw. It was proved that he set fire to straw on a lory, and he was convicted. *Held*, that conviction must be quashed.—*Regina* v. *Satchwell*, L. R. 2 C. C. 21.

2. The prisoner was indicted for receiving goods with knowledge that they had been obtained under false pretences. The false pretences were not set forth. The prisoner was found guilty. On motion in arrest of judgment, *held*, that the defect in the indictment was cured by verdict.—*Regina* v. *Goldsmith*, L. R. 2 C. C. 74.

Infant.

An infant gave a promissory note, charging his reversionary interest with its payment, and executed a statutory declaration stating that he was of full age. After attaining twenty-one he mortgaged said reversionary interest. *Held*, that said charge was avoided by the mortgage.—*Inman* v. *Inman*, L. R. 15 Eq. 260.

Influence.—*See* Undue Influence.

Injunction.—*See* Patent, 1; Unconscionable Bargain.

Innkeeprr.

In an action for the value of goods stolen from the plaintiff at a hotel, the defendant was the manager of the hotel and the license was in her name, but all the property in the house belonged to a hotel company whose name was printed at the top of customers' bills. *Held*, that the defendant was not liable for the loss.—*Dixon* v. *Birch*, L. R. 8 Ex. 135.

Insanity.

Insanity held to be sickness.—*Burton* v. *Eyden*, L. R. 8 Q. B. 295.

See Will, 7.

Insolvency.—*See* Bankruptcy; Limitation.

Insurance.

1. A vessel was insured at and from L. to the west or southwest coast of Africa during her stay and trade there, and back to a port of call in the United Kingdom; returning at a percentage varing with the period of the risk; the ship being held covered at 138*l.* 4*d.* per month if longer than twelve months out. The vessel when on the African coast remained in a port a month assisting another vessel. *Held*, a deviation.—*Company of African Merchants* v. *British and Foreign Marine Insurance Co.*, L. R. 8 Ex. 155.

2. A proposal for insurance on a vessel was accepted by an insurance company on March 11th. On the 17th March the plaintiffs learned that the vessel was lost, and the same day sent to the company for a policy in pursuance of the terms of said proposal. The company then for the first time asked the amount of previous insurance, and a warranty was inserted in the policy as to its amount, and the policy was then given to the plaintiff. The jury found that the company accepted the risk on March 11th. *Held*, that the addition of said warranty, which was for the benefit of the company and did not affect the risk, did not postpone the date of the contract until March 17th; and that the plaintiffs were not bound to communicate information received after March 11th.—*Lishman* v. *Northern Maritime Insurance Co.*, L. R. 8 C. P. 216.

3. The owners of a vessel then on a voyage to New Zealand chartered the vessel to M., agreeing that it should proceed to Calcutta, and there, "being tight, staunch, and strong, and every way fitted for the voyage," should carry a cargo provided by M. to London. The owners then insured the freight. The vessel was injured at New Zealand, and the master being unable there to learn the extent of said injuries had some repairs made, and then proceeded to Calcutta. There he learned that the damage sustained justified an abandonment, and notified his owners thereof. The owners on receipt of this information gave the insurers notice of abandonment and claim for total loss. *Held*, that the loss of freight was caused by a perilof the sea; that no notice of abandonment need be given to insurers of freight; and that even if necessary, the notice given as above was not, under the circumstances, too late.—*Rankin* v. *Potter*, L. R. 6 H. L. 83; s. c. L. R. 5 C. B. (Ex. Ch.) 341; L. R. 3 C. P. 562,

Interrogatories.

The plaintiff brought suit to establish a right of common. The defendant filed interrogatories asking the plaintiff to set forth any instance when such right had been enjoyed. *Held*, that the plaintiff was not bound to answer the interrogatories. Either party is entitled to discovery of facts making out his own case, but not of matters supporting his opponent's case.—*Commissioners of Sewers of the City of London* v. *Glasse*, L. R. 15 Eq. 302.

