Canada Law Journal.

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DIARY FOR JANUARY.

15. Mon.. First meeting Municipal Council (except County Council).
16. Tue... Heir and Dev. sittings end.
17. Wed.. Toronto Assizes (criminal).
21. Sun... *Septuagesima Sunday.*
22. Mon.. First English Parliament, 1256.
23. Tues.. First meeting County Council. Primary Exam.
24. Wed.. Primary Examination.
25. Thur.. Sir F. B. Head, Lieut.-Governor U. C., 1836.
28. Sun.. *Sexagesima Sunday.*
30. Tue.. Examination for Certificate and First Intermediate.
31. Wed.. Earl of Elgin Governor-General, 1847. Exam. continued.

TORONTO, JAN. 15, 1883.

THE Index and Tables of Cases, etc., for the last volume, will be issued with the next number.

THOMAS HODGINS, Q.C., has been appointed Master in Ordinary in the room of Mr. Taylor, who takes the vacant seat on the Manitoba Bench. He would be a venturesome man who would prophecy as to any one that he would be in all respects as efficient as Mr. Taylor. But we can only at present say that the appointment of Mr. Hodgins is an excellent one, and we tender him our hearty congratulations. Mr. Hodgins was called to the Bar in Trinity Term, 1860, and received his silk at the hands of Sir John Macdonald in February, 1873. Like his predecessor in office he has contributed much to the legal literature of this Province, (and frequently so in the columns of this journal), in connection with municipal, election and constitutional law, in which he took a peculiar interest.

OUR prognostications as to the new judge in Manitoba have proved correct, and Mr. Thomas Wardlaw Taylor, Q.C., Master in Ordinary, was, on the 5th inst., gazetted to the seat vacated by the resignation of Mr. Justice Miller. We are glad to know that the wishes of our brethren in Winnipeg have been thus complied with. It was very important that at least one of the judges of the Supreme Court of this new Province should be thoroughly conversant with the principles of equity jurisprudence, and familiar with the practice of the Court of Chancery. It would have been hard to find one more likely to meet these requirements than Mr. Taylor. In addition to this, he has had a long judicial experience as Master, is a man of quickness and industry, in manner most courteous, and with, of course, a character beyond reproach. Mr. Taylor's legal works are well known, consisting principally of two annotated editions of the Chancery orders, a manual on titles, and a work on Equity jurisprudence, adapted from Story. We wish him every success in his new sphere, a wish which will be echoed by the whole Bar of Ontario.

INTEREST PAYABLE BY CONTRACT.

A point of some importance was recently decided by Mr. Justice Fry in the case of *Popple* v. *Sylvester*, 47 L. T. N. S. 329. In that case a mortgagee had brought an action and recovered judgment on a mortgage whereby the mortgagor had covenanted to pay interest on the principal money "so long as any part of the principal money should remain due upon the security;" under this judgment he recovered principal, and interest at the rate secured, up to the date of the judgment, and from thence until pay-

ment only at the rate of four per cent. The action before Mr. Justice Fry was then brought for the recovery of the difference in the interest between seven and four per cent. from the date of judgment until payment, and that learned judge came to the conclusion that the plaintiff was entitled to recover, and he held that the mortgage was not merged in the judgment except to the extent of the money due on it when the judgment was recovered, and that as to subsequently accruing interest there was no merger. The Court of Appeal for Ontario, in *St. John* v. *Rykert*, 4 App. R. 213, came to the opposite conclusion, overruling the judgment of Proudfoot, V.C., 26 Gr. 252, and held that a note made payable "with interest at the rate of 2% per month until paid," was wholly merged in a judgment recovered thereon, both as to all interest then or thereafter accruing due thereon. The Court, in that case, thought the case was governed by the decision of *In re European Central Railway Co.*, L. R. 4, Chy. D. 33. In that case the company had issued debentures in which they bound themselves to pay a certain sum with interest at six per cent.; the principal sum to be paid on a day certain, and the interest to be payable in the meantime half yearly at the several dates expressed in the interest warrants annexed, *until the repayment thereof.* And the Court held that the words "until the repayment thereof" meant "until the day fixed for the repayment thereof." Fry, J., distinguishes that case from the one before him on the ground that there was no covenant to pay interest after the day named, and that therefore it was entirely different to a case where there is an express covenant to pay interest after the day fixed for the repayment of the principal.

The views expressed in *Popple* v. *Sylvester* may possibly be found to qualify the case of *St. John* v. *Rykert*, should the point there discussed come up again on appeal. We are inclined to think sufficient weight was not given in the latter case to the fact that the increased interest was not payable merely as damages, but by virtue of an express contract between the parties. Bearing this in mind, it seems to be clear that the interest recoverable was not a mere incident of the principal, but a substantial part of the contract, that therefore the only interest which could be recovered under the contract was that due when the action was commenced, or, at all events, only that which had accrued up to the date of the judgment, provided a jury could be induced to give, by way of damages, interest at the rate contracted for from the date of the writ until verdict or judgment. But clearly no claim could have been made in that action for interest which had not then accrued. The doctrine of merger certainly appears to be unduly stretched when it is held to apply not only to claims recoverable on a contract for which the plaintiff could, and did sue, but also to claims not then accrued, and for which, in the nature of things, he could not have sued, and did not sue.

Where the interest payable on default in payment of principal money, is merely recoverable as damages, and not by virtue of the express contract of the parties, then it appears to be reasonable enough to hold that although a jury might properly award by way of damages a larger rate of interest than 6%, yet that, nevertheless, the claim on the contract in such a case is after judgment thereon merged in the judgment, because there the interest is a mere incident of the principal, and awarded merely as damages for its detention, and not by virtue of any contract.

OUR much valued cotemporaries the *American Law Review* and the *Southern Law Review* have been consolidated. The new publication will hail from St. Louis, but the name of the Boston journal will be used. The new publishers announce that the *American Law Review* will retain all the best features of the two reviews, and others which will enhance its value.

OPENING OF THE NEW LAW COURTS OF ENGLAND.

This interesting and imposing ceremony marks an era in the legal and judicial history of England second to none that has preceded it. But though the day of Westminster Hall, as a legal centre, has gone by, its traditions remain (to use the words of the Queen as she took the key of the building from the Home Secretary and handed it to the Lord Chancellor) in "the independence of the judges, supported by the integrity and ability of the other members of the profession of the law, which will prove in the future, as they have been in times past, a chief security for the rights of my Crown and the liberties of my people."

The judges assembled in the Princes' Chamber at the House of Lords, and then, in stately procession, passed through Westminster Hall, sacred with so many memories of the past history of the nation, to the carriages that waited to take them to the new Courts; the Queen, meanwhile, making her way to the same rendezvous through a crowd of loyal subjects, shouting their homage to the most worthy of the long line of rulers in whose name justice has been administered to a law abiding people.

At ten o'clock the great Hall of the Court was thrown open to those who were either entitled to or had been invited to be present. The scene is thus described by the *Times*:

"Up the centre ran an open space for the Royal procession to pass from the Strand entrance to the dais raised for them at the further end, and on each side of the hall were ranged tiers of benches set apart for the different professions and corporations represented. The gathering at first was of a curiously mixed description. The full bottomed wigs and robes of the Queen's Counsel, worn only on occasion of State or in the House of Lords, the lavish gold lace of levee dress, the scarlet and ermine of the Common Law and Equity Judges, the dark, heavily-bullioned robes of the Lords Justices of Appeal, the correct black of the Incorporated Law Society, and the brilliant uniforms and orders of the Foreign Ambassadors, blended into one kaleidoscopic whole.

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Inside the hall the first sign of the approach of Royalty was the appearance in front of the dais of half a dozen Beefeaters, who formed not the least picturesque or the least pleasing feature of the scene. Their Elizabethan garb was a quaint suggestion of the olden time, all the more appropriate to the occasion from the fact that the roses of York and Lancaster, intertwined as the symbol of peace in their caps, are said to have been first plucked in Temple Gardens. The sun, too, as if to herald Her Majesty's coming, darted his rays with augmented force through the southern window, and filled the great hall with a crimson glory. At twenty minutes to twelve a blare of trumpets announced the entry of the civic procession—the Common Councilmen in their mauve cloaks, the Sheriffs and Aldermen in red, accompanied by the Mace-bearer and Swordbearer, the latter, with his curious fur cap, looking like a Tartar chief. The procession imported more colour into the already brilliant scene. Attention was now turned to the dais, where the Judges had begun to assemble. The Lord Chancellor and the Lord Chief Justice entered together from the left, the one in the sombre but richly decorated robes which form the Chancellor's State dress, the other in the bright scarlet and ermine of the Common Law Bench. A score of other Judges followed, including Mr. Gladstone, who, as Chancellor of the Exchequer, ranks as a Judge of the Supreme Court. The Prime Minister wore the heavy State robes of his office, resembling those of a Lord Justice of Appeal. Sir R. Phillimore appeared in plain black silk, and Vice-Chancellor Bacon, the last of his rank, in a distinctive robe of blue with a profusion of gold lace. Except for the presence of the Queen and her immediate attendants, and the Royal Family, the company in the great hall was now complete. Beyond the Diplomatic Body on the left sat Ministers and members of Parliament with their ladies, and beyond them again the various undistinguishable sections of 'society.' The stage was represented by Mr. Henry Irving and Miss Ellen Terry. Immediately after assembling on the platform, the Judges proceeded, two by two, down the centre of the hall to the Strand en-

trance, where by this time the Royal party were arriving.

