DIARY FOR OCTOBER.

1. SUN. *17th Sunday after Trinity.*
2. Mon. Clerks and Deputy-Clerks of Crown and Master and Reg. in Chan. to make quarterly returns.
8. SUN. *18th Sunday after Trinity.*
11. Wed. Last day for Reg. & Mas. in Chan. to remit fees.
15. SUN. *19th Sunday after Trinity.* Law of England introduced into Upper Canada 1792.
18. Wed. *St. Luke the Evangelist.*
22. SUN. *20th Sunday after Trinity.*
28. Sat. *St. Simon and St. Jude.*
29. SUN. *21st Sunday after Trinity.*
31. Tues. *All Hallow Eve.*

THE

Canada Law Journal.

OCTOBER, 1871.

LAST AMENDMENTS OF COMMON LAW PROCEDURE ACT.

The Ontario Statute, 34 Vic. c. 12, has effected some changes in the practice, upon which it is now our object briefly to comment.

The repeal of the sections in the Common Law Procedure Act requiring the order of a Judge to plead several matters, and the extension of the powers of the County Court Judges in certain interlocutory matters in the Superior Courts, have arisen, we suspect, out of the agitation of country practitioners, who desire to reduce their agency fees. No doubt the former practice as to pleading occasioned needless expense in some cases, where no cause could be shown to the allowance of the several matters proposed to be pleaded, or where a consent was given to the granting of an order. We think that the evils intended to be guarded against by the former practice will be sufficiently provided for in section 8 of this Act. Whenever pleas are seen to be embarrassing, or frivolous, or founded upon the same matter, practitioners will always be astute enough to get relief under this provision.

The power conferred upon the county judge of changing the venue in actions in his court, we regard as a most beneficial change in the law. Where the cause of action was transitory, it was competent for a plaintiff to sue the defendant in any County Court; and we have known instances where most vexatious litigation has been instituted by a plaintiff choosing a county remote from the residence of the defendant's witnesses. One of the leading rules now observed by the courts in regulating the place of trial is that, as far as possible, a matter shall be disposed of within the jurisdiction in which it arose: James, V. C., in *Baker* v. *Wait*, L. R. 9 Eq. 105; and, see *Levy* v. *Rice*, L. R. 5 C. P. 119. Under the old practice, a defendant in the county court had no possible means of relief, unless he could persuade one of the superior court judges to grant him a certiorari, as was done in *Patterson* v. *Smith*, 14 U. C. C. P. 525.

We incline to doubt whether the Chamber business in Toronto will be much lessened by the extension of the jurisdiction of the county court judges in interlocutory applications. Great confidence is felt in the decisions of the gentleman presiding in Common Law Chambers, and the uniformity of decision secured by coming before the same officer in all such matters, will counterbalance the facility with which such applications can be made in the country before the local Judge. The result will be, perhaps, that all consent applications will be made to the county judge, and all contested motions will be disposed of, as before, at Toronto.

The provision as to obtaining an order to replevy before a county judge, is likewise a benefit, for in many cases expedition is of the essence of the relief. We have known valuable articles to be eloigned during the delay occasioned by an application to the Superior Court Judge.

The seventh section of this Act changes the law in actions against officers for an escape. It is a copy *verbatim* of the English Statute, 5 & 6 Vic. c. 98, s. 31. In fact its effect is just to leave the Common Law as it was before the statute 1 Ric. c. 12, which was held to give by construction an action of debt against sheriffs and other officers of like powers, in cases of escape from final process; *Jones* v. *Pope*, 1 Wms. Saund. 38. The change is a beneficial one, for it does away with the cast-iron rule, that the precise amount of the original judgment shall be recovered against the sheriff, (*Bonafous* v. *Walker*, 2 L. R. 126), and enables the Court and jury to deal equitably, by proportionig the damages to the value of the custody at the time, and to the wilful misconduct or unwitting error of the officer in charge. As to the mode of estimating the value of the body, and so fixing the damages, refer to *Savage* v. *Jarvis*, 8 U. C. Q. B. 331; *Kinloch* v. *Hall*, 25 U.C. Q.B. 141; *Macrae* v. *Clark*, L. R. 1 C. P. 403. And as to the mode of procedure in such cases in a court of equity, see *Moore* v. *Moore*, 25 Beav. 8.

The 2nd section of the act as to the costs of issues following the finding is a repetition of part of the 110th section of the Common Law Procedure Act, and adds thereto a new provision, allowing the judge who tries the cause to certify against the allowance of such costs. This is perhaps not so much a new provision as a restoration of the power conferred by 4, 5 Anne, c. 16 s. 5. Under this statute the cases show that the judge might certify even after the taxation has begun; see *Robinson* v. *Messenger*, 6 A. & E. 602, and *Cobbett* v. *Grey*, 4 Exch. 729.