Judgment.—*See* Criminal Law.

Jurisdiction.

On an application of an infant by petition for an allowance for maintenance, the court has jurisdiction to charge the expense of his past and future maintenance upon the *corpus* of an estate to which the infant is entitled in fee.—*In re Howarth*, R. L. 8 Ch. 415.

See Limitations, Statute of; Receiver.

Larceny.

The prisoner was a depositor in a post-office savings-bank in which 11*s.* stood to his credit. Wishing to withdraw 10*s.* he obtained a delivery warrant for that sum, and presented the warrant to the post-office clerk. The clerk referring by mistake to another warrant for £8, placed £8 upon the counter, and the prisoner took the money and went away. *Held*, (by Cockburn, C. J., Bovill, C. J., Kelly, C. B.; Blackburn, Keating, Mellor, Lush, Grove, Denman and Archibald, J. J., and Pigott, B.; Martin, Bramwell, and Cleasby, B. B., and Brett, J., dissenting), that the prisoner was guilty of larceny.—*Regina* v. *Middleton*, L. R. 2 C. C. 38.

Lease.—*See* Discovery, 1.

Legacy.

1. A testatrix bequeathed £500 in trust for E. for life, and in case E. should leave no children at her decease, then the trustees were to divide said sum "amongst the heirs of my late brother J." She made another similar bequest in which the ultimate gift in default of the children of E. was to her nieces; and her residuary estate she bequeathed to "the five youngest children of my late brother J.," naming them. *Held*, that the word "heirs" in the first bequest must, under the

circumstances, be held to signify the next of kin of J.—*In re Stevens's Trusts*, L. R. 15 Eq. 110.

2. A testator after making two pecuniary bequests gave the residue of his property to his wife for life, and after her death among his children, should there be any. There were no children. *Held*, that the wife was absolutely entitled.—*Crozier* v. *Crozier*, L. R. 15 Eq. 282.

3. A testator gave legacies to several persons whose relationship to himself he specified, including T., whom he described as his niece. He further directed that if the whole of his property made more than the whole amounts mentioned in his will, the residue should be divided among his relations in proportion to their separate amounts. T. was illegitimate. *Held*, that T. was not entitled to share in the residue.—*Hibbert* v. *Hibbert*, L. R. 15 Eq. 372.

4. A testator made a will and two codicils, giving therein no legacy to a college. In a third codicil the testator recited that he had given £1000 to said college, confirmed the bequest, and in other respects revoked said will; he also gave £5000 additional to the college. *Held*, that the testator revoked said will only; and that said college took £6000. *Farrer* v. *St. Catharine's College, Cambridge*, L. R. 16 Eq. 19.

5. A testatrix bequeathed all sums of money which should be due and owing to her at the time of her decease to A., with residuary bequest to B. At the time of her death, in 1781, the testatrix was one of the next of kin of her brother, who had died intestate, being the residuary legatee of his father. In 1820 a sum of money was paid into court on account of the interest said father had held in a partnership. *Held*, that the burden of the proof lay upon A. to show that said money did not fall to B. under the residuary clause, and that A. failed in such proof.—*Martin* v. *Hobson*, L. R. 8 Ch. 401.

6. A testator gave personal estate to a college "for the purpose of founding a new professorship of archæology, for the regulation of which I propose preparing a code of rules." In case the college should decline to accept such rules the said legacy was to be void. The testator never prepared any rules. *Held*, that said bequest took effect absolutely. —*Yates* v. *University College, London*, L. R. 8 Ch. 454.

7. A mariner made a will, beginning: "Instructions to be followed if I die at sea or abroad." *Held*, that the bequests were conditional upon the testator's dying at sea or abroad.—*Lindsay* v. *Lindsay*, L. R. 2 P. & D. 459.

See Appointment; Charity; Class; Condition; Evidence; Limitation; Trusts; Undue Influence; Vested Interest.

Lex Loci.—*See* Marshalling Assets.

(To be Continued.)