Here the grand procession was at once formed. So perfect was the order prevailing that no sooner had Her Majesty alighted than a second blare of trumpets announced her entry into the building. As the procession moved up the centre of the hall, to the strains of Mendelssohn's march in *Athalie*, played by an invisible band, the whole assembly rose and paid silent homage to the Sovereign, who graciously bowed to right and left in return. In the fore-front walked the builders and architects; next in order, the Attorney-General and Solicitor-General, the Judges, the Lord Chancellor, the First Commissioner of Works, and the Chancellor of the Exchequer, and then the Queen, attended right and left by the Lord Chamberlain and the Lord Steward. Her Majesty wore a walking dress of black silk trimmed with fur. Immediately behind walked the Prince of Wales, the Duke of Connaught, Prince Leopold, Prince Christian; and then the Princess Beatrice, the Princess Christian, and the Princess Mary of Teck. The Princesses were all in morning dress, the Princes in military uniform over which they wore their gowns as Benchers of the Inns of Court. The Home Secretary followed as the Minister in attendance, and the rear of the procession was brought up by members of the Royal Household. On reaching the dais, the Queen was conducted to a gilt chair of State by the Home Secretary, who placed himself at her side. The Princes and Princesses took up their position behind Her Majesty, and the Judges disposed themselves in a semi-circle on either side, the Lord Chancellor taking his place on the right. The formalities of the occasion were then proceeded with. The first of these consisted in the First Commissioner of Works offering the key of the building to Her Majesty, which he did in the following words:—

May it please your Majesty,—Your Commissioner of Works and Public Buildings has been charged with the erection of this building during the last eight years. It is now complete. It falls upon me to announce to your Majesty that it is ready to be constituted as "the certain place" in which, in accordance with the ancient laws of your kingdom, justice shall be administered in the future by your Majesty's Courts.

So saying, Mr. Shaw-Lefevre handed the key on a dark crimson velvet cushion to Sir William Harcourt, who in turn presented it to Her Majesty. It was a large key of polished steel, bearing the monogram R. C. J. (Royal Courts of Justice), and a shield with the Royal Standard. After inspecting it a moment, Her Majesty passed the emblem of possession to Sir William Harcourt."

After this the Queen read a short address from manuscript, which was heard distinctly over the hall, and taking the key from the Home Secretary, handed it to the Lord Chancellor. He replied at some length, and after other addresses were read, and replies made, the procession reformed, and Her Majesty left the building. A deputation of the workmen then came forward and presented to her a short address, to which a gracious reply was given. The distinguished company that had gathered in the hall and rooms of the new Courts gradually melted away. Many of them making their way to the different Inns of Court, when they were entertained in the royal way that the Bar there, as well as here, know how when their minds are made up in that direction.

We make no apology for inserting at length the following article from the *Times*, which follows the graphic account of the opening ceremonies:—

"The occasion which brought to Temple Bar the Queen and chief officials of the realm was more than the simple opening of a building; it was more than the transfer of a great function of State to a more commodious home. It is the opening of a new era in the history of our English Justice, that civil institution which, of all others in the entire range of the modern world, has had the longest life in the past, whilst its splendid maturity promises it yet an almost incalculable future. On Monday last, for the first time since the rule of the Plantagenets, or rather of the early Angevins, the country saw consolidated in living and visible unity the heterogeneous mass of judicial bodies, each of which for so many centuries has had its own divergent history, and every link of which is bound up with the history of the State.

For the first time since the Norman Kings, the Sovereign held State in the Royal Court, not only as the fountain of justice in person, but as manifest head of the judicial system, of the ex-

ecutive force, and of the legislative authority in these islands. So that, in some sort, the ceremony had a character of its own that modern England has never witnessed before. There has been no lack of pomp and splendour on many occasions when the Legislature, the civil and military officers, the corporations and the like, have been duly represented. But the occasion of Monday, in reality and historic meaning, stands quite by itself. It is not only the beginning of a new era in the oldest of our living institutions, but it will be the embodiment in visible form of that ancient order which carries back the imagination to the very origins of this realm. It was a fine thought of the Minister in charge to convert the dedication to the public of a new building, in itself so often a barren form, into a symbolic memorial of that primitive Curia Regis, out of which Parliament, Council, Ministry, Cabinet, and Law Courts, all alike, have issued; but from which the Law Courts were the first to develop into clear and organic life.

Of all the institutions and offices which were duly represented in the hall, the Courts of Justice go the furthest back into the past. Our judicial system was a thing of antiquity when the House of Commons first emerged into view; it was full grown before the Great Charter: nor is it clear that the Conquest did more than recast it. The Privy Council and the Garter, the Speaker and the Lord Mayor, dukes and princes, dignities and offices which seem to the layman so ancient, are things of yesterday to the legal antiquary beside the historic offices of the law. There were Chancellors and Masters of the Rolls in the time of the Conqueror; and the Barons of the Exchequer are heard of as early as his youngest son. Seven centuries ago the predecessor of Mr. Gladstone in the Treasurership of the Exchequer tells us how, in the 23rd year of King Henry II., "he sat by the window in the watch-tower near the river Thames," and resolved to record his learning in the duties of the Exchequer and its offices. And so he describes the duties which tradition and long experience had taught him, just as Sir Erskine May records the ancient custom of Parliament, as a thing even then of almost venerable age. We recognized Mr. Gladstone on Monday, not in the new-fangled style of Premier, but in the office of Chancellor of the Exchequer: an office, indeed, that was not created till the Exchequer had been centuries old, but which still is anterior to the House of Commons. His episcopal predecessor, who wrote the famous Dialogue, takes us back to the whole apparatus of the Court—to the oblong table with its checkered cloth to count the money withal, and the melter, and the tallies, and the clerks, and the method of accounts (here you must have the eyes of a lynx, says he). And then he goes on to tell us of the Chancellor, and his clerks, and his office, and the Marshal, and then of the Court of Exchequer and its officers, and how men traced up the functions of the Exchequer to the English kings before the Conquest, and how 'the King in the Royal Court himself decrees right by law sitting in his own person.'

The Great Charter affected, but in no way remodelled the Courts of Justice; but, since its 17th section required the Common Pleas 'to be held in some certain place,' the causes between subject and subject were henceforth fixed at Westminster; and so began that system of disintegration in our administration of justice, which has gone on increasing for nearly seven centuries down to the re-integration of our own time, the visible result of which we have just installed. How often do we notice in those vast transformations of some persistent force in nature or society, where through long epochs the tendency to divergence is counteracted by equal efforts towards union, that the full maturity of the organism reverts to the simple unity of the original germ! That is precisely what we see to-day in the long evolution of our legal system. It began even before the conquest in the primitive single Court. Under the administrative genius of the Norman and Plantagenet Kings and the judicial instinct of our race, it gradually threw out special, local, and anomalous organs. The anomalies at length swelled into an incubus, till the recuperative energy of the system, by a series of vigorous crises, has established at last an organic unity. It is the triumph of civilization to reduce to orderly working the active powers which in ruder times were held by arbitrary bounds. The unity which, in the days of the Confessor, the Conqueror, Henry Beauclerc, and Henry of Anjou, was the simplicity of mere inexperience, is achieved in the days of Victoria, after eight centuries of strong life, by the harmony of mature science. And that judicial organism, after eight centuries, is as much

superior to-day to its original germ in vitality and force, as it is in flexibility and learning. So that the fusion of its parts, of which Monday presented the outward and visible sign, was no heraldic pageant or mere historic survival; it was the starting point of a new development with a boundless range for its energies to come. And the era of Victoria will certainly not be the least in the annals of our law, amid that small list of epochs which have seen our administrative system recast, a list that can hardly be extended beyond the names of the Conqueror, the first and the second Henry, the first Edward, and the Restoration.