In our next issue, we shall review the remaining clauses of the Act.

Why is it that Courts of Appeal are always so unsatisfactory? The following growl comes from the antipodes. The *Melbourne Argus* says:

The Judicial Committee.—What we have to consider is whether we shall finally settle our own appeals or send them to England. The answer to this question really depends upon the improvements that can be effected in the Judicial Committee. If our appeals can be promply despatched by such a court as one of the two highest courts in England ought to be, we should feel very little inclination to attach weight to the reasons urged in favour of a local tribunal. But there is no doubt that a strong feeling of dissatisfaction with the present machinery for finally disposing of colonial appeals is rapidly growing in this country. It is too bad that the most important cases should be left untouched for two, for three, or even for four years. When at length the time for hearing arrives, there is no security that a court will be formed such as the colonies have a right to expect. A couple of retired Indian judges, an ex-Chancellor of Ireland, whose physical infirmities necessitated his retirement from the bench of that country; perhaps, if fortune favours us, a law lord or a judge who has contrived to steal an hour from his own work—such are the usual components of a Court whose decision in all colonial cases is final and unchallengeable. . . . . We earnestly trust that neither pains nor cost will be spared to provide a fitting organ for the greatest appellate jurisdiction in the world. We look, therefore, with the deepest interest for the news of the promised law reforms of the Lord Chancellor. All that we ask is that our suits shall be decided by a fully-organized English Court, and not by some stray legal casuals. We think that the colonies are worth the salaries of three or four Judges, even if the expenses of the Court should mount up to £20,000 or £25,000 a year. Such a sum does not seem unreasonable for the dignity and efficiency of the oldest jurisdiction in the kingdom, and we may fairly add, the greatest; and if England is so poor as to be unable to provide for the due performance of the Queen's primary duty, it will be well worth our while to contribute towards a Court which shall be fit to advise the Queen how to do right towards all her subjects who dwell beyond the limits of the British Isles.

SELECTIONS.

THE LAW OF DISTRESS.

It has been said that no subject has given rise to more legislation than that of distress: 3 Reeves' English Law 555 n. (last ed.). We may safely affirm that there are few branches of the law in which legislation is more urgently required. We need hardly remark that this state of things is a perfectly natural result of our system in framing legal procedure. Instead of inventing an original remedy, we usually prefer to give a new scope to an old process. Instead of revising the details of such process, we leave them untouched until their inconvenience becomes intolerable. A measure is then hastily passed to redress the most pressing grievance, but no attempt is made to remove less obvious anomalies, or to bring the ancient remedy into complete accordance with the wants and ideas of the modern society. Of this method of legislation the law of distress affords an admirable illustration. Originally derived from the Gothic nations of the Continent: (Spelman Gloss: tit. Parcus, p. 447;) this process was employed by our Anglo Saxon ancestors to compel the appearance of a debtor in court. Under a law of Canute, passed to prevent the unfair exercise of this power, the defendant was to be thrice summoned to submit to the judgment of the hundred, and a fourth day of appearance was to be fixed by the shire; after which, if the misguided man still continued contumacious, the complainant might seize his goods: 1 Palgrave's Rise, &c., of the British Constitution, 180. From a very early period, by the custom of the realm, as Fleta tells us, a man might seize and impound beasts which he found trespassing upon his land, until he received compensation for the injury: Fleta, 101. After the introduction of the feudal system, distress became the ordinary means of compelling tenants to perform the services and to pay the fines and amerciaments incident to their tenure: Britton, liv. I, ch. 28, 58. The barons found the seizure of the tenant's goods a more speedy and effectual mode of obtaining satisfaction than the forfeiture of his feud. Moreover they discovered in the new remedy an instrument of oppression of which they were not slow to avail themselves. They dis-

trained for illegal fines and customs not really due, stripped farms of the whole produce, seizing goods of great value for the smallest service, and drove the chattels and cattle distrained into their castles to prevent them from being restored upon replevin. The Sovereign did not neglect this method of supplying his needs. The records of the Exchequer relate that on one occasion the burgesses of Gloucester paid a fine of three hundred lampreys that they might not be distrained to find the prisoners of Poictou with necessaries "unless they would do it of their own accord:" Madox's History of the Exchequer, chap. 13, p. 507.

