DIARY FOR FEBRUARY.

1. Mon.. Hilary Term begins.
2. Tues.. Purification Blessed Virgin Mary.
3. Wed.. Meeting of Grammar School Board. Intermediate Examination of Law Students and Articled Clerks.
5. Frid.. Paper Day, Queen's Bench. New Trial Day, Common Pleas.
6. Sat. .. Paper Day, Common Pleas. New Trial Day, Queen's Bench.
7. SUN.. *Quinquagesima.*
8. Mon.. Paper Day, Queen's Bench. New Trial Day, Common Pleas.
9. Tues.. *Shrove Tuesday.* Paper Day, Common Pleas. New Term Day, Queen's Bench.
10. Wed.. *Ash Wednesday.* Paper Day, Queen's Bench. New Term Day, Common Pleas. Last day for setting down and giving notice for re-hearing. Last day for service for County Court, York.
11. Thur.. Paper Day, Common Pleas.
12. Frid.. New Term Day, Queen's Bench.
14. SUN.. *1st Sunday in Lent. St. Valentine.*
15. Mon.. Last day for County Treasurer to furnish to Clerks of Municipalities in Counties lists of lands liable to be sold for taxes.
18. Thur.. Re-hearing Term in Chancery commences.
20. Sat. .. Declare for County Court York.
21. SUN.. *2nd Sunday in Lent.*
24. Wed.. *St. Matthias.*
28. SUN.. *3rd Sunday in Lent.*

THE

Canada Law Journal.

FEBRUARY, 1869.

THE CHIEF JUSTICE OF THE COURT OF ERROR AND APPEAL.

The last day of the old year was the silent witness of an event which, though not attended with any display, was a noticeable one in the judicial annals of the province. It was the occasion of the ex-Chief Justice of Ontario taking his seat as President (or, as he is now to be called, the Chief Justice) of the Court of Error and Appeal, and of the official presentation to him of an address by the Law Society, commemorative of the event and expressive of the feelings of the profession on his retirement from the more active duties devolving on him as a Judge of one of the Superior Courts.

The address, which was presented by Hon. John Hillyard Cameron, on behalf of the Society, was as follows:

"To the Honourable William Henry Draper, C.B., President of the Court of Error and Appeal.

Her Majesty having been graciously pleased to accept your resignation as Chief Justice of Upper Canada, and subsequently to appoint you as President of the Court of Error and Appeal, we, the Law Society of Upper Canada, beg leave respectfully to address you, and to convey to you our sincere thanks for the unvaried courtesy and kindness which, in the exercise of your judicial office, the members of the legal profession have received at your hands, for a period extending over more than twenty years.

It is to us a subject of unfeigned satisfaction that your talents and learning are not to be lost to the country, but that you will hereafter preside in the Court of ultimate resort in this Province.

We trust that on an occasion like the present you will excuse our calling attention to the course of your professional life as an example and encouragement to those who devote themselves to the study of the law, as showing that, without any adventitious aid, but solely by the exercise of your own ability and industry, you have successfully with satisfaction and applause discharged the duties of Solicitor-General, Attorney-General, Puisne Judge, and Chief Justice.

That you may long continue to fill the dignified position which you now hold, is the sincere prayer of the members of the Law Society.

J. Hillyard Cameron,
Treasurer.

Osgoode Hall, Dec. 31, 1868."

It would be an easy and a pleasing task to enlarge upon the sentiments of the Address, and to speak of the feelings of admiration so universally entertained for one so eminent; but all we could say would be but a mere repetition of what has so often been said before in these pages, in acknowledgment of the distinguished services and ability of the learned Judge, whose sphere of usefulness has now been transferred from the Court of Queen's Bench to the less active but more honorable position of presiding over the Court of ultimate resort in this Province.

His Lordship, in answer to the address, made the following reply:

"Mr. Treasurer and Gentlemen,

I thank you very sincerely for this address. Since my first appointment to the bench, it has been my constant effort to cultivate the most friendly relations with the bar, and I feel no slight gratification at my success, as testified by this mark of your approval, in which you mingle the expression of your satisfaction at my past career with a kind wish that I may yet a while continue to discharge judicial duties.

I have, in my turn, to express my warm acknowledgments to the bar, generally, for their universal attention and respect to me in my intercourse with them as a judge, as well as for unnumbered marks of kindness and regard to me

individually. If I have attained any success in my efforts to maintain that confidence in the purity of the administration of justice in this Province, which existed in the days of my eminent predecessors, I owe it, first, to the co-operation of those learned judges who shared my labours, and next to the ability and assiduity of the members of the profession whom you represent.

Upwards of forty-five years ago I first entered my name on the books of the Law Society, of which I believe I have still the honour to be a bencher; and though I passed some years in the active duties of public life, I never severed myself from the diligent practice of my profession. I rejoice that while sinking into the vale of declining years, I am still thought able to be of use, and that I can maintain the connexion which has existed during the best part of my life. I trust that I shall be enabled to pursue the same course which has procured for me this flattering mark of your esteem, and I look forward with a hopeful confidence to a continuance of that support and assistance to which I have been so deeply indebted in my past career."

The following brief particulars of the career of the Ex-Chief Justice will be interesting to our readers. He was born on the 11th March, 1801, and is now therefore nearly sixty-eight years of age. He commenced life as a cadet or midshipman in an East Indiaman, and has never forgotten his early nautical training. He came to this country some years afterwards, arriving in Cobourg on the 4th June, 1820, and commenced the study of the law in 1823, having articled himself to Thomas Ward, Esq., of Port Hope. He subsequently went into the office of Hon. George Strange Boulton, of Cobourg, and was for some years Deputy Registrar of Northumberland and Durham. He afterwards came to Toronto, we believe at the suggestion of the late Sir John Robinson, then Attorney General.

He was called to the Bar on 16th June, 1828, nearly forty one years ago. On the 18th November, 1829, he was appointed Reporter to the King's Bench, which office he held until March, 1837, when, on 23rd March, he was appointed Solicitor General of Upper Canada, and made a member of the Executive Council in December following.

The union of the Provinces took place in February, 1841, and on the 13th of that month he became the first Attorney General for Upper Canada and Premier. He served in an official capacity at different times under the following governors, viz.: Sir Francis Head, Sir George Arthur, Lord Sydenham, Sir Charles Bagot, Lord Metcalfe, Lord Cathcart, and Lord Elgin.

In 1842 he was made a Queen's counsel, at the same time as Henry John Boulton, Robert Baldwin, Henry Sherwood and James E. Small.

On the 10th April, 1843, he was appointed a Legislative Councillor of Canada, which office he resigned at Lord Metcalfe's request, in January, 1845, and was elected to the Legislative Assembly, where he again sat as Attorney General until 28th May, 1847.

On the 12th June following he was appointed a Puisne Judge of the Queen's Bench, taking the place vacant by the death of Mr. Justice Hagerman, where he remained until 5th February, 1856, when he succeeded Sir James Macaulay, as Chief Justice of the Court of Common Pleas. He presided there until he was transferred to the Queen's Bench, becoming Chief Justice of Upper Canada on the retirement of Chief Justice McLean, who was made President of the Court of Appeal on 22nd July, 1863. He has thus, step by step, arrived at the goal of his ambition, a position he expressed his determination to win, when but a student in the Town of Cobourg.

His energy, perseverance and ability has taken him a step beyond the place he looked forward to as his own. Long may he continue to be an honour to it. Long also may he to enjoy that increased measure of health which we are happy to think has been vouchsafed to him, and the pleasure of knowing that his services are appreciated by an intelligent profession, and that the confidence and esteem of the public are still his own.

LAW REFORM ACT, 1868.

Curiously enough, on the very day that this Act came into force, a question came up for decision, which is reported in another place. We apprehend no other conclusion could have been arrived at, though there are some practical difficulties in the way which might be expected from one mode of procedure taking the place of another without the necessary provisions to prevent their clashing.

We notice an error of the press in sub-sec. 2, section 18, whereby a line has been accidentally omitted, and to which we hasten to call attention. The sub-section should read thus:—

"(2.) Provided that if any one or more of the parties requires such issue to be tried or damages to be assessed or enquired of by a Jury, he shall give notice to the Court in which such action is pending, and to the opposite party, *by filing with his last pleading and serving on the opposite party* a notice in writing to the effect following, that is to say," &c.

How, it may be asked, can this notice be filed, &c., with the last pleading in cases when, under the former practice, issue has been joined, and perhaps notice of trial given, or a case being made a remnant?

LAW SOCIETY, HILARY TERM, 1869.

CALLS TO BAR.

During this term the following gentlemen, having passed their final examination, were called to the Bar:—Alfred J. Wilkes, Brantford; Henry H. Strathy, Toronto; W. R. Squier, B.A., Goderich; Wm. G. McWilliams, B.A., Toronto; Colin McDougall, St. Thomas; George Taillon, Ottawa; W. M. Merritt, St. Thomas; E. C. Campbell, Newmarket; N. M. Monro, Toronto; John H. G. Hagarty, Toronto; John O'Donohoe, Toronto; A. G. Brown, St. Catharines; J. Dunning, Ottawa. The four first-named gentlemen passed without any oral examination.

ADMISSIONS TO PRACTICE.

The following gentlemen were admitted as Attorneys:—Charles Moss, Toronto; John Muir, Grimsby; Alfred J. Wilkes, Brantford; Wm. G. McWilliams, Toronto; Henry H. Strathy, Toronto; A. G. Brown, St. Catharines; John H. G. Hagarty, Toronto: S. M. Jarvis, Cornwall; John R. Dixon, London; Robert C. Henderson; William A. McLean, Toronto; E. S. Essery, London; Joseph Ryan, Kingston. The first four gentlemen passed on the merits of their written examination, and had not therefore to be examined orally. Mr. Charles Moss was especially complimented by the Benchers on the thorough knowledge he evinced of the subjects for examination.

Some alterations have been made in the room wherein Chancery Chambers are held by the Judges' Secretary. Changes are generally supposed to be for the better, and in the matter of arrangement they are probably so in this case; in other respects, however, the Government have not much to be proud of Their selection of some bare, unhappy looking pine tables, with splits between the boards, would do discredit to a third-rate solicitor's office. We are not aware of any necessity to "nip in the bud" any incipient symptoms of luxury or extravagance on the part of the Secretary, who was himself, we believe, at the expense of laying down the matting thought unnecessary by the authorities.

The depredators at Osgoode Hall have not of late confined themselves to the west wing, as some nights ago the vault of the Queen's Bench office was broken into and some money, fortunately only a small sum however, was found and carried off, belonging to Mr. Baldwin, of the Stamp office. There have been, in addition to these burglaries, many minor pilferings at Osgoode Hall, but it is hoped that the authorities are on the track of some of the guilty parties.

FEES TO ATTORNEYS IN DIVISION COURTS.

At the close of our last volume we published a letter criticising the soundness of a decision by a County Judge on the payment of fees to attorneys for work done by them, as such, in Division Courts. A letter was written in answer to this, which, however, did not throw much light on the subject, and "An Attorney," in another letter published hereafter, again returns to the charge.

We have taken the trouble to find out exactly what the learned Judge did say in his judgment, which appears to have been a written one. We allude to the case in which he lays down the rule which should, in his opinion, govern cases such as that spoken of by our correspondents. We do not gather from this judgment (which we apprehend "An Attorney" could not have seen), that the Judge entertained the opinion which the letters of "An Attorney" would lead us to suppose. With the details of the cases neither we nor our readers are at all interested, but it is a matter of simple fairness that the views of the Judge should be given in his own words; the subject, moreover, is of some importance, and worthy of discussion.

The part of the judgment touching on the point before us was as follows:—

"It is difficult to arrive at what is a fair and reasonable or proper allowance to make for services as an Attorney in the Division Courts, for the Superior and County Court tariffs are fixed,

and the retainer once proved, the amount can be ascertained by a reference to the proper officer. No tariff is fixed for the Division Courts, but it is not to be supposed that an Attorney is not to receive anything for practising therein. On the other hand I do not think him entitled to County Court costs (which the plaintiff appears to have charged,) for Division Court business. As there is a wide difference between Superior and County Court costs, which bear some relation to the jurisdiction of the respective Courts, so the costs in the Division Court, being of still more restricted jurisdiction, should be considerably less than those of the County Court. I have no authority, and do not feel inclined, to lay down or fix a tariff for all the items of Division Court business. I shall simply allow in each case a gross sum, and that not a large one, covering all charges in respect of the suit (except disbursements), and having some reference to the trouble taken and the interests involved. If members of the profession think my allowance too small, they can easily protect themselves by a previous arrangement with their clients, and this would, in all cases, be the fairest and most satisfactory way.

The plaintiff endeavours to shew that he came from ——— solely to attend to defendant's business. I do not think the evidence establishes this, and cannot allow the plaintiff anything for travelling expenses. I allow the plaintiff $5.00 for each of the two suits, one at ——— and one at ———, less $3.00 paid on suit at ——— Court, leaving $7.00, and I allow 40 cents for postage and $4.00 for subpœna and copies, making $11.40 in all for Division Court business.

The witness fees, amount paid witnesses, and charge for copy of papers, appear to be covered by the $9.00 paid plaintiff by ———."

Without at present discussing the propriety of this ruling, it can scarcely be said that the Judge decided that an Attorney has no right to recover for services rendered, as such, in Division Court suits, or that the judgment was not given upon some principle, which the Judge considered was a sound one, and which he in a subsequent suit by same plaintiff expressed his intention to follow.

So far as this particular case is concerned, this must close any further reference to it. As to the amount of remuneration, the Judge may or may not have given less than was proper under the circumstances. He, however, was the judge of that, and it is idle to discuss that part of the matter here.

ERROR AND APPEAL ACT.

The following is the Act of last Session respecting the Court of Error and Appeal:

AN ACT

Respecting the Court of Error and Appeal in the Province of Ontario.

[Assented to 23rd January, 1869.]

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The first section of the Act of the Parliament of Canada, passed in the twenty-fifth year of Her Majesty's reign, chapter eighteen, and entitled "An Act respecting the Court of Error and Appeal in Upper Canada" shall be amended by striking out the words "Upper Canada" where they occur in the said section, and inserting the word "Ontario" in lieu thereof, and by adding to the end thereof the words, "and shall be styled and addressed as the Chief Justice of Appeal."

2. The second section of the said Act shall be amended by striking out the words "Presiding Judge," and inserting the words "Chief Justice" in lieu thereof; and by striking out the words "Presiding Judge of the Court of Error and Appeal in Upper Canada," and inserting the words "Chief Justice of the Court of Error and Appeal in Ontario" in lieu thereof.

3. The fourth section of the said Act is hereby repealed, and the following provisions enacted in lieu thereof:—

4. From and after the passing of this Act, the said Court of Error and Appeal shall hold its sittings twice in every year, at the City of Toronto, one of which sittings shall be held in the month of January, and the other in the month of June, upon such days as the said Court by rule or order may, from time to time, respectively name and appoint, and the Court may also adjourn such sittings from day to day, or for such longer period, as the Court may deem expedient; and the Court may permit cases to be entered after the commencement of such sittings for any adjourned sittings of the Court, and upon such notice to the respondents as the Court may fix, and may make such rules and orders therefor as they may deem necessary; and may also fix and appoint days for giving judgment in cases previously argued, and for disposing of such other business as the Court in its discretion shall see fit: Provided there shall be no sitting of the said Court, by adjournment or otherwise, between the first day of July and the twenty-first day of August in any year, save for the purpose of giving judgment in cases previously argued.

5. Notice of such respective rules or orders shall be given by affixing the same in some conspicuous place on the outside of the rooms where the sittings of the said Court are appointed to be held, and in the Judge's Chambers and Practice Court, and in the offices of the

Master and Registrar of the Court of Chancery, and of the Clerks of the Crown and Pleas, in Osgoode Hall, ten days before the time appointed, which notice may be to the following effect:—

In the Court of Error and Appeal.

"This Court will, on the —— day of —— 18—, hold sittings, and will proceed on that day and the following days, in hearing and disposing of the cases mentioned in the following list, and in giving judgment in cases mentioned in the followiag list, and in giving judgment in cases previously argued," [*or if the Court sit only for giving judgment* or in giving judgment in cases previously argued] and in disposing of such other business as the Court in its discretion shall see fit.

(*List to be subjoined*)

(Signed.)

Clerk.