Few of those who pressed on Monday to catch a glimpse of the show or procession, will have any idea that the ceremony of the day was in some sort an act of respect to the Great Charter itself, when viewed in connexion with recent Acts. The Common Pleas, by virtue of the Judicature Act, being merged in the High Court of Justice, having perforce to quit the Hall of Rufus, that 'certain place' in which they settled as required by the Charter of John. On the day that they migrate to that other, but new 'certain place,' by the Temple and the Inns of Court, where they may look for a history as long in times to come, it is due to the conventional respect we all of us pay to the Act of Runnymede, that the 'place' should be proclaimed in the sight of the nation. But the ceremony, if connected with the future through the Judicature Acts of the present reign, goes back in its symbols and suggestions to a time much earlier than the Barons and the Charter. In those days, as now, there was a Chancellor, but no Court of Chancery: then there was an Exchequer, but no Court of Exchequer; there were then, as now, no courts of exclusive law and equity; there was one supreme court, of which all the judges had a share; there was a Chief Justice, but no special Court of King's Bench. Nay, more, the ceremony of Monday gathered in one hall the executive and legislative chiefs, beside the judicial. And so, when the Sovereign in state installed at length the united Courts of Justice in their new common seat, and there took her place surrounded by her sons and her family, by the officers of her house and the officers of State, by peers and magnates of various degree, the scene in the great gothic hall at St. Clement's curiously served to recall one of the gatherings in the dawn of English history, when the King's Court was Parliament, Council, Cabinet, Chancery, King's Bench, Exchequer, and Common Pleas in one, and claimed to be a survival of the old English Gemot, which had power to dispose of the throne itself. It is a quaint point of resemblance to the representative character of this rather elastic body of councillors, that in the open court beyond, the First Commissioner proposes to place, beside so many Witan, or Sapientes, a stout contingent from the people.

The scene must strangely remind us of that stubborn continuity in our English law which has few parallels in history. But two institutions of man can be found to surpass it—one in the ancient world, one in the spiritual sphere—the law of Rome, and the Christian Church. And to put aside these, no modern civil institution, unless we count the throne of England, has any such continuous record. The origins of the English law and its principal offices can be traced back in unbroken series to types that are distant nearly a thousand years. And the actual organization and forms of our own memory have for some seven or eight centuries been in full activity. They were venerable things before the Constitution itself had begun its secular course of development. A man tried for treason to-day must be judged by a law made before the battle of Poictiers was fought, 530 years ago; and at this hour the greatest of all authorities in law is he who once was Attorney-General to Queen Elizabeth. No man can understand how an acre of land is transferred till he goes back to the laws of the first Edward; and the art of conveyancing arose out of innovations which, in things spiritual, are called the Reformation.

A case tried 200 years ago, but for trivial verbal differences, might easily be taken to be argued but yesterday; and as to the reports of 100 years back, there are scores of cases where every turn of expression and argument may be heard any day in term. The apparatus of the Great Seal and its bodyguard, the Hanaper Office, and the Petty Bag, and the quaint offices remembered by living men, all descended from ages when great men could not write their names. The noblest hall that remains to us from the great architecture of the Middle Ages has been the Royal Court of Justice, ever since its walls were raised. The most perfect hall of the Renais-

sance, that exquisite work of the great days of Elizabeth, the only remaining building where a play of Shakespeare's was presented to the Queen, the Court, and his contemporaries, that matchless relic is the hall of an Inn of Court. Three hundred and ten years have mellowed the glow of its blazoned windows, and the quaint fancy of its oaken screen, the fretted beams of its roof, and the faces of the kings and sages of the law in the paintings on its walls. A man who is neither a herald nor an æsthete may permit himself a weak corner in his interests for that long roll of lawyers whose arms and portraits people the four Inns of Court. There is no collection of portraits with so high a standard of power, dignity, acuteness, and patience. And the ermine and scarlet of the judges is, perhaps, the one living bit of noble mediæval costume which has survived the storm of modern innovation.

It was no lawyer, but a poet and the friend of Shakespeare, who called the Inns of Court "the noblest nurseries of humanity and liberty in the kingdom;" and if this were poetic exaggeration of rare old Ben, it remains most true, that the part they have played in literature and politics is hardly less than their part in law. Strike out of English poetry and prose, out of drama, fiction and essay, strike out of the history of our Parliament and of our Government, all members of the Inns and the associations of the Inns, and the blank would be serious indeed. A library would hardly tell the tale of those who flourished, and of all that was done within these precincts of the law. Scores of streets and alleys occupied the site of the present Courts of Justice, and the annals of each single street, and sometimes of a single house, would almost fill a volume. In spite of jests and quarrels, the public has ever taken kindly to the law, and yet more kindly to the lawyers; from Shakespeare to Goldsmith, from Bacon down to Thackeray and Dickens, our literature is saturated with the local colouring of Gray's Inn and the Temple, and of the communities out of which have issued so many of our statesmen, philosophers, teachers and poets.

And the public instinct is true when it feels that the societies of the law and the institutions of justice, which have in the past a history so rich and great, are about to begin a new life under new and ampler conditions. Vast as the antiquity of English law has now become, it has not yet reached the thirteen centuries of Roman law proper; and the era of Justinian, which seemed at the time to be the end of that unparalleled growth, was itself, we can see now, but the beginning of another epoch of thirteen centuries, wherein the Roman law has since, with its rival the English, completely encircled the civilized world. There is untold work yet before the English lawyer; whole mountains of obstruction and obsolete matter to level; areas of consolidation to clear, compared to which the task of Trebonian was an everyday thing. But the Roman law had lasted for near a thousand years, it had outlived even all that in government was free, and all that in philosophy and literature was brilliant, aud it was still in the maturity of its career, rent by anomalies as deep as any in our law to-day, as deeply encumbered with antique forms, as much laden with the masses of its own learning, and as far as we are now from its own ideal of symmetery and elegance. And in spite of its thousand years of life, it had youth and strength enough to spare to complete its task to the end, so that, in the issue, the last years of its mighty career in the old world were the grandest of all; and the work of Justinian has impressed the imagination of mankind more than the work of all preceding legislators or jurists. Few will think that the civilized world and the rising Christianity of the early Middle Ages would ever have perfectly absorbed the Roman law, if they ever had it offered them in its primitive instead of in its final form.

The English law has had a career not wholly unlike the Roman. It has cast out its archaisms; it has built up its equity into a vast but elastic fabric; it has recast its judicial organization, its procedure, its formulas; it has at length fused its law and equity, and has abolished the conflict of its own technicalities and fictions. It at last has a judicial machinery in full harmony with the times and their practical needs. But it retains some structural anomalies of really special importance; it has little that can be called symmetry; and it almost despairs of consolidation. The English law, in fact, is nearly in the same stage of its history that the Roman law was in the epoch of its maturity, but before the great consolidation of Justinian and his immediate predecessors. It is a laughable phrase

of the annalists when they speak of our great law-founder, Edward I., as the English Justinian. Even Victoria is not, or is not yet, the English Justinian. The work of final consolidation in our law, where the very fragments of the consolidation material already fill a library, is perhaps too vast a task for any reign, however long and however creative. That great task awaits the Trebonians and Justinians to come. It will be amply enough to place the name of Victoria beyond that of Edward, that she has given organic life to the whole judicial function.

This is, in law, the true boast of this reign; and it was to crown and symbolize this work by her personal authority that the Queen took her place in the Courts in person. Every layman who has dipped into Blackstone remembers that the Sovereign is the head of the law, present in theory in Court as Judge, and in early times present in fact. But the King, though present in person, and of right entitled to be present, to hear, and to try, is not, by the Constitution (that is, by custom) empowered to determine any cause or motion except by the mouth of his Judges, to whom he has committed his whole judicial authority. Henry Beauclerc, a great king and a great lawyer, would hear causes himself, and he swore dreadfully, "per oculos Dei," when he came to a knotty point—for your Norman King was a soldier of terrible passions. John, Henry, and the four Edwards sat and heard causes in the King's Bench; and Queens Consort did the same when acting as Regent. It was the troublesome learning of James Stuart which drew down on him the rebuke of the Bench when he wished to give judgment in lieu of his Judge. James, who thought he knew more philosophy than Bacon, and more theology than Hooker, was eager to prove that he knew more law than Coke. But the Judges interposed, and saved the Constitution. Like the legendary Judge who arrested the heir to the throne for contempt of Court, the Judges interrupted a King when about to infringe on their functions.