REVIEWS.

Sir John Kelyngs Report's of Crown Cases in the Time of Charles II. Third edition, containing cases never before printed, together with a treatise upon the Law and Proceedings in Cases of High Treason, by a Barrister-at-Law. Edited by Richard Loveland, of the Inner Temple, Barrister-at-Law. London: Stevens & Haynes, Bell Yard, Temple Bar, 1873.

We look upon the volume as one of the most important and valuable of the unique reprints of Messrs. Stevens & Haynes. Little do we know of the mines of legal wealth that lie buried in the old law books. But a careful examination, either of the reports or of the treatise embodied in the volume now before us, will give the reader some idea of the good service rendered by Messrs. Stevens & Haynes to the profession.

There have been heretofore published two editions of Sir John Kelynge's Crown Cases: the first in London in 1708, folio, the second in Dublin in 1789, octavo. The principal difference between the two editions was the change of the title-page.

Sir John Kelyng was Chief Justice of the King's Bench. The cases are taken from his own manuscript. It is said by Sir Michael Foster that Lord Holt first published Sir John Kelynge's reports. The edition as first published was preceeded by a certificate in the following form:

"We do allow and approve of the printing and publishing the Reports and Cases in Pleas of the Crown, collected by the late Lord Chief Justice Kelyng, and three other modern cases added thereto.—J. Holt. John Powell. Littleton Rowys. H. Gould."

The folio edition contained, it is said, an address from Lord Holt to the reader.

In a copy of the folio edition which recently came into the possession of Messrs. Stevens & Haynes, there was written, in an unknown hand, the following note on the margin of the page containing Lord Chief Justice Holt's address to the reader:

"But not all, for he had collected more cases and had two MS. collections of his own reports in ye Crown Law, and these here printed are in the one MSS. (tho' not all, and most fitt to be printed for public use). Ye other MSS. had some considerable cases in it (as his son, Sir John Keyling told me), those of ye Ch. Ju. Keyling, or MSS. not here printed. I have

added in ye space in this book with reference to ye place where they should come in, had they been here printed, so with what printed and in ye spare paper wrote, make one of the MSS."

The additional cases, in which reference is here made, are published in this, the last edition of Sir John Kelynge's Reports. They are printed in red ink, so as to be distinguished from the cases first published. Their addition to the volume has greatly increased its value.

The addition of the treatise upon the law and proceedings in cases of high treason, first anonymously published in 1793, gives still more value to this rare volume. It was originally published by the well-known king's printers, A. Strahan and W. Woodfall. The name of the author has never been disclosed. His preface to the book contains some fine passages. One is as follows:—"The brightest jewel in the Royal Diadem is Justice, and the fairest flower is mercy. The noblest attribute of the Sceptre is prerogative, which is not, nor cannot be invested in the Crown for the purposes of oppression, but is continually exerted for the good of the community." And again, "One word of the press. The liberty of the press is the *palladium* of the constitution, but its licentiousness is *Pandara's* box—the source of every evil. *Factious* leaders have in all ages called themselves *the people*; they point out to the multitude by virtue of this assumed authority grievances that exist *only in imagination* and promise those scenes of happiness which can *never* be the lot of the many."

It is not likely that there will be much call for such a volume in these days of constitutional liberty. But should occasion arise the crown prosecutor as well as counsel for the prisoner will find in this volume a complete *vade mecum* of the law of high treason and proceedings in relation thereto.

William Kellynge's Reports in Chancery in the 4th and 5th years of George II., during which time Lord King was Lord High Chancellor; and in the King's Bench, from the 5th to the 8th years of George II., during which time Lords Raymond and Hardwicke were Lord Chief Justices of England. Reprinted from the edition of 1764. London: Stevens & Haynes, Bell Yard, Temple Bar, 1873.