6. From and after the passing of this Act, any six Judges of the said Court, of whom the Chief Justice of the said Court, or the Chancellor, or the Chief Justice of one of the Superior Courts of Common Law shall be one, shall constitute a quorum of the said Court for the dispatch of business: Provided that no more than two of the Judges whose judgment or decree is appealed from, shall sit on the hearing of such appeal.

7. So much of the fifty-second section of chapter thirteen of the Consolidated Statutes of Upper Canada as requires two months' service of notice of appeal, is hereby repealed.

SELECTIONS.

CONVICTION UPON CIRCUMSTANTIAL EVIDENCE.

The injustice of convicting persons of capital offences upon circumstantial evidence has been a fruitful theme of discussion time out of mind. We believe it is now generally conceded that crimes diminish in a country in proportion to the mildness of its laws. Evils certainly arise in having laws on the statute-book which are at variance with the universal instincts of mankind, and which are therefore continually evaded. The abolition of a bad law is attended with less injury to a community than its constant evasion. Heinous crimes are usually committed in secret, and the proof, therefore, is necessarily circumstantial. Evidence so precarious in its nature should indeed be closely scrutinized. In Scotland, long ago, they refused to convict of capital offences upon such evidence; and in England, since the conviction and execution of Eugene Aram—upon whose character and the circumstances of whose death, the versatile Bulwer founded a readable novel, and the gifted Hood wrote a touching poem—the courts have been prone to analyze carefully a case resting entirely upon such evidence. Aram, it will be remembered, was indicted for killing one Daniel Clarke, and was convicted of his murder by a chain of circumstantial evidence, fourteen years after Clark was missed. The *corpus delicti* was not proved. The concatenation of circumstances which led to his conviction is among the most peculiar and remarkable on record.

In the trial of capital cases there are two time-honoured maxims which have always obtained. (1.) That *circumstantial evidence falls short of positive proof:* (2.) That *it is better that ten guilty persons should escape than one innocent person should suffer.* The first qualified by no restriction or limitation is not altogether true. For the conclusion that results from a concurrence of well authenticated circumstances, is always more to be depended upon than what is called positive proof in criminal matters, if unconfined by circumstances, *i. e.*, the oath of a single witness, who, after all, may be influenced by prejudice, or mistaken; and if by the word "better," in the second maxim, is meant more conducive to general utility, it would also seem to be unsound. And here we may endeavour to ascertain clearly what is understood in legal parlance by "circumstantial evidence." It may be observed that, every conclusion of the judgment, whatever may be its subject, is the result of evidence, a word which (derived from words in the dead languages signifying "to see," "to know,") by a natural sequence is applied to denote the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved; circumstantial evidence is of a nature identical with direct evidence, the distinction being, that by direct evidence is intended evidence which applies directly to the fact which forms the subject of inquiry, the *factum probandum:* circumstantial evidence is equally direct in its nature, but, as its name imports, it is direct evidence of a minor fact or facts, incidental to or usually connected with some other fact as its accident, and from which such other fact is inferred. Upon this general definition jurists substantially agree. For an illustration, then, of direct and indirect evidence, let us take a simple example. A witness deposes that he saw A. inflict a wound on B., from which cause B. instantly died. This is a case of direct evidence.—C. dies of poison, D. is proved to have had malice against him, and to have purchased poison wrapped in a particular paper, which paper is found in a secret drawer of D., but the poison gone. The evidence of these facts is direct, the facts themselves are indirect and circumstantial, as applicable to the inquiry whether a murder has been committed and whether it was commited by D. The judgment in such a case is essentially deductive and inferential. A distinguished statesman and orator (Burke's Works, vol. II., p. 624), has advanced the unqualified proposition that when circumstantial proof is in its greatest perfection, that is, when it is most abundant

in circumstances, it is much superior to positive proof. At one time great injustice was done by condemning persons for murder when it had not been proved that a murder was perpetrated. The now well-recognised principle in jurisprudence that no murder can be held as having been committed till the body of the deceased has been found, has terminated this form of legal oppression. A common cause of injustice in trials for murder is the prevarication of the party charged. Finding himself, though innocent, placed in a very suspicious predicament, he invents a story in his defence and the deceit being discovered, he is at once presumed guilty. Sir Edward Coke mentions a melancholy case of a gentleman charged with having made away with his niece. Though he was innocent, in a state of trepidation he put forward another child as the one said to have been destroyed. The trick being discovered, the poor man was executed, a victim of his own disingenuousness.*

The rules of evidence and the practical principles of jurisprudence have been methodized

* The following case occurred in Edinburgh (*vide* 2 Chambers' Miscellany).

Catherine Shaw encouraged the addresses of John Lawson, which were insuperably objected to by her father, who urged her to receive the adresses of one Robertson. One evening being very urgent thereupon she peremptorily refused, declaring she preferred death to being Robertson's wife. The father became enraged, the daughter more positive, so that the words "barbarity, cruelty, and death," were frequently pronounced by the daughter. He locked her in the room and passed out. Many buildings in Edinburgh are divided into flats or floors, and Shaw resided in one of these flats, a partition only dividing his dwelling from that of one Morrison. Morrison had overheard the quarrel, and was impressed with the repitition of the above words, Catherine having pronounced them emphatically. For some little time after Shaw had gone out all was quiet; presently Morrison heard groans from Catherine. Alarmed, he ran to his neighbor, who entered Morrison's room with him and listened, when they not only heard groans, but distinctly heard Catherine murmur, "Cruel father, thou art the cause of my death." They at once hurried to Shaw's apartment, knocked but received no answer, and repeated the knocks, but no response came. A constable was procured, and an entrance forced, when Catherine was found weltering in her blood, a knife by her side. She was alive, but unable to speak, and on being questioned as to owing her death to her father, was only able to make a motion with her head, apparently in the affirmative, and expired. At this critical moment Shaw entered the room; seeing his neighbors and a constable in his room he appeared much disordered, but at the sight of his daughter, turned pale, trembled, and was ready to sink. The first surprise and succeeding horror left little doubt of his guilt in the breasts of the beholders; and even that little was removed when the constable discovered blood upon the shirt of Shaw. Upon a preliminary hearing he was committed. On his trial he acknowledged having confined his daughter to prevent her intercourse with Lawson; that he had frequently insisted on her marrying Robertson; and that he had quarrelled with her on the subject the evening she was found murdered, as the witness Morrison had deposed; but averred he left her unharmed, and that the blood found on his shirt was there in consequence of his having bled himself some days before, and the bandage becoming untied. These assertions did not weigh a feather with the jury in opposition to the strong circumstantial evidence of the daughter's expressions of "barbarity, cruelty, death," together with that apparently affirmative motion with her head, and of the blood so seemingly providentially discovered on Shaw's shirt. On these concurring statements Shaw was found guilty, and executed at Leith Walk. Was there a person in Edinburgh who believed the father guiltless? No, not one, notwitstanding his latest words, at the gallows, "I am innocent of my daughter's murder." A few months afterwards, as a man who had become the possessor of the late Shaw's apartments, was rummaging, by chance, in the chamber where Catherine died, he accidentally perceived a paper which had fallen into a cavity on one side of the chimney. It was folded as a letter, which on opening contained the following:—

"Barbarous father, your cruelty in having put it out of my power ever to join my fate to that of the only man I could love, and tyrannically insisting upon my marrying one whom I always hated, has made me form a resolution to put an end to an existence which is become a burden to me. I doubt not I shall find mercy in another world, for sure no benevolent Being can require that I should any longer live in torment to myself in this. My death I lay to your charge; when you read this, consider yourself as the inhuman wretch that plunged the murderous knife into the bosom of the unhappy

Catherine Shaw.

A few years ago a poor German came to New York, and took lodgings, where he was allowed to do his cooking in the same room with the family. The husband and wife lived in a perpetual quarrel. One day the German came into the kitchen with a clasp-knife and a pan of potatoes, and began to pare them for his dinner. The quarrelsome couple were in a more violent altercation than usual; but he sat with his back towards them, and being ignorant of their language, felt in no danger of being involved in their disputes. But the woman, with a sudden and unexpected movement, snatched the knife from his hand and plunged it in her husband's heart. She had sufficient presence of mind to rush into the street and scream "murder." The poor foreigner in the meanwhile, seeing the wounded man reel, sprang forward to catch him in his arms, and drew out the knife. People from the street crowded in, and found him with the dying man in his arms, the knife in his hand, and blood upon his clothes. The wicked woman swore in the most positive terms that he had been fighting with her husband, and had stabbed him with that knife. The unfortunate German knew too little English to understand her accusation, or to tell his own story. He was dragged off to prison, and the true state of the case was made known through an interpreter; but it was not believed. Circumstantial evidence was extremely strong against the accused, and the real criminal swore unhesitatingly that she saw him commit the murder. He was executed, notwithstanding the most persevering efforts of his counsel, John Anthon, Esq., whose convictions of the man's innocence were so painfully strong, that from that day he refused to have any connection with a capital case. Some years after this tragic event the woman died, and on her death-bed confessed her agency in the diabolical transaction.

One of the most remarkable cases of conviction upon circumstantial evidence that has occurred in this country, is that of one Ratzky, who was tried and convicted in 1863, at the Oyer and Terminer in Brooklyn, N. Y. The case is known as the "Diamond Murder," and the circumstances of the case were in brief as follows:—

Ratzky boarded at a house in Carrol Street in said city, where one Fellner also boarded, who had a short time before come from Mentz, Germany. Fellner was about fifty years of age, had been a large dealer in diamonds in his native place, but, as shown, he had for certain causes absconded and fled to this country. On his passage over he became enamoured of one Miss Pflum, who was in company with her sister, a Mrs. Marks. On his trip over his gallantry and attentions gained for him, from the passengers, the appellation of "Don Juan," and Miss Pflum that of "Zerlina." Arriving at New York the two ladies engaged rooms at a house in East Broadway, and it was shown on the trial that their characters were not the most exemplary.

On Friday morning, a few days after Fellner and he had commenced to board in Carrol Street, Ratzky and he went to New York together. Fellner never returned to the house. His body was found washed ashore at Applegate Landing, near Middletown, N. J., four days after. On examination of the body it was found that the deceased had been murdered, there being twenty-one wounds on his breast. The body was identified by one Mrs. Schwenzer, who boarded in the same house where Ratzky and Fellner had boarded. Ratzky fled under an assumed name, but was arrested in St. Louis, and finally brought to trial. His story of the affair is, in short, that, on the evening of the morning when he went to New York with Fellner, they called at the house where Mrs. Marks and Miss Pflum were. That Fellner and Miss Pflum were engaged in conversation for an hour, and that during the evening Fellner gave him a gold watch which Miss Pflum handed him from a jewel case belonging to Fellner. It was a little after 8 o'clock that evening when Ratzky informed Fellner that it was about time for them to go home. That he urged Fellner several times to go, but he and Miss Pflum were engaged in a lively conversation, and that at last upon further urging Fellner rose to go, kissed Miss Pflum with great

Conviction upon Circumstantial Evidence.

by a succession of wise men, as the best means of discriminating between truth and error. Having their origin in man's nature, as an intellectual and moral being; and founded (as an eloquent advocate has said) in the charities of religion, in the philosophy of nature, in the rules of history, and in the experience of common life: 29 St. Tr. 966.

The rules as laid down by Wills on Cir. Ev., other writers on the subject have repeated, and are as follows:—

(1.) The circumstances alleged as the basis of any legal inference must be strictly and indubitably connected with the *factum probandum.*

(2.) The *onus probandi* is on the party who asserts the existence of any fact which infers legal accountability: 1 Starkie's L. of Ev., 162; 1 Greenl. L. of Ev. c. 3.

(3.) In all cases, whether by direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.

(4.) In order to justify the inference of legal guilt from circumstantial evidence, the discovery of the body necessarily affords the best evidence of the fact of death, of the identity of the individual, and most frequently also of the cause of the death. A conviction for murder, therefore, is never permitted in our day unless the body has been found, or there is equivalent proof of death by evidence leading directly to that result. The evidence of the inculpatory facts must be absolutely incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. This is a fundamental rule the *experimentum crucis* by which the relevancy and effect of circumstantial evidence must be estimated.

(5.) If there be any reasonable doubt as to the certainty of the connection of the circumstances with the *factum probandum;* as to the completeness of the proof of the *corpus delicti;* or as to the proper conclusion to be drawn from the evidence, it is safer to err in acquitting than convicting. This rule follows irresistibly as a deduction from the consideration of the numerous fallacies necessarily incidental to the formation of the judgment on indirect evidence and contingent probabilities, and from the impossibility in all cases of drawing the line between moral certainty and doubt. It has been truly said (Burnett on the C. L. of Scotland, p. 524) that, though in most cases of circumstantial evidence there is a possibility that the prisoner may be innocent, the same often holds in cases of direct evidence, where witnesses may err as to the identity of a person, or corruptly falsify, for reasons that are at the time unknown. As we have seen, the testimony of the senses cannot be implicitly depended upon, even where the veracity of the witness is unquestionable. As where Sir

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nonchalance before those present, telling her that to-morrow he should leave for Chicago, and desiring her to answer his first letter from there. He embraced Miss Pflum, at the same time whispering something in her ear. They then left—arriving at the ferry, no boat was in, and they sat down on the cross-beam of the ferry dock; that Fellner took off his hat and wiped the perspiration from his forehead, at the same time handing his cane to Ratzky. When the boat came they went on board, he Ratzky, still retaining the cane. In a moment or two Fellner rose from his seat and walked up and down the cabin once or twice, then went on the deck, as Ratzky supposed, for the sake of breathing the cool air; that the boat shortly after started, and if Ratzky's story be true, he never after saw Fellner alive. That he waited for him to come off the boat when it reached Brooklyn side, but not seeing him asked the ferry-master if he had seen a man pass answering the description given. That he called out the name of Fellner at the top of his voice in order to find him, but concluded that he had gone home. If this story had been confirmed Ratzky would doubtless have been acquitted. It appeared on the trial that when the body was found Mrs. Schwenzer proposed to go and see it, when Ratzky endeavored to dissuade her from doing so. She visited Mrs. Marks, at Ratzky's request, who begged her not to say anything about the matter, giving her at the same time a sum of money to secure her silence. Ratzky soon after left the city. Fellner's body being identified, Mrs. Marks and Miss Pflum were arrested on suspicion as being *particeps criminis.* Miss Pflum committed suicide by hanging herself in the cell of a New York station-house a few days after her arrest.

(Webster, in his elaborate argument in the Knapp Case, declared that "suicide is confession.")

On the trial the prosecution argued upon the theory that Fellner and Ratzky crossed on the Hamilton Avenue ferry-boat to Brooklyn; that Ratzky induced Fellner to go to the club-house, which stands near the water at the foot of Court Street, in order to get drinks; that they had been there before, and that Ratzky having got him there he inflicted the stabs and dragged the body to the water's edge or into the water, and from that point Fellner's body floated into the bay and finally was thrown ashore four days after on the Jersey side. It was shown that Ratzky reached home the night in question at 10 o'clock, that he was heated when he got home, and had Fellner's cane and a parcel belonging to him in his possession; that he inquired if Fellner had come, and on being answered in the negative, he told the story as above. To some in the house he said that Fellner had gone to Chicago. The prosecution argued that Ratzky was the last person with Fellner; that he knew he had wealth—a motive for murder; that Fellner's disappearance on the ferry-boat was wholy irreconcilable with Ratzky's subsequent conduct. If he had mentioned the fact that he had missed Fellner on the boat, why is not the ferryman produced? If Ratzky did not know that Fellner had been made away with, would he have had his trunk broken open next morning and taken his clothes, while making no effort to avoid the risk he ran in case of Fellner's return? Do honest men break into trunks, tell conflicting stories, try to keep dead bodies from being identified, run away, assume disguises, and change their name?