If Her Majesty had chosen on Monday to sit in court as Judge, at least so far as to hear some formal motion, it would have been in strict accordance with precedent, and the habits of some of her most illustrious ancestors. It would have given a new force and meaning to that which in these days is of rare and precious value. The office of Judge in this realm is not only the most ancient office that any subject can hold, but it is independent of prerogative, arbitrary will, suffrage, election, Parliament, or House of Commons. It is far older than any electoral body or function known to us; it is utterly apart from any electoral body or authority; and it is the one great popular institution with which representation has nothing to do and nothing to say. In these days the progress of democracy is a fact; the extension of the representative doctrine and the electoral machine is as certain as the rising sun. Unwise men only will quarrel with it or defy it. But its place is politics, not law. Schemes of extending the suffrage belong to the House of Commons. The judicial system has a wholly different origin, a perfectly separate history. Democracies around us everywhere, in America and France, have cast, or are casting, their judicial, like their political system into the ever quickening vortex of the huge electoral mill.

For our English Judges there never was—let us hope there never will be—any *bene placito* as their tenure, whether it be the *placet* of Prince, caucus, or people. The ceremony of Monday will serve to remind us all that our judicial system, at any rate, does not ultimately rest upon a ballot-box. It is a remnant of the Old English polity which should never be mixed up in our modern political strife. It is the oldest civil organization in our State, and looks on the House of Commons itself as the elder race of gods used to watch the new. A republican and a puritan, so long as he loves good order, historic permanence, and personal dignity, must have felt some stir of sympathy within him as he watched the long line of ermined Judges pace down the storied hall of the Red King for the last time after so many centuries of continuous and illustrious toil by their forerunners in office within those memorable walls. And they, on the other hand, who care for the mystery of courtiers and heralds may have found some new authority in the office of Judge, when they saw, seated on the seat of judgment as the first and head of the Judges, the Sovereign in person, herself the heir of a House that has no equal in modern times in antiquity and power; for, through every change and growth of this Empire, it has carried down the blood of the first chief who led the West Saxons across the seas, through a hundred

Kings famous in story, and among them nearly all who built up the massive foundations of this Commonwealth."

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

IN BANCO, DECEMBER 9, 1882.

MURPHY V. G. T. RAILWAY CO.

Railway — Fencing — Gates — Disrepair.

A beast of plaintiff's escaping from a field adjacent to a railway which crossed his farm, through a gate opposite a farm crossing in disrepair, and being killed, it was held that defendants were liable, as it was their duty to keep the gate in repair.

December 30, 1882.

LOTT V. DRURY.

Slander — Nonsuit.

Plaintiff was a miller, and defendant said he had run away in debt to him and others; that he had cleared out.

Held, that a nonsuit was wrong, as the words directly affected plaintiff in his business.

FORRESTER V. THRASHER.

Insolvent — Assignment without assets — Discharge.

A judgment was obtained against defendant in this suit for breach of promise of marriage, and in another for seduction. Defendant afterwards made an assignment, with no assets; no creditors appeared against him, and he then got his discharge. Subsequently acquiring property, execution was issued in this action; but

Held, that his want of assets when he got his discharge was no ground for setting aside the discharge, which, in the absence of a charge of fraud in its obtention, was an answer to plaintiff's claim.

BELL V. RIDDELL.

Felony — Stifling — Pro-note — Unlawful consideration.

Held, that the consideration for a pro-note being the stifling of a felony, avoided the note.

TURNER V. LUCAS.

Preferential judgment — R. S. O. ch. 118.

A debtor of defendant being insolvent, was sued by defendant, and by collusion with the defendant, he appeared, defended, and then allowed his defence to be struck out, when a judgment was at once got against him. Plaintiff also sued, and in regular course got judgment.

Held, defendant's judgment good.

REGINA V. DAGGETT.

Sunday Act — Travellers.

Defendant having been convicted of a violation of R. S. O. ch. 189, for carrying passengers in his vessel on Sunday from Niagara to Toronto,

Held, passengers were travellers within the exception of sec. 1 of the Act, and the conviction was quashed.

LETT V. ST. LAWRENCE, ETC., RAILWAY CO.

Lord Campbell's Act — Death of wife — Right of husband to sue for self and children.

Held, that the husband was not entitled on death of his wife caused by defendants' railway, to recover either for self or children, for aught but pecuniary loss.

WALTON V. WOODSTOCK GAS CO. ET AL.

Recovery of land — Limitation of action.

Plaintiff having on 8th April, 1854, got a grant in fee of vacant land, made no entry. Subsequently a railway company surveyed part of it, with other land, for their line, and an award was made in plaintiff's favour, but the company did not take possession, control it, pay for it, nor deposit maps or plans. One M., on 31st December, 1857, got judgment against the Company in certain Chancery proceedings, and sold the Company's interest to defendant P. P. did not

take possession. He went, however, upon the land to see if the soil was fit for bricks, but he did not enclose it, though he agreed to pay part of the expense if the next owners would fence. P. in 1875 sold to the Gas Company, who took possession and improved, the Railway Company and defendants paying taxes from 1853.

Held, (CAMERON, J., dissenting), that plaintiff could recover the land, for that the possession of neither the Railway Company nor of defendant P. was sufficient to destroy his title.

PARSONS v. THE QUEEN INSURANCE CO.

Fire Insurance—Statutory condition—Variation condition.

The plaintiff applied for an insurance upon his stock in trade with the defendant company. Pending negotiations the company's agent conversed with the plaintiff respecting the amount of gunpowder stored on the premises. He said he thought the company's condition was to allow 25 pounds to be kept. Plaintiff said he did not keep more than 10 pounds, and had not more than that in stock. The insurance was then effected by an interim receipt, and the next day a loss occurred. The plaintiff had more than 10 pounds, but less than 25 pounds of powder in stock when the fire occurred. The statutory conditions prohibited more than 25 pounds being kept in stock without permission, and the company's variation of this condition relieved them from liability, if more than 10 pounds was "deposited on the premises, unless the same be specially allowed in the body of the policy, and suitable extra premium paid." The case having been dealt with on other grounds on an appeal to the Privy Council, was remitted to this Court to try whether the variation was a just and reasonable one.

Held, [HAGARTY, J., dissenting], that under the circumstances of this case, inasmuch as the company's agent had represented that 25 pounds of gunpowder was allowed to be kept in stock, the condition now insisted upon was not a just and reasonable one, and was therefore void, and that the plaintiff should recover.

Per ARMOUR, C.J.—The Act R. S. O. cap. 162, passed for the purpose of securing uniformity of conditions upon fire policies, and setting out such conditions as it deemed proper to be inserted in every policy, showed that the legislature believed such conditions to be just and reasonable for both insurers and insured, and therefore, that if any of the statutory conditions should be varied so as to increase the burden of the insured, such variation would not be a just and reasonable one, within the meaning of the Act.

Per HAGARTY, C. J., and GALT, J.—The variation was a just and reasonable one.

Per HAGARTY, C. J.—The statutory condition exempting the company from liability, if more than 25 pounds of powder were kept without permission, does not preclude or prohibit the insurers from bargaining that they will not be liable if more than 10 pounds be kept, except on certain conditions as to extra premium, etc.

Creelman, for the plaintiff.

Bethune, Q.C., and *Small*, for defendants.

HINTON v. ST. LAWRENCE AND OTTAWA RAILWAY CO.

LETT v. THE SAME.

Railway — Negligence — Accident—Running on unauthorized track.

The defendant company had laid three tracks upon a highway of the City of Ottawa, one of which had been laid without authority from the City, but had been used for a number of years, the City acquiescing, and the plans showing its existence were produced from their custody. This track diverged from the main track at the crossing of another street, and ran nearer to the adjacent buildings, so that a person approaching by the cross street could not see an approaching train at as great a distance as if it were on the main track. The plaintiff H. and a wife of the plaintiff L. were struck by a passing train when driving across this track. The learned Judge at the trial refused to direct the jury that the third track was laid without authority, and that its existence there was a wrongful act, but told them that the Company had no right to lay the rail, and that the question was whether the accident was caused by their negligence.

Held, that there was no misdirection, but that the existence of the third track was an element in considering the danger of the crossing, as it apparently increased the risk.

McCarthy, Q.C., for the plaintiff.

Bethune, Q.C., for the defendants.

REGINA v. PHIPPS.

Extradition—Ashburton Treaty—Forgery—Original warrant.