This handsome volume is the sixth of Messrs. Stevens & Haynes' series of rare and valuable reprints of old reports. There were only two editions of Kelynge's reports published. The first in 1760, without the author's name. The second in 1764, folio, with seventy additional cases. This, the third, is by far the choicest edition published. The publishers assure us that it has been carefully examined before going to press, and that every case has been verified.

The editor of Kellynge's Reports was admitted a student of the Inner Temple on 25th June, 1726, and was called to the bar on 19th November, 1731. The volume contains a very small proportion of equity cases—not more than one-sixth. The remaining cases are at common law. As many of them are decisions of Lord Hardwicke, the volume is sometimes quoted as "Hardw.," and sometimes as "cases King's Bench, temp. Lord Hardwicke." It is also quoted as "Rep. of sel. cas. in Ch.;" occasionally it is cited as II. Kelynge, to distinguish it from Kelynge's Crown Cases, which are generally quoted as 1st or I Kelynge. It is said that many of the cases were copied from the notes of Mr. Justice Gundry.

The edition published in 1764, like the one published in 1873, was published in Bell Yard, Lincoln's Inn. The publisher of the edition of 1764 was "John Warrall, at the Dove, in Bell Yard, Lincoln's Inn." It was he who issued folio editions of Andrew's, Bunbury, Mosely, Plowden, and Strange's Reports. He also published in quarto an ancient and interesting dialogue concerning the exchequer from two manuscript volumes, called the red book and the black book. It was originally published in Latin, and contains an account of "the greatest officers of the realm, their salaries, privileges and exemptions." It is now more than a century since these publications were issued. The enterprize of Mr. Warrall, considering the time in which he lived, was noteworthy, though not equal to that of Messrs. Stevens & Haynes, who occupy premises near where Warrall published, in the small but well known lane called Bell Yard—leading from the Strand to Lincoln's Inn.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Michaelmas Term, 37th Victoria.

During this Term, the following Gentlemen were called to the Degree of Barrister-at-Law:

No. 1270. Maxwell D. Fraser.
Rupert Etheredge Kingsford.
Joseph Benjamin McArthur.
Roger Conger Clute.
Charles Oakes Zaccheus Ermatinger.

No. 1275. Nathaniel F. Hagle.

The above names are given as on the roll, and not in order of merit.

And the following gentlemen received Certificates of Fitness:

Maxwell D. Fraser.
George B. Gordon.
Hammel Madden Deroche.
Charles E. Barber.
} Without oral examination.
Edward Harry D. Hall.
Kenneth Maclean.
Charles Oakes Z. Ermatinger.
Henry Theophilus W. Ellis.
Charles Bagot Jackes.

And on Tuesday, the 18th November, the following gentlemen were admitted into the Society as Students of the Laws:

University Class.

Richard W. H. N. Dawson.
John E. K. Gourlay.
F. M. Morson.
Robert Shaw.
William H. Culver.
Frank S. Nugent.
Robert E. Wood.
John L. Whiting.
Walter Barwick.
Francis Madill.
Alexander C. Galt.
James H. Madden.
Peter L. Palmer.
Charles L. Ferguson.
Richard P. Palmer.
Albert A. F. Wood.

Junior Class.

Trevelyan Ridout.
James V. Teetzel.
John Alexander Palmer.
Harry Dudley Gamble.
George Edgar Millar.
Lorenzo Udolphus C. Titus.
Ralph Winnington Keefer.
Oliver Richard Macklem.
James Norris Waddell.
James Rymal.
Henry Ryerson Hardy.
Robert Conolly Miller.
E. Sydney Smith.

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 Dominion, empowered to grant such degrees, shall be entitled to admission upon giving a Term's 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 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. Douglas 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. S. caps. 42 and 44).

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, Statutes of Canada, 29 Vic. c. 28, Insolvency Act.

That the books for the final examination for students at law, shall be as follows:—

1. For Call.—Blackstone Vol. i., Leake on Contracts, Watkins on Conveyancing, Story'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, Jarman 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, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story'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 shal 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. S. c. 12, C. S. U. C. c. 43.

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, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, 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.