The prosecution examined witnesses on the stand who swore that under a conjunction of favorable circumstances a body thrown into the water on Brooklyn side might float to Jersey shore, But four days had elapsed from the night on which the murder was committed, according to the prosecution, until the body was found. It was not decomposed when found; on the contrary, the blood came from the wounds when probed. It is generally known that a dead body will sink when thrown into the water, and will not rise until decomposition sets in and gases are generated to float it to the surface. The theory is, that it could not have floated, and if not, it was impossible that it could have been carried by the tide from Brooklyn to the Jersey shore. No witnesses were called in behalf of Ratzky, and the jury, after a consultation of fifteen minutes, returned a verdict of guilty. By the law of 1860, a person convicted of murder in the first degree must be confined in the state prison one year, and at the expiration of that time, the governor might order the death penalty to be enforced. By throwing the *onus* of enforcing the penalty on the governor, it was anticipated that the death penalty would be virtually abolished in the state. This law was in force when the murder was committed, but was repealed in 1862; Ratzky was convicted in 1863, and Judge Brown sentenced him to be hanged under the law then in force. On appeal, a new trial was denied, and it was further held, that the court erred in sentencing Ratzky under a law not on the statute-book when the murder was committed. Ratzky was, therefore, sent back for a re-sentence, and under the law of 1860, he is now in prison at the pleasure of the governor of the state, who may execute the sentence at any time, though an effort is being made to have him reprieved.

Thomas Davenport, an eminent barrister, a gentleman of acute mind and strong understanding, swore positively to the persons of two men, whom he charged with robbing him in the open daylight. But they positively proved *an alibi*, and the men were acquitted: *Rex* v. *Wood and Brown*, 28 State Trials, p. 819; Annual Register 1784. Many of the cases where conviction was had upon evidence which was indirect or circumstantial, illustrate the assertion of Burke, that circumstantial evidence is often more reliable and positive than direct proof. Capital crimes are so rarely committed under circumstances which lead to positive unequivocal evidence of them, that presumptions are necessarily founded upon the connection with certain facts. So when the one is proved to have occurred the others are presumed to accompany them. Some presumptions of nature are so cogent and irresistible, the law adopts them as *presumptiones juris et de jure*. The question whether parties in criminal prosecutions ought to be allowed to testify in their own behalf has elicited much discussion during the past five years, and some states, Massachusetts and Maine among the number, have passed enactments allowing parties arraigned for capital offences to testify. Few know how numerous are the cases where it has subsequently been discovered that the innocent suffered instead of the guilty. One such case in an age is enough to make legislators pause before giving a vote against the abolition of capital punishment. But some say the old testament requires blood for blood. So it requires that women should be put to death for adultery, and men for doing work on the Sabbath, and children for cursing their parents; and "If an ox were to push with his horn, in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman, the ox shall be stoned, and his owner also shall be put to death." The commands given to the Jews in the old dispensation do not form the basis of any legal code in Christendom, and to select one commandment and leave the others out is manifestly absurd. It is to be hoped that, not alone from the chance of condemning a wrong party, but from general motives of humanity, and a consideration of the utter uselessness of public executions in the way of example, capital punishment will ere long be numbered among the extinct barbarisms, and other and more rational means adopted for maintaining the integrity of the law and the peace of society.—*American Law Reg.*

J. F. B.

1868 IN ENGLAND.

The year 1868 has presented us with 123 public general Acts, as its contribution to the statute roll. We have already, in our last volume, commented on the new statutes, and shall now confine ourselves to merely enumerating those which merit notice in a retrospective review of the year. Cap. 11 rectified a blunder in the Chancery Dispatch of Business Act of the previous session, by forbidding a single Lord Justice to rehear decrees made on motion. Ireland has no divorce court, and cap. 20 gives to the Irish Probate Court a jurisdiction precisely similar to that bestowed on the English Divorce Court by the Legitimacy Declaration Act of 1858; while cap. 77 has amended the law as to divorce appeals in England. Cap. 24 has abolished public executions. Cap. 37 has simplified the proof of public documents when put in evidence. Cap. 40 aims at removing certain difficulties arising in paritition suits. Cap. 54 provides a machinery for enforcing English, Irish or Scotch judgments or decreets respectively in *all* parts of the United Kingdom. Cap. 68, which seems intended as a feeler or temporary measure, aims at assisting liquidation in bankruptcy and winding-up, by facilitating distribution in specie and foreclosure. Cap. 71 makes the stride of conferring admiralty jurisdiction on certain County Courts. Cap. 72 diminishes the requirements of the law as to promissory oaths. Cap. 73 restores the Parliamentary franchise to Revenue employès. Cap. 76, following the lead of the Bills of Lading Act and of the Policies of Assurance Act of 1867, renders marine policies effectively assignable. Cap. 104, the Bankruptcy Act, 1868, is one of the most important Acts of the year, being aimed at fraudulent composition deeds; and the reader may perhaps remember the rush of deeds which took place before it came into operation, and the subsequent falling off in their number. Cap. 107 ends the compulsory payment for Church-rates for merely ecclesiastical purposes, except where levied in support of a security on the rates, or, by local Act, in lieu of tithe; and cap. 117 does what hitherto could be done only by the Ecclesiastical Commissioners—viz., turns every full incumbent, other than a rector, into the name and style of a vicar. Cap. 110 empowers the Postmaster-General to buy and work all the telegraphs. Cap. 116 makes an excellent amendment in the law of larceny and embezzlement, by extending it to a partner appropriating from the copartnership concern. Besides these we have the Railways Extension of Time Act and Regulation Act, and two Poor Law Amendment Acts, the Boundary Act, to settle the boundaries of Parliamentary constituencies, the Irish and Scotch Reform Acts, and the new Parliamentary Registration Act, which latter should, and probably will, receive some amendments. Finally, as the most important change of all, we have the Election Petitions or "Bribery" Acts, which transfers the jurisdiction over election petitions from the old committees to judges of the Common Pleas, and which though heartily to be welcomed, will not quite suppress electoral corruption. This, then, is a summary of the principal changes which 1868 have made in our statute law. We cannot say that we have discerned any improvements in the aver-

age drafting or the verbiage of the statutes, but as a set-off to this we will rejoice in the hope that something will come of Mr. Shaw Lefevre's suggesting of omitting from the public statute volumes the "Public Local" and "Hybrid" Acts. Of measures dropped in Parliament, and which probably reappear, we may instance as important, Mr. Shaw Lefevre's Married Women's Property Bill, and that of the Earl of Lichfield to amend the Law of Friendly Societies. As to the labours of the Royal and Parliamentary Commissions, the Judicature Commission, the most important of all, has not yet reported. In addition to this we have had commissions appointed to inquire into the Scotch legal system, and the naturalization and neutrality laws, while the report of the digest of law commissioners and their schems resulted in a species of competition among the junior Bar by the compilation of specimens of specimen digests, and the selection by the commissioners of the three gentlemen who are now engaged on Mortgage, Bills of Exchange and Easements.

Turning from the Legislature and the statute-book to the courts and the legal profession, the past year has brought with it very many judicial changes. The veteran Lord Brougham is gone, and with him we have lost Lord Cranworth, Lord Wensleydale, Justice Shee, also Lord Currichill; Mr. Commissioner Goulburn has been succeeded in the Bankruptcy Court by Mr. Bacon, Q.C., and we have also Mr. Edward James, Q.C., and Mr. Bullen, the eminent pleader, and tutor of almost all the younger portion of the junior Common Law Bar. In France, too, the the veteran Berryer died lately, and, by express invitation on behalf of the Paris Bar, his funeral was attended by representatives of the English Bar. Of judicial appointments we have those of Lord Cairns to the Lord Chancellor, of Lord Justices Selwyn and Giffard, of Vice-Chancellor James, Justice Hannen, the three judges appointed under the Bribery Act, viz., Sir A. Cleasby, Sir W. R. Brett, and Sir G. Hayes, —the appointment of Mr. Justice O'Hagan to the Lord Chancellorship of Ireland, and lastly, the elevation, in which the whole profession will rejoice, of Vice-Chancellor Wood, as Lord Hatherley, to the woolsack.

Of judicial decisions;—the House of Lords gave an important judgment in *Low* v. *Routledge* (16 W. R. 1081), on copyright as affecting aliens; while in *Grissell* v. *Bristowe* (17 W. R. 123) and *Coles* v. *Bristowe* (*ib.* 105) the Exchequer Chamber and the Court of Appeal in Chancery pronounced almost simultaneously upon the much-vexed liability of the stock-jobbers. The Exchequer Chamber have also reversed the ruling of the Exchequer as to infants' necessaries, in *Ryder* v. *Wombwell* (17 W. R. 167). In *Langton* v. *Waite* (16 W. R. 508), Vice-Chancellor Malins gave an important decision on stock mortgages, and in *Lloyd* v. *Banks* (*ib.* 988), Lord Cairns finally settled the law of putative notice in cases of incumbrances made by a *cestui que trust.* In *Re Overend Gurney & Co., Ex parte Swann* (*ib.* 570) Vice-Chancellor Malins decided a point singularly bare of authority on payment of a bill of exchange, "*supra* protest." Vice, Chancellor Giffard, in *Guest* v. *The Covebridge Railway Company* (17 W. R. 7), illustrated the inconvenient operation of the Registration of Judgments Acts, and in *Lyon* v. *Home* (*ib.* 824) applied the equity rules as to undue influence to the case of a spiritualist medium and an eccentric old lady. Finally, the Court of Common Pleas negatived the claims of certain ladies to the Parliamentary franchise; and the decision of the Privy Council in the *St. Alban's case* is fresh in the recollection of everyone. In several cases the Equity Courts have ordered the sale of railway land where the line was actually working, on account of unpaid purchase-money. And we must not forget the credit due to Lord Cairns for clearing off all arrears of Chancery appeals before the Long Vacation.

During the year a speech of Mr. Justice Hannen, at the dinner of the Solicitors' Benevolent Society, again revived an old discussion as to the propriety of amalgamating the two branches of the profession; from this topic the public attention has been diverted to the present system of Bar Education, a subject which ere long will very probably engross still more attention, and we hope to some purpose. The general election has given rise to some seventy or eighty petitions, on which the new tribunal will try its powers; and the disestablishment of the Irish Church remains over for the new year. Having thus run, though very briefly, through the principal legal incidents of 1868, we wish our readers and the profession a happy new year.—*Solicitors' Journal.*

CONFLICT OF LAWS—LEX LOCI CONTRACTUS—BILL DRAWN AND INDORSED IN FRANCE AND ACCEPTED IN ENGLAND.

Bradlaugh v. *De Rin,* C.P., 16 W. R. 1128.

Not long ago we noticed (12 S. J. 400) the case of *Lebel* v. *Tucker* (16 W. R. 338), where it was held that an indorsee of a bill of exchange, drawn, accepted, and payable in England, might sue the acceptor here although the indorsement was made in France, and though good by English was invalid by French Law. A somewhat similar case has come before the Court of Common Pleas in *Bradlaugh* v. *De-Rin.* There the bill was drawn in France, accepted in England, and then indorsed in France to the plaintiff. The indorsement was invalid by the French but good by the English law. The question was, could the plaintiff, claiming under this indorsement, sue the acceptor in England. The material distinction between the two cases is that in *Lebel* v. *Tucker* the bill was drawn in England, whereas in *Bradlaugh* v. *De Rin* it was drawn in France.

An older case, *Trinbey* v. *Vignier* (1 Bing. N. C. 151), decided long ago that where a bill

is accepted as well as drawn in France, the law of France must prevail, and an indorsement invalid by the French law is insufficient to give a right of action in England.

Bradlaugh v. *De Rin* is therefore an intermediate case between *Lebel* v. *Tucker* and *Trinbey* v. *Vignier*. The majority of the Court held that it fell within the principle of *Trinbey* v. *Vignier*, and that the plaintiff could not recover. M. Smith, J., differed from this view, and held that as the acceptance was an English contract, it must follow the rule of *Lebel* v. *Tucker*.

There appear to us to be much stronger reasons for holding the opinion of M. Smith, J., than that of the majority of the Court. In the first place the acceptance in England clearly creates an English contract, and it would seem on principle that this contract would create the same obligation as between the acceptor and subsequent indorsees, whether it be written upon an English or a French bill. The drawing, the acceptance, and the different endorsements upon a bill are all different and entirely distinct contracts, and may be, and not unfrequently are, governed by entirely different laws; but the fact that the drawing of the bill is a French contract ought not to affect the liability or rights upon an English acceptance.

The question might be tried In this way:—Suppose a blank acceptance given in England and afterwards properly filled up by a drawer: would it make any difference to the acceptor's liability to subsequent indorsees whether the bill were in fact drawn in France, America, or Austria? Yet, according to *Bradlaugh* v. *De Rin* the acceptor's liability might be different in each of these cases. Again, suppose a bill drawn in France and accepted in England, and then indorsed, as suggested by M. Smith, J., in his judgement, in Vienna or America? what law is then to govern the indorsement: Is it that of the place of the indorsement, or of the drawing, or of the acceptance? If the principle of *Lebel* v. *Tucker* were followed, these difficulties would not arise. In any case, an English acceptance would give rise to the same rights and liabilities without being affected by the law of the place where the bill was drawn. M. Smith, J., notices at the end of his judgement that he differs from the opinion of the other learned judges, "with less reluctance than I should otherwise feel, because it seems to me that it would place the acceptors of bills in a position of great peril and difficulty if the law of the country of the indorsement, whatever it may be, and not the law of the place of acceptance and payment, is to govern" his liabilities.

In conclusion we may notice that *Bradlaugh* v. *De Rin* is not in terms opposed to *Lebel* v. *Tucker*, the judgments of which are carefully restricted to the precise facts before them. The principle, however, of that case seems to have a much wider application.—*Solicitors' Journal.*

LIVES OF THE LORD CHANCELLORS.

Mr. Murray's list of forthcoming books opens with the announcement of "The Lives of Lord Lyndhurst and Lord Brougham, forming the concluding volume of the 'Lives of the Lord Chancellors,' by the late Lord Chancellor Campbell." The volume will be in one respect unique in the history of literature. The death of Lord Campbell preceded by about two years the death of Lord Lyndhurst, and that of Lord Brougham by about five years. It has seldom happened to the biographee, if we may coin such a term, to survive the biographer. The Xanthos of one of Mr. Browning's poems, who "died and could not write the chronicle," would scarcely have had that palliation of his literary inactivity allowed by a man of the late Lord Campbell's energy. He should have written the chronicle as that noble and learned lord wrote his lives of Lord Brougham and Lord Lyndhurst, before he died.

On one occasion in the House of Lords, Lord Lyndhurst expressed the alarm with which, on biographical considerations, the possibility of his death before that of Lord Campbell affected him, and Lord Campbell gave him a reassuring reply; and all the while Lord Campbell was composing his noble and learned friend's biography. Dr. Johnson, as is well known, said that if he thought Boswell had any idea of writing his life, he would take Boswell's. But this justifiable homicide, this man-slaughter in self defence, would have been no use against Lord Campbell. The lives were written.

It is curious to think of him returning home from the House of Peers after a sharp brush with Lord Brougham, to add a new touch to his noble friend's portrait, to give a turn to a feature and to deepen a shade, or heighten a color. Luther spitting on the portrait of Erasmus, or Dante depicting in his Inferno the likeness of his living enemies, would afford some parallell to Lord Campbell's literary labors, if Lord Campbell had not been too calm tempered and fair minded a man to misuse his pen for the gratification of personal resentment.

After all, the careers of Lord Brougham and Lord Lyndhurst were over before Lord Campbell set about writing their lives. The impartiality of history, if such a thing exists, is out of the question. By way of counterpoise, the judgment of a contemporary, actively engaged in law and in politics, upon the men and events of his own time, and a lawyer's and politician's estimate of his great rivals in law and politics, possess a degree of interest which does not always attach to the premature birth of contemporary biography.—*Daily News.*

NEW YORK PENAL CODE.

(From the Solicitor's Journal.)

The New York Penal Code comprises every branch of the criminal law of that State, together with elaborate prison regulations, but does not include criminal procedure or the law of evidence. These subjects are contained in other codes. The Penal Code consists of one thickish large octavo volume. In common with its fellow codes, it is elaborately divided and subdivided into titles, chapters, and sections, with notes appended. The sections are never more than a few lines in length, and great care has been taken to employ throughout that brief, sententious language which seems to be regarded as the necessary characteristic of a code.

We subjoin a single section (section 241) as an example: "Homicide is murder in the following cases: 1. When perpetrated without authority of law, and with a premeditated design to effect the death of the person killed, or of any other human being. 2. When perpetrated by any act criminally dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual. 3. When perpetrated, without any design to effect death, by a person engaged in the commission of a felony."