The prisoner was the superintendant of an almshouse in Philadelphia, Penn., which was supported by the City of Philadelphia, Certain persons furnished goods to the almshouse and were entitled to receive warrants from the almshouse for the price thereof. The warrants were duly prepared and signed, in favour of the parties entitled, in the hands of W., the secretary of the almshouse, to be delivered to the proper parties on their signing the counterfoils of the warrants. The prisoner obtained possession of the warrants by falsely representing to W. that he had authority to sign the names of the respective parties entitled and by signing such names on the counterfoils. The warrants were then cashed at the city treasury.

Held, [CAMERON, J., dissenting,] that the offence amounted to forgey within the meaning of the Ashburton Treaty, and that the prisoner should be remanded for extradition.

Per HAGARTY, C.J.—The evidence disclosed a *prima facie* case of forgery, sufficient to warrant the commitment for trial of the prisoner if the crime had been commited in Canada.

Per ARMOUR, J.—The treaty was not intended to include the crime of forgery, only when that crime is common to both countries. In framing the treaty the high contracting parties were dealing with the then present and future, and the general term forgery should include everything in the nature of forgery, and which thereafter might be held to be forgery at common law by the decisions of the Courts, or might be declared to be forgery by the statute law.

Held, also, that the original warrant, within the meaning of 31 Vict., c. 94, sec. 2 (D), is not the first of two or more consecutive warrants, but is any warrant issued in the Uuited States.

MIDLAND RAILWAY CO. v. ONTARIO ROLLING MILLS CO.

Contract to deliver iron—Cash as delivered—Delivery of part—Refusal of payment until whole delivered—Repudiation of contract—Counter claim—Damages for non-delivery of remainder.

The plaintiff agreed to deliver to the defendant 1,300 to 1,500 tons of old iron rails, etc., "cash on delivery of each 100 tons, or with privilege of drawing against them as may be agreed between us, as they are shipped." On 17th February, 1880, the plaintiff, having delivered 1,150, sent an account of shipments and drew for $1,500, which the defendant refused to accept on 21st of February, erroneously asserting that two car loads, price $333, had not been received, when, in fact, they had been received, as afterwards acknowledged by them, and adding, "we think you should now deliver the balance due on contract before asking us to pay any more money. The time has so far gone by the date when we expected the whole amount, that we think it not unreasonable to ask this." There was a silence for some time, and on 5th June, 1880, the plaintiffs wrote, "We shall now soon be able to complete the delivery of old rails," and then went on to refer to another contemplated contract. In answer, the defendants' agents referred to the contemplated contract, but said nothing about the completion of the present one. In August. 1880, the plaintiffs again drew for the price of the amount delivered, which was refused acceptance for the same reasons as before. The plaintiffs sued for the price of the iron delivered, and the defendants counter-claimed for damages for the non-delivery of the difference between the iron delivered and 1,300 tons.

Held, [HAGARTY, C.J., dissenting,] reversing the judgment of OSLER, J., who tried the case, that the refusal of the defendants to pay for the iron, except upon delivery of the remainder, not amounting to such a repudiation of the terms of the contract as would have then entitled the plaintiffs to sue for breach thereof in not accepting the remaining 150 tons, did not absolve the plaintiffs from the delivery of the remainder; and that while the defendants were liable for the price of the amount delivered, they were entitled to judgment on their counter-claim for damages caused by failure of the plaintiffs to deliver the balance.

Kerr, Q.C., for the plaintiffs.

Osler, Q.C., for the defendants.

COMMON PLEAS DIVISION.

IN BANCO, DECEMBER 29TH, 1882.

LONDON LOAN CO. v. SMITH.

Mortgage—Absence of covenant to repay—Evidence of debt.

Held, that a mortgage which contains no covenant for repayment of the consideration money does not of itself afford evidence of a debt

Gibbon, (of London), for the plaintiff.

Meredith. Q.C., for the defendant.

MCGREGOR v. MCNEIL.

Agreement to cut timber—Chattels—Right to remove after time limited.

Under an agreement, dated 2nd October, 1880, the defendant sold to B. all the pine timber growing on certain land, to be removed during the years 1880 and 1881. The timber was all cut into logs before the end of 1881, but a portion was not then removed.

Held, that this was a sale of goods and chattels, and not of an interest in land, and the timber so cut, being the plaintiff's property, he had the right to remove it after the expiration of the time mentioned.

R. Martin, Q.C,, for the plaintiff.

Lount, Q.C., for the defendant.

DOYLE v. BELL.

Dominion elections—Civil remedy—Ultra vires.

Held, that sec. 109 of the Dominion Election Act, 37 Vict. ch. 9, which gives a civil remedy for the recovery of the penalties imposed for the offences committed against sec. 92 ot the Act, namely, bribery, etc., was not *ultra vires* of the Dominion Parliament.

Osler, Q.C., for the plaintiff.

Bethune. Q.C., for the defendant.

UNION INSURANCE COMPANY v. FITZSIMMONS.

UNION INSURANCE COMPANY v. SHIELDS.

Calls—Notice—Evidence of—Delivery of—Mailing—Stockholder—Company—Winding up—Right to sue.

Actions for calls. The 37 Vict., c. 93. sec. 7, under the authority of which the calls in question were made, provided that no call should be less than 10 per cent., and 30 days notice should be given of every such call. The resolution passed for giving the call, was passed on the 3rd August, 1881, the call to be payable on Tuesday, September 6th.

In the first named case the defendant lived in Ottawa. On Friday, August 5th, notice in proper form was mailed at Toronto, properly addressed to defendant at Ottawa, which in due course of post would reach Ottawa office at 7 p.m. On Saturday evening the office closed at 7.30, and unless by personal application to the post master the letter would not be delivered until the Monday following, August 8th, when it was as a fact delivered.

Held, (WILSON, C.J., doubting,) that under the statute the delivery of the notice must be deemed to be made from the mailing, and therefore the notice was good.

In the last named case the objection was that the defendant was not a stockholder, because that the stock had become vested in his assignee in insolvency; and also that the defendant had not received notice of the call. It appeared that the stock had never been returned by the defendant to the assignee as part of his assets, that the assignee had never accepted it, and that the defendant had subsequently received a dividend on it. It also appeared that the notices were sent to the assignee, and that he directed his book-keeper to forward them to defendant, which he stated he did; while the plaintiffs' manager stated, that, after the call was made, he spoke to the defendant about it, and he promised to pay it. The defendant denied having received notice, and the conversation with the manager.

Held, on the evidence, that the defendant was still a stockholder, and that he must be deemed to have had notice.

In both the above cases it was objected that there was no power to sue, because that the company's license had, under 42 Vict., c. 25, been revoked; but it was shewn that one B. had been duly appointed receiver, and was specially required, by the order of the Chancery Division, to prosecute all members in arrears for calls, and that he had adopted these actions and was prosecuting them as receiver. The objection was therefore held not to be tenable.

Frank Hodgins, for the plaintiffs.

Biggar, for the defendant Fitzsimmons.

Falconbridge, for defendant Shields.

CHAPMAN v. SMITH.

Practice—Order dismissing action after once taken to trial—O. J. Act, Rule 255.

Issue was joined in an action, on the 16th December, 1881, and the case tried on the 22nd, when a nonsuit was entered, which by consent was set aside. The record was again entered for the March Assizes of 1881, and remained over until the following Assizes, when by consent it was struck out, without costs to either party. These proceedings were before the O. J. Act. After this Act came in force the plaintiff's solicitors, though they stated that the plaintiff did not intend to go on with the action, refused to consent to its dismissal, and an order was obtained from the Master in Chambers dismissing it with costs. On appeal to CAMERON, J., the Master's order was set aside. The defendants then appealed to the Divisional Court.

Held, that, under the O. J. Act, Rule 255, the Master's order was properly made, that the words in that rule, "for the next sittings of the Court," were not confined to the first sittings which took place after the close of the pleadings, and that the fact, therefore, of the plaintiff having taken the case once to trial did not prevent the defendant from moving for a dismissal of the action, in case the plaintiff neglected to take the case down again for trial on a future occasion.

Holman, for the plaintiff.

Watson, for the defendant.

KELSEY v. ROGERS.

Contract to make staves—Property in.

The plaintiff, residing in Detroit, on 22nd December, 1880, entered into an agreement with one M., headed "A Mem." of a joint account agreement between the parties, whereby M. agreed to furnish to the joint account, loaded in cars at stations on G. T. and G. W. Rys., 12,000 to 15,000 staves at $180 per M., describing the kinds with the prices, to be loaded in cars and ready for shipment not later than June 1st, 1881, to be a joint account transaction, share and share alike in gain or loss, and to be consigned to a Quebec house, which would pay freight and commission. The plaintiff to furnish a competent man to cull the staves, and to make reasonable advances from time to time as the progress of the work should warrant, the expenses of the culler and interest on money advanced to be charged to the joint account. The staves to be considered, whether marked or not, the property of the plaintiff as security for advances.