To remedy these evils a series of statutes were passed, extending from Magna Charta to Stat. 1 and 2 Ph. and M., c. 12. These enactments re-affirmed the provisions of the common law, protecting the tenant against wrongful distress, and affixed heavy penalties to some of the more audacious violations of justice.

With the decline of the feudal system the process of distress lost much of its oppressive character. It was no longer a weapon in the hands of a powerful baron, but merely a summary mode of recovering rent reserved on a contract of lease voluntarily entered into. Means of evading the process were speedily discovered. Since a distress could only be made on the demised premises, the removal of the goods afforded an easy mode of depriving the landlord of his remedy. Since a distress could only be taken for rent in arrear during the continuance of the lease, the last half year's rent, which was generally not in arrear until after the expiration of the lease, could not be distrained for. Moreover, as the distress was simply a pledge, to be retained at the risk of the landlord, until the rent was paid, it afforded no remedy in the case of a tenant who obstinately refused to redeem his goods. The current of legislation which had previously been exclusively directed to the protection of the tenant, underwent a change, and the object of nearly all the statutes subsequent to that last above-named, was to improve the remedy of the landlord. He was authorised to follow and distrain goods fraudulenty removed; to distrain within a certain time after the determination of the lease; to take certain classes of goods not previously liable to distress, and a complete revolution was effected in the character of the process by the well-known Act of William and Mary, conferring on the landlord power to sell the goods distrained.

The modern statutes have almost exclusive reference to distress for rent, and it is to this branch of the process that we propose to restrict our remarks. We do not intend to discuss the policy of the law, or to suggest any serious modification of the privileges of the landlord. We take it for granted that this favoured individual should be allowed an advantage over all other creditors in the recovery of his debt. Assuming this, however, it is obviously desirable that the landlord's special remedy should be so well-defined and simple as to save him from the danger of error, and the tenant from the temptation to avenge himself by an action at law. The process, moreover, ought to be applicable to all cases in which payments by way of rent are reserved. Above all it ought to occasion the least possible inconvenience and loss to the tenant. Let us see how far the present law of distress for rent fulfils these conditions.

At the very threshold of the subject, we are confronted with several important limitations of the right to distrain, complicated with distinctions of singular subtlety. No distress can be made, except by express agreement, for payments by way of rent reserved on leases of mere chattels; but a mixed payment of rent and corporeal hereditaments—as, for instance, rent for furnished lodgings—since it is held to issue out of the hereditaments only, may be recovered by distress. Rent reserved on a mere licence to use premises for a particular purpose, as in the common case of a letting of a mere standing for machinery, cannot be distrained for, but if the letting is of the exclusive use of a defined portion of a room in a mill, the landlord may resort to this remedy. Rent due under a mere agreement for a lease, although the tenant may have entered under it, and continued in occupation for some years without paying rent, cannot be recovered by distress; but if the tenant, after entering into occupation, promises to pay a certain rent, or even only settles it in account with his landlord, a new agreement will be presumed, under which the landlord may have the right to distrain. Under a very ancient (see Britton, liv. I, ch. 28, 57b.) and wise rule of the Common Law, the remedy of distress is confined to rents of fixed amount. It would be obviously in the highest degree undesirable that the landlord should have the power of deciding for himself the amount of rent for which the seizure should be made. Where that amount has not been certainly fixed, he must resort to an action for use and occupation. According to Coke there may be a certainty in uncertainty, and it is held that a distress may be made for any rent which is capable of being reduced to a certainty. Hence a rent of 8*d.* per cubic yard for marl got and 1*s.* per 1000 for bricks made, may be distrained for, although it is obvious that questions may arise between landlord and tenant as to the amount of marl actually got, or the number of bricks actually made.

Another rule of great antiquity is, that the person distraining must possess a reversion in the demised premises: Lit. s. 114, Bro. Abr. tit. *Dette* pl. 39; citing Year Book, 43 Ed. 3, 4. Hence no distress can be made for rent reserved upon the assignment of a lease, but the reservation of a reversion of a single day will authorise a distress. A tenant from year to year underletting from year to year, has a sufficient reversion to enable him to distrain, and a mortgagor permitted by the mortgagee

to continue in receipt of the rents of the mortgaged property, may distrain for rent due upon a lease made before the mortgage. It has been recently held that the reversion to support a distress need not be an actual reversion; that it is sufficient if it be a reversion by estoppel, and that if the tenant is actually let into occupation there is a reversion which he is estopped from denying: judgment of Blackburn, J., in *Morton* v. *Woods*, 37 L.J. Q.B. 248.