To frame a penal code is, of course, a *comparatively* easy task. The most determined opponents of innovation would probably admit that codification is so far practicable, Our formidable difficulties begin when we approach the question of a *civil* code. Still, even a penal code is no easy matter, and presents abundant obstacles to success. These obstacles Mr. Dudley Field and his colleagues have skillfully overcome. They have constructed a very fair penal code, not unworthy of the great State under whose auspices it has been produced; though hardly equal to such a masterpiece as our own Indian Code promises to be, if we may judge of it from those portions which are already complete.

The Penal Code of New York has been laid before the Legislature in a complete form, but has not yet become law. Inasmuch, however, as its provisions, with a few exceptions, are mere embodiments of the substance of the existing law, the code presents us with a very fair exposition of the *existing* criminal law of the State of New York. In fact, though not yet in force as a code, it already serves the purpose of a digest. This criminal law of New York is primarily derived from our own, and is in most respects identical with it. In some points, however, changes have been introduced. Some of these are important; others curious—at least, to English eyes. A glance at the Penal Code may, therefor, be both instructive and interesting. We premise that in all the points hereafter mentioned, except where it is otherwise stated, the Penal Code only embodies existing provisions of the law of New York. We are not in the habit of considering the Americans a very strait-laced people, yet it is remarkable how often offences against morality, to which our criminal law does not extend, are prohibited by theirs. Thus, sections 38–51 of the Penal Code forbid Sabbath-breaking; under which head almost every kind of Sunday travelling is included. Contrast this with our Sunday excursion trains! Again, seduction for the purpose of prostitution is punishable by imprisonment for five years; as also is seduction under promise of marriage, unless the parties have subsequently married. Incest is similarly punishable (section 34). Betting or gaming to the amount of twenty-five dollars or upwards is a criminal offence, punishable by fine: though enactments of this kind seem not to be very rigidly enforced. The laws against drunkenness seem to be much the same as our own, with one or two curious additions. Mr. Abel Smith's bill has been anticipated in New York. All publicans selling strong drinks on Sunday are guilty of a misdemeanor (section 728); and the same penalty attaches to persons selling or giving away spirituous liquors on an election day. Moreover, it is a criminal offence to sell drinks at any time to an habitual drunkard (section 726). What would the great publican interest in this country say to such proposals? Another provision of a similar nature is still more curious. It is competent to a wife to request any publican or other person not to sell drink to her husband; and on that mere request being made without more, the publican is prohibited from selling drink to the husband, on pain of a fine and of becoming for ever incapable of holding a license (section 726).

It is proposed by the Code Commission that the exemption of a wife from punishment on account of acts done in her husband's presence should be considerably limited. According to the code as now drawn, such presence is no excuse in the cases, not only of treason and murder, but of abortion, keeping a bawdy-house, obscene exhibitions of books or prints, and other offences.

It is instructive at the present time to observe that, according to New York law, the administering, though not the receiving, of bribes at elections is a misdemeanor (sections 61 *et. seq.*). So, also, is treating, intimidation of any kind, and even the carriage of voters to the poll.

A peculiar feature of the New York law is the introduction of what we may call *minimum* terms of imprisonment, for serious offences. Thus a person found guilty of rape may be sentenced to any term of imprisonment *exceeding* five years; but he cannot be sentenced for a *less* term. And the same in certain other cases. This is an innovation which we do not admire. However serious the offence may be, it may occasionally happen that circumstances mitigate the crime to a very large extent. And in such cases a *minimum* term of imprison-

ment might press with much hardship. It would also operate in practice as an obstacle in the way of a conviction whenever there were mitigating circumstances. On the whole, we think that the discretionary power given by our law to the judge is right in principle; and we should regret to see it exchanged for any procrustean rule whatsoever. The adulteration of food is made a misdemeanor (section 451); though we do not quite understand whether this is a repetition of an existing law, or is merely a proposal of the Code Commission.

The existence of a state of society more lawless than our own is indicated by section 455, which makes it a misdemeanor to carry concealed weapons, while the mere manufacture or sale of "slung shot" is in itself a criminal offence (section 453). Section 469 contains a somewhat notable provision. It is thereby made a misdemeanor to make or publish any false statement or rumor in order to rig the market. Another stringent enactment is contained in section 520, which provides that every person making a false statement or return, whether written or oral, as the basis of taxation, shall be liable to the penalties of a misdemeanor.

The New York Code contains a provision directed against birdnesting; this applies, however, only to birdnesting in cemeteries (section 702); but with regard to this particular species of sport, its provisions are exceedingly precise. Not only is birdnesting, or the catching or killing of birds in cemeteries prohibited, but it is a criminal offence to buy or sell any birds so captured. It seems from a survey of this Code, that the New York criminal law is, or is capable of being, more stringent than our own; it certainly descends somewhat further into detail.

A letter appeared in the money article of the *Times* of last Tuesday, which raises a question as to the effect of the indorsement of a cheque by procuration, and is of considerable importance to bankers. It is well known that a forged indorsement upon a bill or cheque usually conveys no title whatever even to a *boná fide* indorsee for value. If therefore a banker pays a forged cheque he cannot debit his customers account with such payment, but must bear the loss himself, unless it was caused by the negligence of the customer. It is, however, enacted by section 19 of 16 & 17 Vict. c. 59, that "any draft.... upon a banker payable to order on demand which.... *shall purport to be indorsed by the person to whom the same shall be drawn payable*," shall be a sufficient authority to pay the amount, and it shall not be necessary for the banker to prove the indorsement "was made by or under the direction or authority of the person to whom the draft was made payable."

Some doubt has been felt as to whether the section applies to cheques indorsed by procuration. That is, whether a forged indorsement by A. as agent to B., or by procuration in any other form, would protect a banker forging the cheque. It is clear that if the payee's name is forged the banker is safe, but is he less so if the forger uses his own name stating it to be as agent for the payee?

There is, we believe, no reported case upon this section, and as far as we know this question has never been judicially considered. The letter in the *Times* which we mentioned contains a statement of a case (apparently not reported anywhere) where Martin, B., ruled, it would seem at Nisi Prius, that the bankers were protected in a case such as we have suggested.

We imagine that there are not many persons who are aware of the case which, if the decision was stated, ought to be more generally known.—*Solicitors' Journal.*

ONTARIO REPORTS.

COMMON LAW CHAMBERS

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law, Reporter to the Court.*)

Strachan v. Howcutt.

Law Reform Act 1868, sec. 17.

A summons to refer a Superior Court case for trial to a County Court came on to be heard on 1st February, 1869, (on which day the Law Reform Act, 1868, came into force).

Held, that the plaintiff could amend his issue and proceed under that Act without any order. The summons was discharged, the parties agreeing as to costs.

Quære, as to authority of Judge to order costs to plaintiff.

[Chambers, February 1, 1869.]

On 1st February, *Kennedy* moved absolute a summons to refer this case to the Judge of a County Court for trial.

J. B. Read, shewed cause:

This application is unnecessary as section 17 of the Law Reform last, 1868, says that "Al issues of fact and assessments of damages in the Superior Courts of Common Law relating to debt, covenant and contract, where the amount is liquidated or ascertained by the signature of the defendant, may be tried and assessed in the County Court of the County where the venue is laid, if the plaintiff desire it, unless a Judge of such Superior Court shall otherwise order and upon such terms as he may deem meet, in which case, an entry shall be made in the issue and subsequent proceedings in words or to the effect of Form A. in the schedule to this Act, in place of the *venire facias*, &c."

The plaintiff can proceed under that Act, and the summons should be discharged.

Kennedy contra. Issue was joined in this case and the summons granted, before the Act referred to came into force and it should not be held to apply retrospectively. The provisions of sec. 18 would seem to show that it is not intended so to operate. In any case the plaintiff should have the costs up to this time.

Adam Wilson, J.—There is no necessity for this order. When procedure alone is concerned the rule of interpretation of statutes, which might

interfere with the vested rights, does not apply. The plaintiff can under the last Act, go to trial before the County Court Judge withoot any order and he may amend his issue in accordance therewith.

I doubt if I have any right to give costs to the plaintiff.

Summons discharged, the defendant consenting to let the order go with ten shillings costs to plaintiff.

INSOLVENCY CASES.

(In the Co. Court of Prince Edward & Court of Chancery.)

In the Matter of John Thomas, an Insolvent.

Upon an application for discharge of Insolvent under sub-sec. 10 of sec. 9 of Act of 1864, a creditor objected that it did not appear that Insolvent had any estate, and therefore, did not come within provisions of the Act, and also, that Assignee had not given the notice mentioned in sec. 10, sub-sec. 1 of same Act.

Held, on appeal to Court of Chancery, reversing decision of the Judge of the County Court, that the discharge of insolvent should not have been refused on above grounds.

[Chancery, June 8th, Sept. 9th, 16th, 1868.]

This insolvent made a voluntary assignment in March, 1867, to official assignee of County of Prince Edward a few days after all his property had been sold by the Sheriff. At the expiration of two months the assignee applied to the insolvent for funds to pay for advertising meeting of creditors for examination of the insolvent under sec. 10, sub-sec. 1 of Act of 1864. The insolvent replied that he had no money to give for the purpose, and the meeting was not called.

At the expiration of a year from date of assignment, insolvent not having obtained from the required proportion of the creditors a consent to his discharge, or the execution of a deed of composition and discharge, applied to the Judge of the County Court of Prince Edward for a discharge, having given notice of such application by advertisement as required by sub-sec. 10 of sec. 9 of Act of 1864.

Allison, for the only opposing creditors, objected, 1st, that it did not appear that the insolvent had any estate to assign, and therefore did not come within the provisions of the Act; 2nd, that the notice required by sec. 10, sub-sec. 1, had not been given by the assignee.

Ollard for insolvent, contended that the act applied to all persons unable to meet their engagement as mentioned in sec. 2 of the act, and it was not necessary that insolvent should be possessed of any estate at the time of assignment, otherwise a person in insolvent's position with several writs of executions hanging over him, could never obtain the benefit of the act. As to the second objection, that it was a question between creditors and asignee: that creditors who had notice of his assignment could at any time before discharge, and upon application for discharge, of which they also had notice, examine insolvent if they desired to do so: that insolvent could not be prejudiced by the omission or neglect of the assignee who might possibly be one of the principal creditors, and so, naturally opposed to insolvent's being discharged.

The learned judge of the County Court held that both objections were good, and refused the discharge. Upon this the insolvent applied for leave to appeal, which was granted by Mr. Justice Adam Wilson. The case was subsequently heard in the Court of Chancery, by way of petition.

J. C. Hamilton, for the appellant, argued that the only grounds which any creditor could take on the application for discharge under section nine, sub-section ten, were those set forth in preceding sub-section six, which does not include the grounds acted on by the learned Judge. As to the second reason of the Judge, he argued that could not be valid under our law, which expressly applies in Ontario to all persons, whether traders or not, and that, consequently the decisions under the English bankruptcy law, prior to 1862, could not apply. It is stated that this was expressly so held by the late Judge of the County of York (The Hon. S. B. Harrison), in the case of Robert H. Brett, an Insolvent.

The following anthorities were also cited: *Re Holt* and *Gray*, 13 Grant, 568; *Ex parte Glass* and *Elliott*; *Re Boswell*, 6 L. T. Rep. N. S. 407; *Re Parr*, 17 U. C. C. P. 621; *Ex parte Mitchell*, 1 DeGex Bankruptcy Cases, 257; *Re Williams*, 9 L. T. N. S. 358.

VanKoughnet, C.—I think the County Court Judge wrong in the reasons assigned by his order refusing the certificate of discharge. The assignee's neglect of duty is no reason for depriving the debtor of his discharge. Any of the creditors could have applied to the Assignee, or to the Judge, to compel the Assignee to call a meeting for the examination of the Insolvent; and, I apprehend, this can yet be done, if the Assignee or Judge thinks it proper.

This want of assets does not appear to me to be, in itself, a sufficient reason for refusing the discharge.

Order of Judge reversed, and matter remitted to him to deal with in accordance herewith.*

Hillborn v. Mills et al.

(In the County Court of the County of Elgin—Before His Honor Judge Hughes.)

Insolvency—Practice—Service of Papers—Irregularity, who may object to—Setting aside proceedings—Affirmation by Quaker—Taken before plaintiff's Attorney—Plaintiff, a surety and joint maker, taking up a note before due, so as to take proceedings in insolvency against joint maker.

[St. Thomas, 6th October, 1868.]

The plaintiff was surety for the defendants upon a promissory note given to McPherson & Co., for $195, which was not yet payable. The defendants owed the plaintiff a debt of $50, and in order to make up a sufficient sum whereon to found an attachment against the defendants, who had absconded, the plaintiff paid the note to McPherson & Co., and then made affirmation to his debt amounting in the aggregate to a sufficient sum within the meaning of the 7th sub-section of the 3rd section. The plaintiff was a Quaker, and his affirmation commenced as follows:—"I, William Dillon Hillborn, of the township of Yarmouth, &c., do solemnly, sincerely and truly declare and affirm that I am one of the society called Quakers. I am the plaintiff in this cause. The defendants are indebted to me in a sum of $385, currency, which sum is made up as follows," &c. Then followed the detail, and the particular note of McPherson & Co. is thus de-

* The case on appeal is reported in 15 U. C. Chan. Rep. 196.—Eds. L. J.

scribed: "A promissory note for $195, including interest, dated 24th April last past, *and payable on the 1st November next*, to McPherson, Glasgow & Co., or order, which said note I signed as a joint and several maker with the said defendants, but only as a surety for them, the amount of which note I have paid to the said McPherson, Glasgow & Co.," &c., &c.

The attachment issued in the usual way to the sheriff, who seized all the property of the defendants, which was already in the hands of the bailiff of the Division Court, under seizure upon executions issued upon judgments in that court against the defendants, at the suit of one Backhouse and others, judgment creditors.

Mr. Ellis, attorney for Jugurtha Backhouse, one of the judgment creditors, presented a petition to the judge of the court, setting forth, 1st, his judgment and execution; 2nd, that the affidavits upon which the fiat for the attachment was issued were insufficient, and the proceedings thereon irregular, because, 1st, the plaintiff, being a Quaker, had not complied with the 1st section of the Con. Stat. of U. C., cap. 32, in first affirming that he was a Quaker, and, 2ndly, in affirming to the contents of the affirmation in the form of words prescribed by the statute: "I, A. B., do solemnly, sincerely and truly declare and affirm that," &c.; and that, in the absence of observing the form prescribed, the affirmation could not have the force and effect under the Insolvent Act of an affidavit, as required in the 7th sub-section of the 3rd section; and because, 2nd, the affirmation, such as it was, was sworn before the plaintiff's attorney; and because, 3rd, the affidavits of the other witnesses, proving the fact of defendants' insolvency, bore date before the plaintiff's so-called affirmation; and because, 4th, there was no sufficient debt to constitute plaintiff a creditor, so as to justify the adoption of these proceedings, by which defendants' estate was sought to be placed in compulsory liquidation. There were other objections taken to the proceedings, which it is not necessary to enumerate.

A summons was granted in the usual way for plaintiff or his attorney to show cause why the proceedings should not be set aside. The summons and petition were served on Saturday, the 10th October, returnable on the next Tuesday forenoon, the 13th October.

On Tuesday, the 13th October, Mr. McLean, attorney for plaintiff, attended to show cause, and objected, 1st, that the service of summons was insufficient under section 11, sub-section 9, of the Insolvent Act, which requires one clear day's notice, and cited the case of *Leffur* v. *Pilcher*, 1 Dow. N. S. 767; *Francis* v. *Beach*, 9 U. C. L. J., 266. 2nd. That the copy served was not a true copy. 3rd. That the petitioner here cannot, and that none but defendants can object to any irregularity in the proceedings, and cited section 3, sub-sections 3 and 4, and Arch. Prac. 12th edition, 1472; *Parker* v. *Howell*, 7 U. C. L. J., 209. 4th. That the informality or insufficiency complained of should be clearly set out on the affidavits, petition and summons, and cited section 11, sub-section 13, of the Insolvent Act, and Arch. Prac. 12 ed. 1476 and 1475. 5th. That the mode whereby a creditor is to obtain rights under his execution are provided for by the Insolvency amendment Act of 1865, section 16, by petition, signified to the assignee and others interested. And lastly, as to the debt which constituted the plaintiff a creditor, in so far as the note of McPherson & Glasgow was concerned, that there is an implied promise to pay the plaintiff on the part of the defendants, so soon as an act of insolvency was committed.