Held, that under this agreement the staves were the property of the plaintiff as soon as made, and not the property of M.; and that the Bills of Sale Act did not apply.

Meredith, for the plaintiff.

Gibbons, for the defendant.

CORPORATION OF ANCASTER v. DURAND ET AL.

Tolls—Demise of—Right to make—Bylaw—Toll gate outside township limits.

Action on a bond made by D. and two others, sureties for the payment of the purchase money arising under a lease to D. of a toll gate, and of the right to collect the tolls thereat.

Held, under the circumstances of this case, that the fact of the toll gate being placed on the Barton side of the road, Barton and Ancaster being adjoining townships, was no objection to the demise; that there was the right to demise; and that although there should have been either a general or special by-law for such purposes, the defendant could not raise the objection for the first time in his notice of motion to set aside a verdict entered for the plaintiff.

Osler, Q.C., for the plaintiffs.

MacKelcan, Q.C., for the defendants.

GALLAGHER v. GLASS.

Assignment for creditors — Trust to carry on business—Validity.

An assignment in trust for creditors of a small stock of goods, valued at about $230, and a lot of land, made to a person not a creditor, and without consulting the creditors, contained a provision empowering the assignee to carry on the business and wind it up, no time being stated therefor, to pay all salaries, wages, etc., and all advances made in goods and money for conducting said business in the winding up thereof, and in his discretion to call a meeting of creditors, or otherwise to take their advice in the winding up; also to sell the lands as to him should seem best. On an interpleader issue between an execution creditor and the assignee:

Held, (WILSON, C.J., dissenting), that the deed could not be supported.

Bartram, (of London), for the plaintiff.

Gibbon, (of London), for the defendant.

SEARS v. AGRICULTURAL INS. CO.

Insurance—Nonpayment of premium note—Variation condition therefor—Reformation.

A premium note, dated 24th May, 1880, given on effecting an insurance with the defendants' company, stated that the insured, for value received in policy No. 1305, promised to pay the company $14.50, on 24th December, 1880, with interest at 7 per cent., and contained an agreement that if the note were not paid at maturity the whole amount of the premium should be considered as earned, and the policy null and void so long as the note remained unpaid. Upon the policy, which was dated 14th May, 1880, and took effect from the 24th May, 1880, was endorsed a variation condition that the policy should not be valid or binding until the premium was actually paid, unless credit was given, for in that case it was a condition of the contract that if the premium were not paid ———, 18——, the whole amount of the premium should be considered as earned, and the policy null and void so long as any part thereof remains unpaid. The application stated that the premium was due the 24th May, 1880.

Held, that the omission to fill in the blank in the condition, which was the same as sec. 48 of R. S. O., c. 161, did not prevent its operating, for the condition would be perfect omitting the figures "18" altogether, but if necessary the condition could be reformed by inserting the words evidently intended, "24th May, 80."

Held, also, that the conditon was not unreasonable.

The fire occurred on the 13th September; on the 15th, the plaintiff, through a solicitor, paid the amount of the note to the defendants, who were ignorant of the loss. On the 17th May, notice and proofs of loss were sent to the defendants, when they immediately repaid back the money to the solicitor.

Held, that the payment, being made in fraud of the defendants, could not avail the plaintiff.

Macdonald, (Kingston), for the plaintiff.

Britton, Q.C., for the defendants.

SMITH v. FORBES ET AL.

Broker Discretion—Ratification.

Action against the defendants, stockbrokers, carrying on business at Toronto, for breach of duty, in not buying for plaintiff certain stock. On Saturday March 25th, plaintiff instructed defendants by telegram to buy certain stock at 114 or less. The telegram was received too late to enable defendants to act that day. On the following Monday, the 27th, they telegraphed plaintiff that they had cancelled his order in the meantime, as there were unfavourable rumours about the stock, and that they would write. The plaintiff received this telegram on the same day about noon, but did not answer it, but waited for the defendants' letter. The letter was received about 5 o'clock on the following day Tuesday the 28th, and was to the same effect as the telegram, and asked plaintiff to repeat order if he wished defendants to act for him. The plaintiff replied by letter, which, after acknowledging receipt of defendants' letter, stated that from defendants' telegram he was prepared for something a good deal more tangible as a reason for not filling his order than the mere general unfavourable impressions described in defendants' letter, and something more definite than suspicion had caused it and theretore waited for the letter; that he thought he was justified in expecting the defendants to make good any decided advance; that he had given defendants a positive order to buy, knowing well that in the important decline which had taken place the air would be full of rumours and uncertainty, but having faith in the ultimate result he was willing to risk his money; that he had just telegraphed them as to how market closed that day. The telegraph stated that letter was received; that he did not think defendants were justified in not buying, and asking, as intimated in his letter, how market closed. The defendant, on 29th, telegraphed in reply that last sale yesterday 120, market very uncertain.

Held, that the above correspondence shewed the plaintiff ratified or assented to the defendants' course of conduct in disobeying his instructions, and exercising their discretion, and that the construction was a matter for the Court, and not for the jury; at all events no damage was proved, as the contract was broken on Monday, when the stock was at 114. The plaintiff therefore was held not to be entitled to recover.

Falconbridge, for the plaintiff.

McMicheal, Q.C., for the defendant.

MCNAB v. PEER.

Tax deed—Questioning within two years—Interested party—Statute of Elizabeth—Indigent Debtors' Act.

Under sec. 1 of 37 Vict., c. 15, O., a tax deed is valid and binding, unless questioned before a Court of competent jurisdiction within two years by a person interested. One O., claiming under a sheriff's deed, on a sale under an execution against lands, and also under a deed from one M., filed a petition, under the Quieting Titles Act, against the plaintiff, the grantee under a tax deed, within the two years, to quiet the title to the land. The plaintiff appeared and filed his claim under the tax deed, which was opposed by O. The plaintiff afterwards withdrew it and abandomed it, and an order was made by the referee barring his claim. An order was subsequently made by the referee dismissing O.'s petition, which order was affirmed on appeal to a judge.

Held, that O. was not a person interested within the meaning of the Act, for that the sheriff's deed conveyed no interest, as one of the defendants to the suit was dead at the time the execution issued; and neither did M.'s deed, for the evidence shewed that it was a breach of trust on his part; and the transaction was a fraudulent one on the part of both parties.

Held, also, that a deed of assignment of land in trust to pay certain creditors, and to pay over any surplus to the assignor, is not, under the statute of Elixabeth, a contrivance to defraud or defeat creditors; and that sec. 18 of the Indigent Debtors' Act did not refer to real property.

Per OSLER, J.—The proceedings under the Quieting Titles Act were a questioning of the deed, within the meaning of the 37 Vict., c. 15.

Per WILSON, C.J.—The proceedings had no such effect, as the questioning means a successfull questioning.

Maclennan, Q.C., for the plaintiff.
Leith, Q.C., for the defendant.

MCLEAN v. GARLAND.

Assignment for creditors—Restriction to scheduled creditors—Validity.

A deed of assignment to the plaintiff, a creditor, for the benefit of creditors, after reciting that the assignor was indebted in sundry sums which he was unable to pay, and was desirous of making a fair and equal distribution of his property and effects amongst his creditors, for the purpose of paying and satisfying, rateably and proportionately and without preference and priority, all his creditors their just debts, conveyed all his property to the plaintiff in trust to sell, and out of the proceeds to pay in full the several debts, etc., then due by the assignor to the plaintiff and the several other persons and firms "designated in the schedule annexed marked B., but if not sufficient for such purposes then rateably amongst such scheduled creditors."

Held, that the deed was void as against creditors, the trust to pay being restricted to scheduled creditors.

A. C. Galt, for the plaintiff.
Walker, (of Hamilton), for the defendant.

CHANCERY DIVISION.

Boyd, C.] [Dec. 1, 2, 6.

MERIDEN v. LEE.

Interpleader issue—Cognovit actionem—Fraudulent preference—R. S. O. c. 118.

Where a creditor knowing his debtor to have recently given a chattel mortgage on all his stock in trade, and knowing him to be hopelessly insolvent, and, under threat of suit, induces him to give *cognovit actionem*,

Held, that the judgment and execution recovered upon a *cognovit* so given are fraudulent and void as against subsequent execution creditors, under R. S. O. c. 118.