Ellis, in reply, insisted that there was an implied authority for the petitioner to move to set aside the proceedings under sub-section 10 of section 3, the words "*any petition*," &c., also under the amended act, 1865, section 16, and cited *Parker* v. *McCrae*, 7 U. C. C. P. 124; and as to the liability of defendants for money paid by plaintiff, as their surety, cited *Andrew* v. *Hancock*, 5 E. C. L. R. 490; *Spragge* v. *Hammond*, 6 E. C. L. R. 37; *Gibson* v. *Bruce*, 44 E. C. L. R. 214; *Howlby* v. *Bell*, 54 E. C. L. R. 284.

On the same day the following judgment was delivered by

Hughes, Co. J.—As to the service of the petition upon plaintiff's attorney, I consider it was quite sufficient to give the plaintiff one clear day's notice of it, to serve it as it was alleged to have been served on the evening of Saturday, returnable on Tuesday morning, within the meaning of the 9th sub-section of the 11th section, in the absence of any rule of court requiring papers in insolvency to be served before a particular hour. I do not know, and it was not shown, at what hour the petition and summons were served, nor is it shown by any affidavit that the copy served was not a true copy. The affidavit put in for the petitioner shews that Mr. Charles Ermatinger served them on Saturday, the 10th October, instant. Mr. McLean pointed out, in the copy of the petition he produced, some trifling and unimportant verbal defects and clerical errors, (just such as a clerk recently articled, and unaccustomed to copy legal documents, often makes,) but which in this case were not calculated to mislead; it was a sufficiently perfected copy to enable the plaintiff's attorney fully to understand what the purport of the petition and application were. I therefore overrule that objection, for he received all the notice that was necessary.

As to the 3rd objection to the petition, I have met with some difficulty in satisfying myself, in view of there being no provision authorising the setting aside proceedings for irregularity at the instance of any other than the defendant. I know that it was at one time doubted whether a judge of a District Court, in vacation, had authority to set aside an interlocutory judgment, or give time to plead, because the District Court Act then existing, which constituted the court, and its practice did not specially prescribe such authority, and therefore the defect was subsequently supplied by the passing of 9th Vic. cap. 2, of the statutes of Canada. The judge of an inferior court is always held by the superior courts to be confined to the powers and jurisdiction conferred upon him by statute.

There is no doubt whatever that were this a proceeding which I could amend, I have full power conferred upon me by the 14th sub-section of the 11th section of the Act of 1864. On

the other hand, it has been urged that the proceeding is so manifestly without foundation, because there is not a sufficient compliance with the requirements of the 7th sub-section of section 3 (Act 1864), that any court must be held to have such an inherent jurisdiction as to require the law and practice of the court to be substantially complied with.

The judge of an inferior court cannot grant a new trial on the merits unless the statute gives him the power to do so: 1 *Mosely on Inf. Courts*, 283, but it has been held that if a judgment had been obtained by a fraudulent surprise, the judge may grant a new trial, *Bayley* v. *Bourne*, 1 Str. 392; so it has been held that the judge of an inferior court may grant a new trial for matters of irregularity, as where proceedings have been contrary to the practice and rules of the court; *Ib.*; and *vide Jewell* v. *Hill*, 1 Str. 499.

I find it laid down in Archbold's Bankruptcy Practice, 10 Ed. 378, for certain irregularities the court will annul the fiat, as for a misdescription of a place of residence of the petitioning creditor, but this was done by the Court of Review in Bankruptcy (see same Vol., p. 376). There is no Court of Review for Insolvency proceedings here, (as there used to be under the Bankrupt Act,) excepting in the way of an appeal from the decision of the judge, so that unless the judge has the power to set aside proceedings for irregularity it cannot be done at all, no matter how irregular they may be.

The strict wording of the 12th sub-section of the 3rd section gives no more right to the defendant than to this petitioner to move the judge, nor power to the judge to set aside proceedings for irregularity; the sole ground upon which defendant can petition to have the proceedings set aside is on the ground that his estate has not become subject to compulsory liquidation, which involves merely in strictness an enquiry upon the merits.

I apprehend, however, that the power to control and enforce the practice of the court must exist somewhere, and must be primarily in the judge, subject to an appeal: that is what I must, therefore, hold at present, until I am better advised, and that the 7th section of the amended Act of 1865, with reference to the "*contesting of proceedings*," applies to the different modes by which proceedings in Insolvency might be contested, as they are in England, by actions of trespass and trover, and the like, notwithstanding proceedings of adjudication in the Court of Bankruptcy there—and which, but for that 7th section, might be instituted here for the same purpose. Here, that section makes all such proceedings conclusive for all purposes after a certain time, which, to my mind, argues in favor of, instead of against the application of this petitioner, and of all such applications by those who may be interested in the proceedings or in the defendants' estate.

In England a creditor may pray to annul a fiat, even although privy to the very act on which he grounds his objection to the fiat, (see Arch. Prac. in Bank. 394,) or any party not a creditor who can shew he sustains a grievance from the fiat, as a trustee under a deed which the fiat will overreach (idem 395); even a stranger summoned to give evidence before the commissioner, can petition to annul the fiat, and the plaintiff in an action to which an attorney (the bankrupt) had been attached for not putting in bail in pursuance of his underta ing, had a sufficient interest to annul the fiat (idem 395); an adjudication must be supported by all the legal requisites (see *ex parte Brown*, 1 D. M. & G. 456; 1 Doria & Macrae, Bankruptcy, 322,) so that on the whole I think the petitioner here, who swears he is, and whose petition sets forth how he is a creditor, has in this court a sufficient interest to give him a *locus standi* upon an application of this nature, notwithstanding the decisions of the judges at Common Law in the cases cited, and of *Wilson* v. *Wilson*, 2 Practice Rep. 374.

Then it was further objected that the informality and insufficiency complained of should have been clearly set out in the petition, or affidavit, or summons. This no doubt would be a sufficient objection in an ordinary court of law, with an established set of rules or practice; but in the absence of all such, and with a summons referring to a petition and papers filed and served, specially setting forth that plaintiff's affirmation was informal and insufficient in law in several respects, I think it is all that any court or rules of practice could reasonably require.

The first of these objections is that the plaintiff, a Quaker, did not affirm as required by law. The 1st section of the C. S. of U. C, cap. 32, is a permissive enactment for the *relief and benefit of particular sects*, and after having first made the declaration presented as to their membership of the particular society, provides that they "may make the affirmation or declaration in the form therein following," that is to say: "I, A. B., do solemnly, sincerely and truly declare and affirm," &c. Both declarations are requisite, and the making of the one and dispensing with the other does not so comply with the statute as to give the affirmation of such privileged persons as the plaintiff the same force and effect as an oath taken in the usual form. In Upper Canada the creditor, under the 7th sub-section of the 3rd section, must, by "*affidavit*" of himself or any other individual, show, to the satisfaction of the judge, that he is a creditor of the defendants, &c. There were three ways in which he might have acted: either by swearing to the necessary affidavit himself, or getting some one else to act as his agent and make the affidavit, or to have complied strictly with the 1st section of the Con. Stat. of U. C., cap. 32, whereby "*the affirmation or declaration would have the same force and effect, to all intents and purposes, in all courts of law and equity, and all other places, as an oath taken in the usual form.*" He did neither; and in the absence of either I think the attachment, and all proceedings under it, irregular, and must be set aside.

As to the objection that the plaintiff's affirmation was made before Mr. McLean, the plaintiff's attorney prosecuting the attachment, the case of *Ex parte Coldwell*, 3 DeG. & S., 664, cited in 1 Doria & McRae, 322, shews that it is invalid and unsustainable, because the mere circumstance of the affidavit filed in support of the petition for adjudication being sworn before a Master Extraordinary in Chancery in England,

who was solicitor to the petitioning creditor, was held to be not sufficient for annulling the adjudication; and in the absence of any rule of practice I must hold the 25th section of the amendment Act of 1865 has been sufficiently complied with here.

I do not think it necessary, at present, to go into the other grounds taken on the petition, as to the existence of a sufficient debt whereon to ground a fiat for attachment so as to constitute the plaintiff a creditor of the defendants, because it would take up more time than I have at my disposal. I will, however, say that I have very strong doubts as to whether a person who is a surety, as this plaintiff was, can legally go and pay up a promissory note before it is due, for the purpose of adopting proceedings in insolvency, and claim to be a creditor of the defendant, as this plaintiff has done. He might, perhaps, upon a regular transfer of a negotiable note, on which he is endorser, but I doubt if he could where he is merely the joint maker with the defendants, as their surety. (See *Ex parte Brown*, 1 D. M. & G., 461, and *Ex parte Greenstock*, DeGex., 230).

It is therefore ordered that the judge's fiat and the writ of attachment be set aside and quashed, and that all proceedings under it be also set aside and annulled, with costs.

ENGLISH REPORTS.

CHANCERY.

THEXTON V. EDMONDSTON.

Practice—15 & 16 Vict. c. 86, s. 36—Discovery of material witness after evidence closed.

A specific legatee of chattels, plaintiff in an administration suit, discovered, after the evidence had been closed in the suit, a witness who could give material evidence that the testator at the time of his death possessed certain articles within the terms of the specific bequest, the existence of which was denied by the defendants.

Held, that the evidence was not admissible.

Summary of the classes of cases in which the Court allows further evidence to be received.

[M. R., March 12, 1868, 16 W. R. 833.]

This was an application under section 38 of the Act 15 & 16 Vict. c. 85, for leave to put in further evidence after the time fixed for closing the evidence had expired. The suit was one for administration, the plaintiff being a residuary legatee of certain personal chattels, and the evidence had been closed on the 11th January.

The plaintiff's solicitor now deposed that on the 10th February one of the parties interested in the estate to be administered in the suit called on him to inquire when the assets would be distributed, and in course of conversation gave him the names of persons who it was believed would be able to give important evidence that the testator in the pleadings mentioned possessed at time of his death valuable articles of silver, plate, and other jewellery which had not been delivered over to the plaintiff as directed by the testator's will, and which the defendant denied the testator to have possessed at the time of his death; that since the 10th February he had applied to one of the parties named who could give most material and important evidence on the question, and had also given him information which would, as he believed, lead to his obtaining a further affidavit from another witness on the same subject, and that he had no means of knowing the aforesaid evidence was obtainable until the said 10th February, nor, as he verily believed, had the plaintiff, or his country solicitor, until informed by the deponent, and that in his judgment and belief it was material and necessary in support of the plaintiff's case, on the above question, that he should be permitted to give further evidence of the plate and jewellery possessed by the testator at the time of his death.

W. Pearson, in support of the application, referred to *Watson* v. *Cleaver*, 2 W. R. 265, 20 Beav. 137; *Douglas* v. *Archbutt*, 5 W. R. 393, 23 Beav. 293; *Scott* v. *The Corporation of Liverpool*, 5 W. R. 669, D. & J. 369; *Boyse* v. *Colclough*, 3 W. R 8, 1 K. & J. 127; and *Hope* v. *Threlfall*, 2 W. R. 4, 1 Sm. & G. App. 21. In an unreported case *Price* v. *Bostock* (V. C. W., 27th May, 1858), an extension of time for one month was given to the defendant for filing affidavits in reply, the plaintiff having given evidence of material facts not averred in his bill; and in *Smith* v. *Meadows* (V. C. K., 9th June, 1864), also unreported, evidence was allowed to be given by the plaintiff of acts showing that if the defendant had not executed a deed in question she was at all events bound by it. Here the defendants deny the existence of certain chattels. We, after the evidence has been closed, discover a person who knows material facts about them, and from whom we had no reason to suspect any evidence could have been obtained.

North, for the defendants, was not called on.

Lord ROMILLY, M. R.—I cannot grant this application. The only grounds on which I have allowed evidence in a cause to be given after the time for closing the evidence had expired are, (1) where one of the parties swears that he has not seen the evidence on the other side, and comes within a reasonable time; (2) where, on the evidence, a new issue arises, not raised by the pleadings, but very material to the question to be decided, the point being, however, reserved whether the further evidence can, in such a case, be introduced; (3) where the character of a witness is impugned, when the witness is allowed to meet the charge; and (4) where, after the evidence has been closed, new facts have happened. The present application cannot be supported upon any of these grounds, and must be dismissed with costs.

QUEEN'S BENCH.

ROWE V. HOPWOOD.

Infant, contract with—Ratification by, after coming of age—9 Geo. IV., c. 14, s. 5.

Goods were supplied to an infant who, after he came of age, signed, at the foot of an account containing the items and prices, the following memorandum:—"I certify that this account is correct and satisfactory."

Held, that this was no more than an admission of the correctness of the items and charges, and did not amount to a ratification, on which the defendant could be charged under 9 Geo. IV., c. 14, s. 5.

[W. R., Nov. 14, 1868.]

This was an action tried at the last assizes at Cambridge, before the Lord Chief Justice. The action was for goods sold and delivered, being wine supplied to the defendant. There was a

plea of infancy, and a replication that the defendant ratified and confirmed the debt after he became of age.

It was proved in evidence that after the defendant attained twenty-one years the plaintiff took an account to him which contained the items and prices, and on which was already written, "Particulars of an account to the end of 1867; I certify that this account is correct and satisfactory." This the defendant signed; and in this it was alleged the ratification consisted.

The learned judge directed the jury that this was insufficient, and that they should find a verdict for the defendant, but reserved leave to the plaintiff to move to set aside the nonsuit. The statute 9 Geo. IV., c. 14, s. 5, enacts that "no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon ratification after full age of any promise or simple contract made during infancy, unless such promise or any ratification shall be made by some writing signed by the party to be charged therewith."

O'Malley, Q.C., now moved accordingly. He argued that there was a sufficient recognition, or at least evidence of an account stated. The words used need not be such that a promise can be implied from them, but it is sufficient that there should be an acknowledgment of the debt. He cited *Harris* v. *Wall*, 1 Ex. 122; *Hartley* v. *Wharton*, 11 Ad. & E. 934.

Cockburn, J.—I think there should be no rule. The statute requires that any recognition of a debt incurred by a person under age, made after he has arrived at full age, must be in writing if any action is to be maintained on it, and therefore the effect of such written document is a question for the court, and not for the jury. There must be, in my opinion, a recognition of the debt binding on the debtor. In the present case there was an account submitted to the defendant, and when we look at the supposed recognition, we find it is only an admission that the items are properly set out, and that the sums charged for them are satisfactory in amount. This is not sufficient. We ought to have a recognition of the account as a subsisting liability. I do not think the terms here used amount to that, and therefore there should be no rule.

Lush, Hannen and Hayes, JJ., concurred.

Rule refused.

COMMON PLEAS.

Worssam v. Vandenbrande.

If there be adverse possession of land, that adverse possession will be interrupted (so as to cause the Statute of Limitations to cease to run as against the true owner) by the true owner entering upon the land, asserting his rights, and entirely removing that which constituted the possession of the tortious possessor. And as a matter of law it is unnecessary for the true owner to go on and show that he continued in possession.

[W. R., Nov. 21, 1868.]

This was an action of ejectment, tried on June 26th, before Keating, J., at the sittings in Middlesex, after last term. There was a verdict for the plaintiff.

To-day the court was moved for a rule to show cause why the verdict should not be entered for the defendants, on the ground that there was no evidence at the trial to go to the jury in favor of the plaintiff.

In this case the plaintiffs showed a paper title, and the defendant claimed, under the Statute of Limitations, as having had continuous adverse possession for more than twenty years.

The paper title of the plaintiff was not disputed, but the continuous possession of the defendant for twenty years was denied by the plaintiffs. The interruption on which they relied took place between nineteen and twenty years before the writ in the present action was issued. Upon that occasion those whom the present plaintiffs represent went to the land, and with implements which they had brought broke down the fence which enclosed the land, and erected a post on the close, to which they affixed a board, on which was painted a statement that any one who desired to take a lease of the land should apply to those on whose behalf the entrance had thus been made. At the time this was done the close was undoubtedly in the possession of those under whom the defendant claimed. But that possession was evinced solely by the fence.

The plaintiffs' party remained on the land three quarters of an hour. Three days after this the post and board were gone, but there was no evidence to show who had removed them, nor was there evidence of any subsequent dealing with the land by act thereupon by any one for the next five years. After that period the possession of the defendant was evinced by acts of the most unequivocal kind—namely, by the erection of buildings.

The sole question raised to-day was whether the entry just described was a mere entry, or was such a dealing with the land as amounted to taking possession so as to interrupt the adverse possession of the defendant.

Sir Robert Collier, and *Philbrick*, for the defendant. The question turns on 3 & 4 Wm. IV., c. 27, ss. 2, 3, 10. Though the plaintiffs made an entry in 1848, yet they never were in genuine possession. No notice seems to have been given to the defendant, and the entry was made behind his back, nor does it appear that the entry was made under professional advice. There was no evidence to show that those who pulled down the fence knew who put it up. *Doe d. Baker* v. *Coombes*, 9 C. B. 714, is a stronger case than the present. But the acts there were held not to amount to possession. The presumption from the defendant's subsequent dealing with the land is that he took possession immediately after the entry in 1848. Though no subsequent act on the land was proved earlier than 1853, yet the defendant *let* the land before that year. [Bovill, C.J.—Yes, but that is only paper against paper. What you have to make out is a title by adverse possession.] *R.* v. *The Inhabitants of Wooburn*, 10 B. & C. 846, is in my favour also.

Bovill, C.J.—The verdict must stand. The commencement of the defendant's title was in 1845. A fence is put up. This is the sole thing done on the land then. If this had continued, the title of the defendant would have been good. In 1848 the fence is destroyed by the true owner

partially, as some say, wholly as others say. But now we must hold that it was wholly destroyed, for there was evidence to go to the jury that it was wholly destroyed. The post and the board are erected. Now is this taking possession or is it a mere entry? There had been no adverse possession but the fence. When that was pulled down I cannot see that anything remained to make the possession of the defendant. The case of the plaintiff does not rest wholly on the pulling down the fence, and then erecting the post, but also on this, that there is no evidence from 1848 to 1853 of any act on the land hostile to the title of the true owner. *Doe* v. *Coombes* seems to me to support the present view. The party was there in possession, and what was held there was that what was done was no divesting of possession. In the case of *R.* v. *The Inhabitants of Wooburn* there was a hut on the land, and those on the land do not seem to have been turned off.

Byles, J., concurred, and cited Sir Edward Sugden's commentary on section 10 of 3 & 4 Wm. IV., c. 27.

Keating and Brett, JJ., concurred.

Rule refused.

Godwin v. Brind and others.

Principal and agent—Power "to treat" for sale of land.

A. and B. advertised an estate for sale. The advertisement stated "to treat and view the property applications are to be made to A. or B."

Held, that this did not give A. authority to sell the estate, so as to bind B., without his concurrence.

[C. P., 17 W. R. 29.]

This was an action for breach of contract, tried before Mellor, J., at Salisbury, when the plaintiff was nonsuited on his opening.

The facts stated were that the plaintiff, who was a brewer in Wiltshire, saw in a newspaper an advertisement of an estate for sale; and, in consequence of seeing this advertisement, he went to view the estate, and entered into an agreement to purchase it for about £10,000. The advertisement, which it was admitted was inserted in the newspapers by authority of all the defendants in this action, was, as far as material, as follows:—"To treat, and view the property, applications are to be made to Mr. George Brind, or to Mr. Walter Brind, on the premises; also to Mr. John Brind, of, &c.; or to Mr. Benjamin Francis, of, &c." The defendants were the four persons mentioned in this advertisement, and they were joint owners of the estate.

The contract with the plaintiff was signed by Mr. Francis alone; but the other defendants repudiated the bargain, and sold the estate to another purchaser at a slightly increased price.

H. T. Cole, Q. C., moved for a new trial, on the ground of misdirection, and contended that by the terms of the advertisement any one of the defendants had power to bind the rest of them.

Bovill, C. J.—I think my brother Mellor construed the advertisement rightly. It authorised persons to view and enter into negotiations with any of these four defendants, but it did not authorise any one of the defendants to conclude the important matter of sale.

Byles, J.—The words are "to treat and view." Who, then, is to view? The intending purchaser. And so it comes to this, "you, the intending purchaser, may treat with any one of the four."

Keating and Brett, JJ., concurred.

Rule refused.

UNITED STATES REPORTS.

Neel's Administrator v. Neel.

Where a family relationship exists, as, for instance, between father and son or grandson, or uncle and nephew, or even more remotely, no implied promise to pay for services rendered in such relation between the parties, arises.

In such cases a contract or express promise to pay for services, must be established in order to enable the claimant to recover, and the evidence ought to be clear and satisfactory, otherwise the services will be referred to the relationship.

But where there is evidence of a contract, if it be unwritten, it is always for the jury to say whether it establishes the claim of the plaintiff or not.

If the testimony show that the family relation once existing has been changed to a contract to pay wages, the claimant will be entitled to recover: and if no sum be fixed he may recover as per a *quantum meruit.*

Where an amendment to the *narr.* would have been allowed on trial, if objection had been made, after verdict it will be treated as amended in accordance with the evidence and trial.

Error to District Court of Allegheny County.

Woods for plaintiff in error.

Large contra.

The opinion of the court was delivered at Pittsburgh, Nov. 16, 1868, by

Thompson, C. J.—There is a well defined line of decision in this Commonwealth, to the effect that where a family relationship exists, for instance, as between father and son, or grandson, or uncle and nephew, or even more remotely, no implied promise to pay for services rendered in such relation between the parties arises. In such cases a contract, or express promise to pay for services, must be established in order to enable the claimant to recover, and the evidence ought to be clear and satisfactory, otherwise the services will be referred to the relationship. But when there is evidence of a contract, if it be unwritten, it is always for the jury to say whether it establishes the claim of the plaintiff or not.

In the case in hand, there was evidence of a promise by the intestate to pay wages to the plaintiff if he would remain and manage the farm for him. No such contract existed when he first went to live with his uncle, but having grown to man's estate he talked of leaving, as he had a perfect right to do, when, it is alleged, a promise to pay was made if he would remain, and it is in full proof that he remained and faithfully attended to the farm, as well as other business of the intestate. One witness testifies that in 1856, the intestate represented to him that the plaintiff talked of leaving him, and requested the witness, the plaintiff's brother, to speak to him and prevail on him to remain. That he did so, and that he remained. The same witness further said, that in 1857 General Neel promised to pay him wages, but did not say what he would give. Another witness testified that in 1864 she heard her grandfather, the intestate, tell the plaintiff he would give him $1,500 a-year if he would remain on the farm with him. He did remain, although he had been then talking of leaving. Was this a promise to pay wages, or was it a testamentary

promise? There was nothing to give any plausibility to the idea that it was the latter. The learned judge therefore left it to the jury to say from the testimony whether there was a promise to pay wages. He fully admitted in his charge the defendant's position, that if the plaintiff occupied a mere family relation on the farm, no implied promise would arise to entitle him to recover. He also affirmed the plaintiff's position, that if the testimony showed that the family relation once existing had been changed to a contract to pay wages, the plaintiff would be entitled to recover. He could not do otherwise in the face of the testimony, although it was none of the strongest. Yet it was hardly possible to doubt that the original relation was changed, at least after 1857, taking the testimony to be credible, and certainly after the promises to the same effect in 1864, it was more easily to be credited.

No sum was fixed and agreed upon in any of these conversations when promises were made, if made at all. It therefore entitled the plaintiff to recover as for a *quantum meruit*, if the testimony sustained it. And this he would be entitled to recover for services for six years anterior to the bringing of the suit; and so the judge submitted the case to the jury. As already said, we see not how the judge, without error, could have done otherwise. If the jury have given the plaintiff a large verdict, having found a promise to pay, we cannot correct it; nor could the court below, unless it considered it excessive. We see no error thus far—nor anything to complain of in the answer of the court to the defendant's third point.

We now recur to the first assignment of error, namely: That under the pleadings and issue, no verdict or judgment could be rendered for the plaintiff.

The exception results from a mere slip of the pleader in stating the promise to have been that of the administrator instead of the intestate. The case was tried throughout as against the estate of the latter. Had the objection been made at the trial, an amendment would have been allowed at once. After verdict we will treat the *narr.* as amended in accordance with the evidence and trial. Seeing nothing wrong in the record, the judgment is affirmed.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR AUGUST, SEPTEMBER AND OCTOBER, 1868.

(Continued from Vol. IV. page 297.)

Abatement—*See* Trust.

Accord and Satisfaction—*See* Action, 2.

Action.

1. Declaration that defendant wrongfully, negligently, and improperly hung a chandelier in a public-house, knowing that the plaintiff and others were likely to be therein and under the chandelier, and that the chandelier, unless properly hung, was likely to fall upon and injure them; and that, the plaintiff being lawfully in the public-house, the chandelier fell upon and injured him. *Held,* bad, on demurrer, as not disclosing any duty by the defendant towards the plaintiff, for breach of which an action would lie.—*Collis* v. *Seldon,* Law Rep. 3 C. P. 495.

2. Declaration by the widow of A., under 9 & 10 Vict. c. 93, and 27 & 28 Vict. c. 95, against a railway company for negligence, whereby A. was injured, of which injuries he died. Plea, that in the lifetime of A. the defendants paid him, and he accepted, a sum of money in satisfaction and discharge of all claims and causes of action against the defendants. *Held,* good, on demurrer, inasmuch as the cause of action was the defendant's negligence, which had been satisfied in the deceased's lifetime, and the death of A. did not create a fresh cause of action.—*Read* v. *Great Eastern Railway Co.,* Law Rep. 3 Q. B. 555.

Administration—*See* Executor and Administrator.

Admiralty—*See* Ship, 2, 3.

Adultery—*See* Divorce, 1.

Advancement—*See* Power, 1.

Agent—*See* Landlord and Tenant, 1; Master and Servant; Pledge, 2: Ship, 3.

Agreement—*See* Contract.

Alien—*See* Copyright.

Alteration.

A promissory note expressed no time for payment, and, while it was in the possession of the payee, the words "on demand" were added without the maker's assent. In an action by the payee against the maker, *held,* that as the alteration only expressed the original effect of the note, and was therefore immaterial, it did not affect the validity of the instrument.—*Aldous* v. *Cornwall,* Law Rep. 3 Q. B. 573.

Appeal.

1. Where a decree has been made against several defendants, the bill may be dismissed against all the defendants on an appeal by one defendant only.—*Kent* v. *Freehold Land and Brick-making Co.,* Law Rep. 3 Ch. 493.

2. Where a court of equity has decreed chattels to be delivered up, the execution will not usually be stayed pending an appeal to the House of Lords.—*Harrington* v. *Harrington,* Law Rep. 3 Ch. 564.

Apportionment.

An annuity was charged on property, part of which was mining land, settled on A., and part agricultural land, settled on B. The mining land produced a large income, but, being of a fluctuating nature, and liable to great diminution, was valued at seven years' pur-

chase, and the agricultural land at thirty years' purchase. *Held,* that the two properties must contribute in proportion to the actual income *de anno in annum,* and not in proportion to the capitalized value.—*Ley* v. *Ley,* Law Rep. 6 Eq. 175.

Appropriation—*See* Trust.

Assignment—*See* Landlord and Tenant, 4; Priority, 1, 4.

Attorney.

1. An attorney, acting as clerk to a firm of attorneys, received the purchase money of certain property, which he appropriated to his own use. He admitted the misappropriation. *Held,* that, though he was not acting strictly in his professional character, yet that the court would exercise its summary jurisdiction and punish the misconduct; and they suspended him for a year.—*Re Hill,* Law Rep. 3 Q. B. 543.

2. An attorney inserted in a deed a false recital as to the consideration, knowing it to be false, and attested the execution of the deed and the receipt of the consideration, knowing that no such consideration had passed or was intended to pass. But no fraudulent use of the deed had been attempted, no fraudulent motive alleged, and no injury occasioned by it. *Held,* that the misstatement was not in itself sufficient to warrant the striking the attorney off the rolls.—*In re Stewart,* Law Rep. 2 P. C. 88.

See Partnership.

Auctioneer—*See* Frauds, Statute of, 2,

Average—*See* General Average.

Bailment—*See* Pledge.

Bankruptcy.

1. A trader gave a bill of sale of his stock in trade to A.; but the bill was not registered. Nine months after, he conveyed by deed all his property, except his furniture and book debts, to a creditor, to secure the same debt and further advances. *Held* (1) that, notwithstanding the reservation, the deed was fraudulent, as it placed the bulk of his property out of the reach of his creditors; and (2) that, being thus fraudulent, it could not be sustained as a substitution for the first bill of sale.—*Ex parte Foxley,* Law Rep. 3 Ch. 515.

2. The plaintiffs were in the habit of drawing bills on Bombay, and handing them to the defendants, London bankers, for collection by the defendants' Bombay branch, the proceeds being remitted to the plaintiffs through the defendants' London house. The plaintiffs executed a deed of inspectorship, under the Bankruptcy Act, 1861, the defendants then having in their hands £3,248 of the plaintiffs, the proceeds of bills collected in Bombay. At the same date, the plaintiffs were indebted to the defendants in the sum of £8,335. *Held,* that it was a case of mutual credit, within the Bankruptcy Act, 1849, sec. 171, and that the defendants might retain the £3,248 as a set-off.—*Naoroji* v. *Chartered Bank of India,* Law Rep. 2 C. P. 444.

See Priority, 1.

Barratry—*See* Ship, 1.

Bill of Lading—*See* Freight, 2; Ship, 1.

Bills and Notes—*See* Alteration; Bankruptcy, 2; Conflict of Laws; Discharge.

Capital—*See* Apportionment.

Carrier—*See* Damages; Railway, 1; Ship, 1.

Cheque—*See* Donatio Causa Mortis.

Children, Custody of—*See* Husband and Wife, 1.

Codicil—*See* Revocation of Will.

Collision—*See* Ship, 1.

Common Carrier—*See* Carrier.

Company.

1. A company incorporated for the working of collieries contracted with A. to erect a pumping engine and machinery for that purpose, and paid him part of the price. *Held,* that the company could maintain an action against A. for breach of the contract, though the contract was not under seal.—*South of Ireland Colliery Co* v. *Waddle,* Law Rep. 3 C. P. 463.

2. Directors of a joint-stock company, who neglect its rules, are liable to make good to the shareholders any loss occasioned thereby; their liability in this respect does not differ from that of ordinary trustees.—*Turquand* v. *Marshall,* Law Rep. 6 Eq. 112.

3. Where the functions of a corporation have ceased, the managers of the corporation are bound to account for all moneys belonging to the corporation, and, when such moneys are improperly retained, to make a decree on the petition of a shareholder on behalf of himself and the other shareholders, for the division of the moneys among them.—*Cramer* v. *Bird,* Law Rep. 6 Eq. 143.

4. On the 9th of May, the plaintiff, through his brokers, sold shares in a company to the defendants, stock jobbers, the settling day being the 15th of May. On the 10th, the company stopped payment, and the petition for winding up was presented on the 11th. The purchase money was paid by the defendants on the 15th; the certificates of the shares were then delivered by the plaintiff and transfers were executed by him to seventeen persons as nominees of the defendants. The transfers could not be registered on account of the winding up. *Held,* on

on a bill for specific performance, that the defendants were bound to fulfil the contract, to repay the amount of calls paid by the plaintiff, and to indemnify him against future calls.—*Coles* v. *Bristowe*, Law Rep. 6 Eq. 149.

See Misrepresentation; Ultra Vires.

Conflict of Laws.

A bill of exchange drawn in France upon and accepted by the drawee in London, was indorsed in blank in France; such indorsement does not, by the law of France, give the indorsee any property in or right to sue on the bill there in his own name. *Held* (per Bovill, C. J., and Willes, J.; Montague Smith, J., *dissentiente*), that the indorsee could not sue the indorser in England.—*Bradlaugh* v. *De Rin*, Law Rep. 3 C. P. 538.

See Divorce, 2; Executor and Administrator, 2; Foreign Court.

Confusion—*See* Insurance, 2.

Contempt.

A contempt of court being a criminal offence, no person can be punished for it unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given him.—*In re Pollard*, Law Rep. 2 P. C. 106.

Contingent Remainder—*See* Devise.

Contract—*See* Company, 1, 4; Frauds, Statute of; Landlord and Tenant, 4, Misrepresentation; Specific Performance.

Contribution—*See* General Average.

Copyright.

An alien friend, who, during a temporary residence in a British colony, publishes in the United Kingdom a book of which he is the author, is, under the 5 & 6 Vict. c. 45, entitled to an English copyright.