Held also, that such a transaction cannot be supported on the ground of pressure. *Ex parte Hall*, 19 C.D. 580, followed.

Proudfoot, J.] [Jan. 10.

DIXON v. CROSS.

Right of way—Way of necessity—Injunction—Deed—Registration—Notice.

A. and B., being tenants in common of 100 acres of land, made a partition thereof, whereby 50 acres were alloted to each in severalty. The 50 acres allotted to A. were land-locked, and there was no way out to the highway, except over the 50 acres of B., and a right of way, over B.'s 50 acres, was settled and agreed on between them. The course of this way was subsequently

changed by agreement between the predecessors in title of the plaintiff and defendant, but no deed was registered. A.'s parcel subsequently became vested in the plaintiff, under conveyances granting not only the land but also all ways, etc., therewith used and enjoyed. The plaintiff also claimed title to the way in question under a deed from one of the defendant's predecessors in title of B.'s 50 acres, which was not registered until 22nd May, 1882. The defendant claimed title to part of B.'s 50 acres by deed made in 1854, without notice of the alleged right of way.

The way in question was used by the plaintiff and his predecessors in title for 30 years, prior to the obstruction thereof by defendant, to restrain which this action was brought.

Held, that the plaintiff's right of way being a "way of necessity," it was not necessary for the plaintiff to show any express grant of the right of way, by the defendant or his predecessors in title.

Held, also, that the "way of necessity" passed under the grant of the land and "all ways, etc., used and enjoyed therewith."

Held, also, that the subsequent express grant of a right of way, by the defendant's predecessor in title, did not destroy the right to a way of necessity.

Held, also, that the plaintiff was entitled to the user of the way in question as a "way of necessity," notwithstanding the non-registration of the deed whereby it was granted by the defendant's predecessor in title, and to an injunction restraining obstruction thereof by the defendant.

Held, also, that the defendant, having actual notice of the plaintiff's use of the way, must be presumed also to have knowledge of the right by which it was enjoyed.

Held, also, that if the way in question were not a "way of necessity" it would, nevertheless, have passed to the grantee of the land to which it was appurtenant, and "all ways used and enjoyed therewith," following *Langley* v. *Hammond*, L. R. 3 Ex. 171; *Watts* v. *Kelson*, L. R. 6 Cby. 174; and *Kay* v. *Oxley*, L.R. 10 Q.B. 366.

Proudfoot, J.] [Jan. 10.

BEEMER v. OLIVER.

Estoppel—Insolvency — Creditor— Acquiescence —Sheriff's sale—Fraudulent conveyance.

The plaintiff, an execution creditor, purchased at sheriff's sale, under execution, certain lands of which the registered title was then in the execution debtor; but in a subsequent suit, by the assignee in insolvency of the husband of the execution debtor, to which, however, the sheriff's vendee was no party, judgment was obtained declaring that the conveyances whereby the lands had been transferred from the insolvent to his wife were fraudulent, and the assignee thereupon proceeded to sell the lands as part of the estate of the insolvent, the sheriff's vendee attending and forbidding the sale. At this sale the defendant became the purchaser, and the proceeds of this sale, together with the other assets of the insolvent estate, were distributed by the assignee, and the plaintiff, being also a creditor of the insolvent, accepted a dividend in common with the other creditors.

Held, by accepting the dividend, part of which was paid out of the proceeds realized by the assignee out of the sale of the lands in question, the plaintiff was estopped from impeaching the sale by the assignee. *Cairncross* v. *Lorimer*, 7 Jur. N. S. 149, followed; *Millar* v. *Hamelin*, before OSLER, J., not yet reported, distinguished.

Held, also, that the purchaser from the assignee was entitled to avail himself of any defence which would have been open to the assignee.

Proudfoot, J.] [Jan. 10.

HENDRIE v. G. T. R. CO.

GRAND TRUNK RAILWAY CO. v. TORONTO, GREY AND BRUCE RAILWAY CO.

31 Vict. c. 40, s. 21 (O.)—38 Vict. c. 56, s. 13 (O.); 44 Vict. c. 74, s. 14 (O.)—Bondholders —Toronto, Grey and Bruce Railway Co.—Voting—Right to vote as shareholders.

Under a statute which provided that in the event at any time of the interest upon the bonds of a railway company remaining unpaid and owing, then at the next general meeting of the Company, all holders of bonds should have and possess the same rights and privileges, and qualifications for directors and for voting, as are attached to shareholders, provided that the bonds, and any transfers thereof, should have

been first registered in the same manner as was provided for the registration of shares.

Held, that the words "the next general meeting" were merely indicative of the earliest period at which the bondholders might vote, and that the statute did not intend to require a new registration so long as the interest remained unpaid.

Held, also, that the bondholders' right to vote was not limited to the right of voting for directors, but that they had the right to vote on all subjects properly coming before a general annual meeting upon which shareholders might vote; and where a statute extended the bondholders right of voting to "special meetings."

Held, also, that the bondholders had the like right to vote on all subjects coming before "special meetings."

Where a statute authorized a Railway Company to enter into agreements with other companies for leasing or running its line, provided that assent thereto should be given by at least two-thirds of the shareholders present, or represented by proxy, at any meeting specially called for the purpose,

Held, that the word "shareholders" must be interpreted to include all who were entitled to vote as shareholders, and was not restricted to the actual shareholders of the Company.

Held, also, that the registered bondholders were entitled to vote at a special meeting called for the purpose of obtaining the assent of the the shareholders to such an arrangement on the question of its adoption.

Held, also, that the votes of registered bondholders having been rejected, the arrangement though confirmed by two-thirds of the actual shareholders present, or represented, was nevertheless not properly confirmed within the meaning of the statute.

PRACTICE CASES.

The Master at Hamilton, Proudfoot, J. [Feb. 22, 1881.

DUFF v. CANADIAN MUTUAL FIRE INSURANCE COMPANY.

Costs—Liability of company composed of different branches—R. S. O. cap. 161, ss. 66, 67.

A solicitor's claim for costs after retainer by the Canadian Mutual Fire Insurance Company, was held to be a necessary expense of the company, and not of any particular branch of it, the same as rent, fuel, etc., and was, therefore, payable out of any moneys which the company might have on hand. The amount should afterwards be apportioned among the branches, as the Directors might determine, under R. S. O. cap. 161, sec. 67.

The word "claims" in sec. 66 of that Act, means claims for losses by fire, and not accounts for expenses of the company.

Duff, for the plaintiff.

Laidlaw, for the defendants.

Osler, J.] [March 16, 1881.

JONES v. GALLOW.

Action for breach of promise of marriage—Examination—R. S. O. cap. 62.

Since 33 Vict. cap. 13 (O.), neither of the parties to an action for breach of promise of marriage can be called as a witness of the opposite party.

Discovery by means of oral examination under R. S. O. cap. 50, sec. 156 *et seq.*, substituted for the old practice of administering interrogatories, must be limited to the cases in which the party to be examined is compellable to give evidence by or on behalf of the opposite party, and hence does not apply to actions of this nature. See 45 Vict. cap. 10 (O.), assented to 10th March, 1882.

Mulock, for appellant.

Clement, contra.

Boyd C.] [Dec. 20, 1882.

GOUGH v. BENCH.

Specific performance—Damages.

The action was brought to set aside a contract made by the plaintiff with the defendants for the sale of certain land. The defendants, by way of cross relief, asked to have the contract specifically performed, or for damages.

The Court, on a hearing, declined to decree specific performance, and directed a reference to the Master at Orangeville, to ascertain the damages (if any) sanctioned by the defendant.

The Master, by his report dated 30th Nov., 1882, certified that the defendant had sustained damages by reason of the costs of investigating title, etc., to the extent of $11.05. The contract price of the land was $3,000; and the report

further stated that the true value of the land at the time the defendants were entitled to a conveyance was $4,000, and that if the Court considered the defendant entitled to such damages, the difference was $1,000, but the Master declined to allow this class of damage.

On appeal,

BOYD, C.—The finding of the Judge who tried the cause, that no actual fraud was proved against the purchasers, influenced the Divisional Court in not making a decree for the revision of the contract, but by no means thereby affirmed the right of the defendant to receive compensatory damages for his loss of the bargain.