Semble (per Lord Cairns, L. C., and Lord Westbury; Lords Chelmsford, *dubitantibus*), that the protection of the statute is given to every author who first publishes in the United Kingdom, wherever he may be resident.—*Routledge* v. *Low*, Law Rep. 3 H. L. 100.

Corporation—*See* Company.

Criminal Law—*See* Contempt.

Cruelty—*See* Divorce, 1.

Custody of Children—*See* Husband and Wife, 1.

Custom—*See* Prescription.

Damages.

The plaintiffs delivered to the defendant's servants, for shipment on the defendant's vessel, several cases containing machinery, intended for the erection of a saw-mill at Vancouver's Island. The defendant knew generally of what the shipment consisted. On the arrival of the vessel at her destination, one of the cases, containing machinery, without which the mill could not be erected, could not be found, and the plaintiffs were obliged to send to England to replace the lost articles. *Held*, that the measure of damages for the breach of contract was the cost of replacing the lost articles in Vancouver's Island, with interest at five per cent on the amount till judgment, but that the plaintiffs were not entitled to compensation for loss of profits sustained whilst the mill, by reason of the loss, remained idle.—*British Columbia Saw-mill Co.* v. *Nettleship*, Law Rep. 3 C. P. 499.

Desertion.

A husband who withdraws from cohabitation with his wife may be guilty of desertion, though he continues to support her.

Reasonable cause for desertion is not necessarily a distinct offence, on which a decree of separation or dissolution could be founded, but it must be grave and weighty. Mere frailty of temper is not sufficient.—*Yeatman* v. *Yeatman*, Law Rep. 1 P. & D. 489.

Devise.

A testator held two estates, A. and B.,—A. under a lease for lives renewable for ever, and B. in fee. In 1833, he made a will, in which he said, "I devise and bequeath to my son all those my property, lands, and premises at A.," together with plate, furniture, &c. "I also devise and bequeath to my son my lands and premises at B." All his estates were charged with an annuity to his wife. A codicil provided that if the son should die without heirs of his body, in that case, and in default of such heirs, the lands at A., and the plate and furniture, all charged with the annuity to the wife, and also with a reasonable provision for the son's wife, should, at the son's death, descend to D. C., his heirs, &c., for ever. In the event of the death of the son without heirs, a charge was created in favour of a married daughter. The son died, never having had a child. *Held*, that the son had an estate in the nature of a fee simple, with an executory devise over to D. C. in the event that happened of the son dying without heirs of the body living at his death; and that, in B., the son had an estate for life or in tail, with a contingent remainder to D. C. in the same event.—*Coltsmann* v. *Coltsmann*, Law Rep. 3 H. L. 121.

See Heirloom; Legacy Duty; Vested Interest.

Directors—*See* Company, 2, 3.

Discharge.

A discharge of joint debts discharges the separate liability of the debtors on a joint and several note given to secure a joint debt (per Byles, Keating, and Montague Smith, JJ.; Bovill, C. J., *dissentiente*).—*Rixon* v. *Emary*, Law Rep. 3 C. P. 546.

Divorce.

1. A wife petitioned for judicial separation on the ground of cruelty; the court found the charges not proved, and dismissed the petition. *Held*, that she was estopped from setting up the same charges of cruelty, coupled with a charge of adultery, in a subsequent petition for dissolution.—*Finney* v. *Finney*, Law Rep. 1 P. & D. 483.

2. A., an Englishwoman, married B., a Belgian, in Scotland. They afterwards went through a second ceremony of marriage in Belgium. Subsequently, a Belgian tribunal pronounced a decree of divorce, purporting to dissolve the Belgian marriage, but not purporting to affect the Scotch marriage. A. afterwards married C. in England, in the lifetime of B. *Held*, that the Scotch marriage was valid and subsisting; and, on the petition of C., the court declared his marriage with A. null and void.—*Birt* v. *Boutiner*, Law Rep. 1 P. & D. 487.

See Desertion.

Donatio Causa Mortis.

The delivery of the donor's cheque on his banker, which was not presented before the donor's death: *held*, not a good *donatio causa mortis*.—*Hewitt* v. *Kaye*, Law Rep. 6 Eq. 198.

Easement—*See* Way.

Equity—*See* Partnership.

Equity Pleading and Practice — *See* Appeal; Misrepresentation; Way, 2.

Estate Tail—*See* Marriage Settlement.

Estoppel—*See* Divorce, 1.

Evidence—*See* Frauds, Statute of, 1; Interrogatories; Prescription,

Execution—*See* Appeal, 2.

Executor and Administrator.

1. A testator, owning shares in a company with unlimited liability, directed his executors to convert his estate with all convenient speed. P., one of the three executors, died a year and five weeks after the testator. The shares were not converted. *Held*, that P.'s estate was liable for all loss occasioned to his testator's estate by the failure to convert within twelve months. —*Grayburn* v. *Clarkson*, Law Rep. 3 Ch. 605.

2. Where the nomination of the executor of a person who has died domiciled in Scotland has been confirmed in the Court of Probate, as provided by 21 & 22 Vict. c. 56, sec. 12, the executor has all the powers of an English executor, and may dispose of leaseholds in England; though, by the law of Scotland, an executor cannot deal with leasehold property in that country.—*Hood* v. *Lord Barrington*, Law Rep. 6 Eq. 218.

See Frauds, Statute of, 2.

Executory Devise—*See* Devise.

Fixtures.

A steam-engine and boiler, annexed to the freehold for the more convenient use of them, and not to improve the inheritance, and capable of being removed without any appreciable damage to the freehold, pass under a mortgage of the freehold.—*Climie* v. *Wood*, Law Rep. 3 Ex, 257.

Foreign Court.

A British ship, mortgaged in England, was arrested at New Orleans by creditors of the mortgagor, who were British subjects resident in England; and, as the courts of New Orleans do not recognize the rights of mortgagees not in possession, the mortgagees, to protect the ship from sale, gave bonds for the amount claimed by the creditors. On a bill by the mortgagees to restrain a suit on these bonds, *held*, that, though the decisions of the New Orleans courts might be unjust, yet, as the creditors owed no duty to the mortgagees, and had a right to proceed against the property of their debtor, wherever they found it, the bill could not be maintained. —*Liverpool Marine Credit Co.* v. *Hunter*, Law Rep. 3 Ch. 479.

See Divorce, 2.

Frauds, Statute of.

1. A tenant applied to the landlord's solicitors for a renewal of his lease. The solicitors sent him a report by a surveyor, recommending the grant of a lease for fourteen years at a given rent, if the tenant would make certain repairs. The tenant replied, assenting to the repairs and rent, but asking for a term of twenty-one years. No agreement was come to; but, some months after, the landlord and tenant having negotiated directly, the landlord wrote to the tenant, promising him a lease for fourteen years "at the rent and terms agreed on." The tenant accepted in writing. *Held*, that parol evidence was admissible to connect the report and the tenant's previous letter with the subsequent letters; and it being proved that there had been no other rent or terms agreed on than those mentioned in the report, the case was taken out of the Statute of Frauds. —*Baumann* v. *James*, Law Rep. 3 Ch. 508.

2. The memorandum of sale of a leasehold house stated that it was the property of A., deceased, and that the sale was by direction of the executors, not naming them, aad was signed by the auctioneer, as agent "for the vendors." A. was a domiciled Scotchman, and had, by will, named seven persons, and the acceptors of them, as executors. Two only accepted office, and confirmation was granted to them in the English Court of Probate subsequently to the contract of sale. *Held*, that the contract was valid, and specific performance was decreed.—*Hood* v. *Barrington*. Law Rep. 6 Eq. 218.

Fraudulent Conveyance—*See* Bankruptcy, 1.

Freight.

1. A mortgagee of a vessel intervening by taking possession, or, when that is impossible, by giving notice to the mortgagor and the charterers, before the freight is payable, though after it is earned, is entitled to the freight as against the assignee in bankruptcy of the mortgagor. (Bramwell, B., *dissentiente.*) — *Rusden* v. *Pope*, Law Rep. 3 Ex. 269.

2. F., a ship owner at L., requested the defendants to purchase goods for him at C., to be shipped on board his ship, which was then on its way to C., consigned to the defendants; and, as the goods were to be shipped on owner's account, he consented to a nominal rate of freight being inserted in the bill of lading. Before the execution of the order, the ship was transferred to the plaintiff. The defendants, having no notice of the transfer, executed the order, and put the goods on board the ship; the master—who also had no notice of the transfer—signing bills of lading to the defendants' order, "Freight for the said goods free on owner's account." Before the arrival of the ship at L., F. stopped payment, and the defendants claimed to stop the goods *in transitu*. On her arrival, the plaintiff took possession and claimed freight. On a case stated, *held*, that the plaintiff was not entitled, as against the defendants, to freight, or a sum equal to freight, for the carriage of the goods.—*Mercantile Bank* v. *Gladstone*, Law Rep. 3 Ex. 233.

See Insurance, 1; Priority, 4.

General Average.

A ship sailed from L. for C. with 2,000 tons of salt. The day after she sailed, the ship struck on a bank, and, after throwing overboard 1,000 tons of the salt, was got off, and got back to L., where the remainder of the salt was unloaded, and was found to be badly damaged. The charterer had paid freight in advance. In an action by the ship owner against an underwriter, to recover a general average contribution in respect of the salt jettisoned, on a case stated for the opinion of the court as to the principle by which the average-stater was to be guided in ascertaining the value of the jettisoned goods: *held*, that the salt jettisoned was to be valued at the price which it would have been worth at L., if brought back there, taking into account the probability of its arriving there in a sound or a damaged state, or in a state in which it could have been forwarded, so as to take advantage of the prepaid freight.—*Fletcher* v. *Alexander*, Law Rep. 3 C. P. 375.

General Words—*See* Statute, Repeal of.

Guaranty—*See* Landlord and Tenant, 2.

Heirloom.

A testator gave chattels to trustees, in trust for the persons who for the time being should, under the limitations of a settlement, be in actual possession of certain estates, to the end that the chattels might be deemed heirlooms, to go along with the said estates so far as the rules of law or equity would permit; but so, nevertheless, as that the chattels should not, for the purpose of transmission, vest absolutely in any person who, under the settlement, should become seised of the estates for an estate of inheritance, unless such person should attain twenty-one, or, dying under age, should leave issue inheritable under the settlement. The first tenant in tail, in possession under the settlement, died without issue, under twenty-one. *Held*, that the estate of the first tenant in tail was thereby terminated, but that there were no words which carried over the chattels in that event to any other tenant for life or in tail, and that therefore the chattels passed by a residuary clause in the will.—*Harrington* v. *Harrington*, Law Rep. 3 Ch. 564.

Highway—*See* Way, 2.

Husband and Wife.

1. A woman, living for sufficient cause apart from her husband, had living with her their child, against her husband's will; the court having given her the custody. She had no adequate means of support. *Held* (Cockburn, C. J., *dissentiente*), that she had authority to pledge her husband's credit for the reasonable expenses of providing for the child.—*Bazeley* v. *Forder*, Law Rep. 3 Q. B. 559.

2. A man covenanted to pay a woman an annuity for her life, payable half-yearly, for her separate use, and free from anticipation. He afterwards married her, and died leaving her surviving. *Held*, that the annuity was not extinguished, but only suspended, by the mar-

riage.—*Fitzgerald* v. *Fitzgerald*, Law Rep. 2 P. C. 83.

3. The defendant received money for the use of a married woman, and he wrote to her that he held the money at her disposal. The woman's husband survived her, and died, never having interfered as to the money. *Held*, that the wife's representative, and not the husband's, was the proper party to sue for the money.—*Fleet* v. *Perrins*, Law Rep. 3 Q. B. 536.

See Desertion; Divorce; Marriage Settlement; Power, 1, 3.

Income—*See* Apportionment.

Injunction—*See* Railway, 2; Way, 2.

Insurance.

1. The owner of a vessel chartered to sail from A. to B. with cargo, and there discharge, thence to proceed to C., load cargo, and proceed to D., insured the chartered freight to be earned on the voyage from C. to D., but only against perils incurred on the voyage from A. to B. The vessel, on the voyage to B., recived such injuries as would have justified abandonment or sale at B., but neither took place within a reasonable time, and the owner partially repaired the vessel at B., aud sailed it to B., where it was destroyed. No notice of the abandonment of the freight was given in a reasonable time. *Held*, that there was neither an actual nor a constructive loss of the freight within the policy.—*Potter* v. *Rankin*, Law Rep. 3 C. P. 562.

2. Cotton of different owners was shipped in bales, specifically marked at M. for L. Forty-three bales belonged to the plaintiffs, and were insured by the defendants against the usual perils. The ship was wrecked near Key West; some of the cotton was lost, and all was damaged,—some so much so that it had to be sold at Key West. The rest was brought in another vessel to L. The marks on many of the bales were so obliterated by sea-water that none of the cotton lost or sold at Key West, and a part only of that brought to L., could be identified. Two only of the plaintiffs' bales were identified, and these were delivered to them. *Held*, that, in respect to the cotton lost and that sold at Key West, there was a total loss of a part of each owner's cotton, and that all the owners became tenants in common of the cotton which arrived at L. and could not be identified: the share of each owner's loss in the cotton totally lost or sold, and his share in the remainder which arrived at L., being in the proportion that the quantity shipped by him bore to the whole quantity shipped; and therefore that there was neither an actual nor constructive total loss of the plaintiffs' forty-one bales.—*Spence* v. *Union Marine Insurance Co.*, Law Rep. 3 C. P. 427.

See General Average; Stoppage in Transitu.

Interrogatories.

1. An office copy of answers to interrogatories made in a former suit by a party to an action is admissible in evidence against him, without putting in the interrogatories, or proving the party's signature to the original answers.—*Fleet* v. *Perrins*, Law Rep. 3 Q. B. 536.

2. In an action for malicious arrest against a municipal corporation, the plaintiff was allowed (Martin, B., *dubitante*) to interrogate the town clerk whether he caused the plaintiff to be arrested. *Semble*, that any interrogatory may be put which is material, *bona fide*, and not scandalous, and any objection to answering is to be taken at the stage of answering, and under the oath of the interrogated party.—*McFadzen* v. *Mayor, &c., of Liverpool*, Law Rep. 3 Ex. 279.

Joint and Separate Debt—*See* Discharge.

GENERAL CORRESPONDENCE.

The right of Attornies to fees in Division Courts.

To the Editors of the Canada Law Journal.

Gentlemen,—A correspondent signing himself "J. T." in your January number, has undertaken to explain away, and give the particulars of one of the cases tried in a Division Court, before a certain County Judge, as detailed by me in your December number, 1868. Your correspondent apparently knows nothing of the facts of the case alluded to by him,—if he does he mistakes them.

It is true, as he says, that I had been retained to attend to a suit before the judge in question at a country town, but I made no allusion to that suit, for my bill of costs had no relation to the first retainer or business done therein, which had ended and been paid for before the second retainer. The retainer on which I brought my suit was given afterwards, a written one, not ambiguous at all, and the judge founded his judgment upon it, as he said at the time, not upon any other evidence. All my evidence before the judge was written evidence and could not be misunderstood. In my letter I had no intention to accuse and did not accuse the judge of any improper motive. I

do not think him capable of anything of the kind; nor did I suppose it possible that he could have any enmity to me, since we always have been upon the best of terms. If I am to suppose any thing against him, it would be a mistaken view not only of the law, but of the equity of the two cases and the facts in evidence. There were two cases to which I alluded in my letter, decided by the judge at different courts; and in deciding the last case, he took occasion to say *he decided it upon the same principle* as the first. The principle I supposed to have been in his mind was, that an attorney has no right to recover in his court for attendances, letters and affidavits written, and arguments before a judge in new trial cases. Therefore if he gave judgment upon some principle, upon what principle did he give it? Certainly it must have been given for work done as an attorney, and not as a mere labourer—and if as an attorney, why strike off proved attorney's work, or allude to some principle in his mind of deciding attorneys' cases? The case now in question to which "J. T." alludes was brought by me upon a written retainer filed in the court, *as explicit as it could be*—for applying upon special affidavits for a new trial, in which important law points were involved, and where the amount sued for was about $100.