We considered his conscience to be so far affected, that we would not give him the benefit of his bargain specifically, and we did not intend, while referring it to the Master to assess his damages (if any), to give him the benefit of his bargain in the shape of a money payment to the extent of $1,000, which is in effect a confirmation of our view that he had over-reached to that extent the old woman with whom he was dealing. It was referred to the Master under the authority of *Pasey* v. *Hanlon*, 22 Gr. 445, as we did not know what expenditure of money, or outlay the defendant might have made on the faith of his bargain being completed, and of which it would not be fair to deprive him. I do not regard the Common Law cases cited as to the measure of damages when the vendor can convey, but refuses to do so, as at all applicable to the proper disposition of the matters referred to the Master. The appeal is dismissed with costs.

Bain, for the defendant, appellant.

McMillan (Orangeville), contra.

Trade-mark—Use of name.

The business of a biscuit maker was sold, "with the goodwill and all advantages pertaining to the name and business" of the vendor.

Held, that this included the trade-mark, and the vendor could not continue to use a trade-mark exactly like that formerly used by him, though it consisted of his own name and arms stamped on the biscuit.—Q. B. Quebec, *Thompson* v. *McKinnon*.

Legal News, Dec. 2, 1882.

CORRESPONDENCE.

Registration of Wills.

To the Editor of the LAW JOURNAL.

SIR,—I beg to submit the following answer to query on page 20:—The necessity for registration would arise only in case of a will of lands. A will of lands must be executed according to the *lex loci rei sitæ*. If the notary were the only witness no estate would pass, and registration would be useless. Assuming, however, the will to be valid, one of the alternatives given by R.S.O. c. 111, sec. 63 would have to be complied with. If the original document deposited under that section were in French, the copy, I should say, would necessarily be in that language. The deposit of a translation is not contemplated. I must say I pity the ordinary registrar, especially as no sum is allowed him for lexicon and grammar.

January 10th, 1883. J. F.

ARTICLES OF INTEREST IN COTEMPORARY JOURNALS.

The conflict of marriage laws—*Law Mag.* (Eng.) Nov., 1882.

The methods of jurisprudence—*Ib.*

English procedure on foreign judgments—*Ib.*

Executory devises.—*American Law Mag.*, Dec., 1882.

Capacity to marry.—*Ib.*

Some disputed question in the law of commercial paper

(1) Stipulation for attorney's fee in promissory note.

(2) Rate of interest after maturity of note.

(3) Liability of third person endorsing before delivery.—*American Law Rev.* Dec., 1882.

The English judicature system.—*Ib.*

Taxation for railroads by New England towns—*Ib.*

Province of the judge in a criminal trial.—*Southern Law Rev.*, Jan.

National common law.—*Ib.*

Wrongful dismissal of servants—duty—action—defence—evidence.—*Ib.*

Decisions of the Federal Courts on questions of State law.—*Ib.*

Appointment of receivers for co-tenants of property.—*Am. Law Reg.*, Dec., 1882.

Common words and phrases.—*Albany L. J.*, Dec. 23., 1882.

Merger on extinguishment in the law of mortgage of real estate.—*Ib.*

Law Society of Upper Canada.

OSGOODE HALL.

TRINITY TERM, 1882.

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

Messrs. John Donald Cameron and Charles Walker Oliver, with honors; and Messrs. John Campbel, Ferrie Bown, Charles Joseph Leonard, Ernest Edward Kittson, Victor Alexander Robertson, Loftus Edwin Dancy, J. Hamilton Ingersoll, Henry Walter Hall, Robert Abercrombie Pringle, John Calvin Alguire, Frederick, Augustus Knapp, John A. Robinson and James Martin Ashton.

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

Graduates—Spencer Love Francis Robert Latchford, John Alfred McAndrew, Henry Walter Mickle, Alfred Mitchell Lafferty, Charles True Glass, Arthur Eugene O'Meara, Angus McMurchy, Edward George Graham, Robert Hall Pringle, Smith Curtis, Willoughby Staples Brewster, John Frederick Grierson, Edward Kirwan C. Martin John Shilton, Christopher Robinson Boulton, Fenwick Williams Creelman, William Hume Blake, Francis Wolferstan Goodhue Thomas, William Morris, Alexander Clive Morris, David Fasken, James Baird, Frederick C. Wade, Geo. Sandfield Macdonald, George Goldwin Smith Lindsay, Alfred Herman Gross.

Matriculants—Joseph Stockwell Walker, George Ira Cochrane, D'Arcy DeLessart Grierson, Edward James Barrow Duncan, Francis Hall, John Franklin Wills, Henry Parker Thomas, William Francis Johnston, Thomas Atkins Wardell, William Howard Hearst, Norman McDonald, W. J. Millican, John McKay, Robert C. LeVisconte.

Juniors—Herbert Alfred Percival, John Healy Reeves, James S. Chalk, John Henry Alfred Beattie, Wesley Byron Lawson, Henry Newbolt Roberts, Frank Foley Lemieux, James Percy Moore, James Herbert Sinclair, George Herbert Dawson, Neil McCrimmon, John Young Murdoch, Gordon Joseph Leggatt, George Henry Hutchison, George Luther Lennox, Richard Alexander Bayley, Edward Albert Crease, Joseph H. Jack, John Williams Bennett, Malcolm McLean, William George Burns.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his Diploma, or a proper certificate of his having received his Degree. All other candidates for admission as Articled Clerks or Students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

Articled Clerks.

From 1882 to 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

In 1882, 1883, 1884, and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil at their option, which are appointed for Students-at-law in the same year.

Students-at-Law.

CLASSICS.

1882.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum, B. G. B. IV., c. 20–36, B. V. c. 8–23.
- Cicero, Pro Archia.
- Virgil, Æneid, B. II., vv. 1-317.
- Ovid, Heroides, Epistles. V. XIII.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles, V. XIII.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical Analysis of a selected Poem :—

1882—The Deserted Village.
The Task, B. III.

1883—Marmion, with special reference to Cantos V. and VI.
1884—Elegy in a Conntry Churchyard.
The Traveller.
1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencement of the Second Punic War to the Death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography—Greece, Italy, and Asia Minor. Modern Geography—North America and Europe.

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.

1883 / 1885 { Emile de Bonnechose, Lazare Hoche. | 1882 / 1884 { Souvestre, Un philosophe sous les toits.

OR, NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics, 7th edition and Somerville's Physical Geography.

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

From and after January 1st, 1882, the following books and subjects will be examined on :

FIRST INTERMEDIATE.

William's Real Property; Smith's Manual of Common Law ; Smith's Manual of Equity ; Anson on Contracts ; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes ; and Cap. 117, Revised Statutes of Ontario and Amending Acts.

SECOND INTERMEDIATE.

Leith's Blackstone, 2nd edition ; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, Wills ; Snell's Equity ; Broom's Common Law; Williams' Personal Property; O'Sullivan's Manual of Government in Canada ; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

FOR CERTIFICATES OF FITNESS.

Taylor on Titles ; Taylor's Equity Jurisprudence ; Hawkin's on Wills ; Smith's Mercantile Law ; Benjamin on Sales ; Smith on Contracts ; the Statute Law and Pleading and Practice of the Courts.

FOR CALL.

Blackstone, vol. 1, containing the Introduction and Rights of Persons ; Pollock on Contracts; Story's Equity Jurisprudence ; Theobald on Wills ; Harris's Principles of Criminal Law ; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence ; Byles on Bills ; the Statute Law and 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.

The Law Society Terms begin as follows :—

Hilary Term, first Monday in February.
Easter Term, third Monday in May.
Trinity Term, first Monday after 21st August.
Michælmas Term, third Monday in November.

The Primary Examinations for Students-at-law and Articled Clerks will begin on the second Tuesday before Hilary, Easter, Trinity and Michælmas Terms.

Graduates and Matriculants of Universities will present their Diplomas or Certificates at 11 a.m. on the second Thursday before these Terms.

The First Intermediate and Solicitor Examinations will begin on the Tuesday before Term at 9 a.m.

The Second Intermediate and the Barristers Examinations will begin on the Thursday before Term at 9 a.m.

The First Intermediate Examination must be passed in the Third Year, and the Second Intermediate Examination in the Second Year before the Final Examination, and one year must elapse between each Examination, and between the Second Intermediate and the Final, except under special circumstances.

Service under articles is effectual only after the Primary Examination has been passed.

Articles and assignments must be filed within three months from date of execution, otherwise term of service will date from date of filing.

Full term of five years, or, in case of Graduates, of three years, under articles must be served before Certificate of Fitness can be granted.

Candidates for Call to the Bar must give notice signed by a Bencher during the preceding term, and deposit fees and papers fourteen days before term.

Candidates for Certificate of Fitness are required to deposit fees and papers on or before the third Saturday before term.

FEES.

Notice Fees	$ 1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
" Diplomas	2 00
" Certificate of Admission	1 00