It was necessary for me to make out a brief, and put down cases in point (the brief itself was worth $4), and the judge looked over it and it is filed among the papers. The judge knew that I went out on the train to a country town to argue the case, and spent most of the day to do so; and when he tried the case, he had before him the affidavit of a barrister (the county attorney of his county), swearing that my services in going out, &c., were worth $7. Yet in this case, setting aside all attendances, letters and affidavits, the judge only allowed me $6, not even that which the barrister swore I was entitled to for arguing the case. Now I have a copy of the bill presented before the judge, every item of which was fairly proved. Here it is:—

1868, May 6.	£	s.	d.
Letter, &c., to client, and attendance about result of arbitration.......	0	2	6
Instructions to apply for new trial (on new retainer)..	0	5	0
Drawing affidavit of client of facts of case 2s, 6d., copy 1s. 3d.........	0	2	9
Drawing my affidavit (special) of facts and for new trial 5s., copy 2s. 6d., attending to swear and paid 2s. 3d.	0	9	9
Letter forwarding, same to———, to have served and attendance	0	2	6
Paid postage	0	0	7½
Affidavit of service of affidavits drawn	0	2	6
Attending at———to see that——— had served the affidavits.........	0	1	3
Telegraph to———paid 1s. 3d., attendance 1s. 3d..................	0	2	6
Attendance and argued case at——— argued for the defendants, and expense to the country and back to——	1	15	0
Writing a letter to client of result of new trial, and attendance, notifying him	0	2	6
Also writing to his brother, his agent, &c	0	2	6
	£3	19	4

I purposely leave all names and places in blank.

There is not an item in this bill to which I am not fairly entitled. It may be a question whether the letters should be with attendance more than 1s. 3d. But some items are omitted, and under all the circumstances considering the small sum I charge for going into the country, and that my application for a new trial was successful, the judge should have allowed the whole bill. Then he had before him an affidavit in which a barrister and county attorney of his county, swears thus:—

That ——— in this suit acted as counsel for the within defendant in that suit, and the within defendant stated to me he had retained or employed him to do so.

That in my opinion *seven dollars would be a reasonable* fee for counsel going from ——— to ———, and arguing an application for a new trial there, &c."

The judge read the affidavit, and took it as regularly before him. Urgent business kept the county attorney at home, but the affidavit was not objected to on that ground. All the original papers and affidavits were before the judge. He knew of the difficult argument and that I had to expend in serving bills and going to sue, certainly at least $4; yet all he gave me was $6. What attorney would go into court under such circumstances? I would not have sued in the judge's court at all, if the cause of action having arisen there, had not obliged me to do so.

Now I again repeat that the judge admitted that he was bound by the written retainer; and although "J. T." wished to confound my first employment with the last, the judge told him the *evidence proved the contrary*, and he did not give his judgment upon any such views put forward by "J. T."

"J. T," is pleased to say that the judge in question is a young man and beloved in his county. That is not the question however; I am not dealing with character, age or position in this matter. The profession has rights as well as the judge, and it would be well for all judges to remember, that like me and many others, they and their families once depended on the fair earnings of their profession for a livelihood.

I believe in judges protecting lawyers in those rights. It is all very well for people to talk of the great fees and earnings of lawyers, but every man knows, who has looked thoroughly into it, that taking education, study, talents, and time into account, no profession upon the whole is worse paid than that of the law. There may be a few law firms that make money, but how many are there who deserve better things, who only make a "bare annual living?"

My letter of December was not written alone for myself, but for the rights of a learned body of men, who ought to be fairly and equitably paid by those who employ them, and who have a right to expect better treatment from judges than I have received from the one who "dealt out lame equity" to me.

An Attorney.

February 9, 1869.

[We speak of the subject matter of this in another place. Our correspondent also alludes to another suit in which he was allowed only $1, but we have given more space to these matters than we can well afford, and it is only because they are of some interest, as to the question of what fees attorneys should be allowed for Division Court services that we insert them at all.—Eds. L. J.]

To the Editors of the Law Journal.

Gentlemen,—In August, 1864, I was articled, and in Hilary Term, 1865, was admitted into the Law Society.

It will, therefore, not be necessary for me to pass either of the two extra examinations as articled clerk, and only the last of the two as Student-at-Law.

At the foot of the list of books prescribed by the Law Society for the second examination is a memorandum, to the effect, that the students will be re-examined in subjects and books of the first examination.

The question arises, will I, who will not be required to pass the first examination be examined in the books and subjects of it.

By kindly giving your opinion on this point in the next issue of the *Law Journal* you will very much oblige the writer as well as many others similarly situated.

Yours very truly,

London, Nov. 19, 1868. A Student.

REVIEWS.

The First Book of the Law. By Joel Prentiss Bishop. Boston: Little, Brown & Co. 1868.

This book is by the author of some excellent works, well known to our readers, which treat of "Criminal Law," "Criminal Procedure," and "The Law of Marriage and Divorce." It is intended as an explanation of the nature, sources, books and practical applications of legal science, and methods of study and practice.

It is all that the title page promises, and much more, and contains a great deal that will be useful to those who perhaps think themselves above any assistance or information that can be derived from such an avowedly elementary work.

The object of the work is, as is set forth in the preface:—

"First, to enable all young persons to decide for themselves the question, whether the law offers to them the pursuit for life which is best adapted to their natural capacities and tastes; secondly, to teach all, who may choose to read it, something concerning the nature of the law, how it has come to us, what is legal authority, and so on, in order to qualify them the better to discharge the duties of citizens in a free republic; thirdly, and chiefly, to teach the student of the law how to study it, and to furnish him with various incidental helps in the study. It is not written upon the plan of teaching a little law upon every legal topic, therefore of necessity conveying to the mind of the young reader no really correct and perfected image of any thing; but its object is to prepare the way for a thorough and profound study of the law,

viewed both as a science and an art, in other books."

The work is divided into four parts:

I. The preparation necessary for law studies, treating of physical capacity, mental aptitude, moral aptitude, and preparatory studies and training; containing much useful advice, which, if acted upon, would save many a young man from entering a profession wholly unsuited to his capacity or his inclinations.

II. The nature of law in general, and of the Common Law in particular, giving a comprehensive view of the foundation on which the laws rest.

III. The sources of legal authority, the author coming now to the consideration of the more practical part of his work, and discussing his subjects in this and the next part with those who have made up their minds to go to work at their studies in earnest, telling them where to look for information, and the respective value of different sources of knowledge.

IV. This part goes a step further, and teaches the student where to study, the book he should read, the field of legal acquisition, what is to be learned besides books, and practical directions for learning how and where to find things—invaluable knowledge, second only to the knowledge itself, and a necessary practical adjunct to such knowledge.

The work concludes with an alphabetical list of names and abreviations of text books and reports, with their dates, and some observations respecting the qualities and histories of particular books, a table of inestimable advantage, as will be sufficiently obvious both to the student and to the practitioner, information which can nowhere else be found in such a compact, though full and accessible shape.

Everything in this book shows the downright earnestness of a man fully impressed with the dignity of his profession, and with a desire that all who follow it should do so with their hearts in the work, and with a high sense of the moral attributes that should pervade its votaries.

The observations of the author evince much shrewdness and originality, combined often with a curious quaintness not often seen in books in the nineteenth century. This quaintness has in some measure gone the length, though without any thought of such thing in the mind of the author, of a species of irreverence, or rather of an unnecessary allusion to sacred things, far-fetched and fanciful, and somewhat out of place.

Warren's Law Studies has been a favourite book with students for many years, but for our part, and especially in this country, we are inclined to think that the book before us is the most readable and the most instructive, and we strongly recommend our readers to read it for themselves, students particularly. Even after the sound advice contained in it has been digested, there is still left in it sufficient practical information to make it a valuable addition to the lawyer's library.

It can easily be obtained by writing direct to Messrs. Little, Brown & Co., the enterprising law publishers of Boston, or it may be ordered from them through any bookseller.

CHANCERY SPRING SITTINGS.

The Hon. Vice-Chancellor Spragge.

Toronto	Tuesday	Mar. 16.
Goderich	Thursday	April 8.
Stratford	Monday	April 12.
Sarnia	Friday	April 16
Sandwich	Tuesday	April 20.
Chatham	Friday	April 23.
London	Friday	May 7.
Woodstock	Thursday	May 13.
Simcoe	Tuesday	May 18.

The Hon. The Chancellor.

Guelph	Tuesday	April 6.
Brantford	Tuesday	April 13.
St. Catharines	Friday	April 16.
Hamilton	Tuesday	April 20.
Whitby	Tuesday	April 27.
Barrie	Tuesday	May 4.
Owen Sound	Tuesday	May 18.
Cobourg	Wednesday	May 26.

The Hon. Vice-Chancellor Mowat.

Ottawa	Tuesday	April 27.
Cornwall	Friday	April 30.
Brockville	Friday	May 7.
Kingston	Tuesday	May 18.
Belleville	Friday	May 21.
Peterboro'	Friday	May 28.
Lindsay	Monday	May 31.

SPRING CIRCUITS, 1869.

Eastern Circuit.

The Hon. Mr. Justice Morrison.

Kingston	Tuesday	Mar. 16.
Brockville	Wednesday	Mar. 24.
Perth	Tuesday	Mar. 30.
Ottawa	Tuesday	April 13.
L'Orignal	Tuesday	April 27.
Cornwall	Monday	May 3.
Pembroke	Tuesday	May 11.

SPRING SITTINGS—APPOINTMENTS TO OFFICE.

Midland Circuit.

The Hon. Mr. Justice A. Wilson.

Napanee	Wednesday	Mar. 17.
Belleville	Monday	Mar. 22.
Cobourg	Monday	April 5.
Whitby	Tuesday	April 13.
Peterborough	Tuesday	April 20.
Lindsay	Tuesday	April 27.
Picton	Tuesday	May 4.

Niagara Circuit.

The Hon. The Chief Justice of the Common Pleas

Hamilton	Monday	Mar. 15.
Welland	Tuesday	Mar. 30.
St. Catharines	Monday	April 5.
Barrie	Monday	April 12.
Milton	Tuesday	April 27.
Owen Sound	Monday	May 10.

Oxford Circuit.

The Hon. The Chief Justice of Ontario

Stratford	Tuesday	Mar. 30.
Berlin	Tuesday	April 6.
Guelph	Monday	April 12.
Woodstock	Monday	April 19.
Brantford	Monday	April 26.
Cayuga	Tuesday	May 4.
Simcoe	Tuesday	May 11.

Western Circuit.

The Hon. Mr. Justice John Wilson.

Sarnia	Tuesday	Mar. 16.
Goderich	Tuesday	Mar. 23.
London	Tuesday	Mar. 30.
St. Thomas	Thursday	April 8.
Chatham	Tuesday	April 13.
Sandwich	Tuesday	April 20.
Walkerton	Tuesday	May 11.

Home Circuit.

The Hon. Mr. Justice Gwynne.

Brampton	Tuesday	Mar. 16.
City of Toronto	Monday	April 5.

APPOINTMENTS TO OFFICE.

NOTARIES PUBLIC.

WALTER HOYTFUTTEN, of the Town of Guelph, Esq., Barrister-at-Law. (Gazetted July 25, 1868.)

MORGAN CALDWELL, of Walkerton, Esquire, Barrister-at-law. (Gazetted September 12, 1868.)

JAMES DAVID EDGAR, of Osgoode Hall, Barrister-at-Law. (Gazetted September 19, 1868.)

EDWARD H. TIFFANY, of the City of Hamilton, Gentleman, Attorney-at-Law. (Gazetted September 26, 1868.)

EBENEZER W. SCANE, of the Town of Chatham, Gentleman, Attorney-at-Law. (Gazetted Oct. 17, 1868.)

WILLIAM WELLAND BERFORD, of the Town of Perth, Gentleman, Attorney-at-Law. (Gazetted October 24, 1868.)

JOHN MORISON GIBSON, of the City of Hamilton, Esquire, Barrister-at-Law. (Gazetted October 31, 1868.)

JOHN MUDIE, of City of Kingston, Esquire, Barrister-at-law. (Gazetted November 7, 1868.)

GEORGE PETER LAND, of the City of London, Esq., Barrister-at-Law. (Gazetted November 14, 1868.)

WILLIAM BARCLAY McMURRICH, of the City of Toronto, Esquire, Barrister-at-Law; JOHN McLEAN, of the Town of St. Thomas, Esquire, Barrister-at-Law; and ROBERT GRAHAM, of the Village of Enterprise, Gentleman. (Gazetted November 21, 1868.)

DALTON McCARTHY, Jun., of the Town of Barrie, Esquire, Barrister-at-Law; ROBERT CASSELS, Jun., of the City of Toronto, Barrister-at-Law; FREDERICK BISCOE, of the Town of Gulph, Esquire, Barrister-at-Law; ROBERT R. WADDELL, of the City of Hamilton, Gentleman, Attorney-at-Law, and ROBERT HICK, Jun., of the City of Ottawa, Gentleman, Attorney-at-Law. (Gazetted November 28, 1868.)

JAMES EDWIN O'REILLY, of the City of Hamilton, Gentleman, Attorney-at-Law. (Gazetted Dec. 12, 1868.)

JOSEPH JAMIESON, of the Village of Almonte, Gentleman, Attorney-at-Law. (Gazetted December 19, 1868.)

CHARLES ROBERT HORNE, of Windsor, Esquire, Barrister-at-Law. (Gazetted January 9, 1869.)

JOHN PAUL CLARK, of Brampton, Gentleman, Attorney-at-Law. (Gazetted January 23, 1869.)

ASSOCIATE CORONERS.

JOHN PHILLIP JACKSON, Esquire, M.D., for the County of Perth. (Gazetted August 1, 1868.)

JAMES McLAREN WALLACE, of the Village of Spenceville, Esquire, M.D., for the United Counties Leeds and Grenville. (Gazetted August 22, 1868.)

JAMES PATRICK FOLEY, Esquire, M.D., for the County of Ontario. (Gazetted September 5, 1868.)

JAMES WATERFORD STUART, of Port Dover, and WILLIAM HENY MILLER, of Vittoria, Esquires, M.D., for the County of Norfolk, and JONATHAN McCULLY, of the Township of Howard, M.D., for the County of Kent. (Gazetted September 19, 1868.)

CHARLES DOUGLASS, of the Town of Streetsville, Esquire, M.D., for the County of Peel. (Gazetted October 24, 1868.)

WILLIAM K. KERR and THOMAS WEBSTER, of the Town of Brantford, Esquires, for the County of Brant. (Gazetted October 31, 1868.)

JAMES McBRIDE WOODS, of the Village of Streetsville, Esquire, M.D., for the County of Peel. (Gazetted December 5, 1868.)

JOHN COVENTRY, of the Village of Wardsville, and DANIEL CLINE, of Belmont, Esquires, M.D., for the County of Elgin. (Gazetted December 19, 1868.)

WILLIAM F. ROOME, of the Village of Newbury, and JOSEPH MOTHERSILL, of the Village of Strathroy, Esquires, M.D., for the County of Middlesex. (Gazetted December 19, 1868.)

JOHN MUIR, of the Township of Wolford, Esquire, M.D., for the United Counties of Leeds and Grenville. (Gazetted December 19, 1868.)

JOHN F. HICKS, of the Village of Duart, Esquire, M.D., for the County of Kent. (Gazetted Dec. 19, 1868.)

WILLIAM CHARLES HAGERMAN, of Lyndock, Esq., M.D., for the County of Norfolk. (Gazetted Jan. 9, 1869.)

JOHN O'SULLIVAN and ROBERT KINCAID, of the Town of Peterborough, Esquires, M.D., for the County of Peterborough. (Gazetted January 16, 1869.)

ROBERT J. SLOAN, of Wingham, Esquire, M.D., for the County of Huron. (Gazetted January 16, 1869.)

The Rev. Mr. Mackonochie appears to have caused much indignation in the minds of some of our contemporaries by not having made any change in the ceremonial of his services since the recent decision of the Privy Council, and it has been stated that he has by his conduct been guilty of "contumacy." In fact, however, he has not been acting in the slighest degree contrary to law. The so-called "judgment" of the Judicial Committee is really no judgment at all. It is simply a statement of the reasons on which the Court base their report to the Queen. The report itself, again, has no binding authority until it has been submitted to Her Majesty in council for approval, and has been embodied in an order in council. When these steps have been taken, but not before, the report becomes a judgment in the ordinary sense of the term, and it must then be obeyed accordingly. The consequences of disobedience would be an attachment for contumacy and contempt, and the infliction of such a punishment as the Court of Arches might in its discretion deem proper.