Other restrictions upon the landlord's power to distrain, have reference to the time at which it may be exercised, and in these we perceive a somewhat different current of judicial opinion. We have already mentioned that no distress can be made until the day after that on which the rent becomes due, and that a statutory remedy has been provided for the fraudulent removal of goods to avoid a distress. By a strict construction of the statute its operation has been limited to cases in which the goods were removed *after* the rent became due. Goods previously removed cannot be seized for rent; hence, at any time before the rent day, a tenant may carry off his chattels in full view of his landlord, and with the avowed object of avoiding a distress. A man cannot distrain for rent in the night, because, as Chief Baron Gilbert says, the tenant hath not thereby notice to make a tender of his rent, which possibly he might do to prevent the impounding of his cattle: Gilbert on Distress, 50. As night is held to extend from sunset to sunrise, it appears that, in summer at least, a distress may be made before the person whose goods are seized, is awake, and cannot be made in the evening, when he is most likely to be at hand to tender the rent.

Let us suppose, however, that a landlord duly entitled to distrain has resolved to adopt that remedy. His first step is to appoint a bailiff, and the first care of that functionary is to protect himself against the risk arising from his own incompetence, by inserting in the warrant to distrain a carefully worded indemnity by the landlord. His next proceeding is to seek admission to the demised premises, and, thanks to the numerous cases which have been decided upon this subject, the limits of what he may and may not do, in order to effect this purpose, are marked out with tolerable clearness. It is not always quite so easy to discern the principle upon which the decisions are based. The leading rule seems to be that the bailiff may enter in the ordinary mode adopted by other persons who have occasion to go into the premises: *Ryan* v. *Shilcock*, 7 Ex., at p. 75. It has, however, been held that he may climb over a garden wall, or enter by an open window, methods of obtaining admission which cannot be considered as usual. Since the Englishman's house is his castle, the person distraining must not break the outer door, or unhasp a window, or open an unfastened window. It is not quite obvious why the Englishman's stable, not situate within the curtilage of his house, should also be deemed his castle; yet although the sheriff may break open the stable door, a person distraining for rent is not entitled to do so. The rule in *Semayne's case* appears to have been understood by the old authorities as prohibiting the person distraining from opening the outer door if it happened to be shut and not fastened, and a similar construction has been adopted in America, where it has been held that a sheriff's officer cannot even lift the latch of an outer door in order to open it: *Curtis* v. *Hubbard*, 1 Hill's Rep. 336. Recent English cases, however, have established the right of the person distraining to open the outer door in the ordinary way, but the tendency of judicial opinion appears now to be towards a stricter interpretation of the rule: *Nash* v. *Lucas*, L. R. 2 Q. B., 590.

The protection from distress extends only to the outer shell of the building. If the external door is open, the person distraining may break open inner doors. Hence, a lodger who has an outer door may, by keeping it locked between sunrise and sunset, prevent his landlord from availing himself of his remedy by distress; but if, although renting the upper floors from year to year, he has no outer door, he is not considered to have a castle, and the landlord's bailiff may obtrude himself under circumstances as inconvenient as those in the case in Hobart's Reports, where an entry by a bailiff, who broke open the door of a chamber where a man and his wife were in bed, was held to be lawful: Hob. 62, 263. The prohibition of breaking the outer door is also limited to the first entry of person distraining. If, after having lawfully entered he is forcibly ejected, or if, having gone out with the intention of returning, he finds himself barred out, he may break open the door to regain possession. Nice questions have arisen as to what is a sufficient possession to entitle the landlord to adopt this course. In the case of *Boyd* v. *Profaze*, 16 L. T., N. S., 431, the defendant, in going to distrain, lifted the latch of an outer door and had got his arm and foot inside, when the servants, with considerable presence of mind, placed a table between the door and a copper which stood near, and squeezed the unfortunate man between the door and the doorpost. By inserting a pair of shears in place of his limbs he succeeded in preventing the door from being closed, and having afterwards entered by force, contended that he had previously obtained a sufficient possession to entitle him to do so. The judge, however, was of opinion that the entry by the arm, foot, and shears, not being a peaceable possession, could not have that effect. After so much elaborate care bestowed upon the definition of lawful and unlawful modes of entry, it is rather surprising to find that actual entry on the demised premises is not essential to a distress. In his judgment in *Cramer* v. *Mott*, the Lord Chief Justice says, that where the article seized "is just inside the door, the tenant at the door, and the landlord's wife,"

acting as his agent, "in such a position as to be able in one moment to put her foot in the room, it must be taken that she was constructively in the room:" 39 L. J., Q. B., 183.

The principle of the law is that as the landlord is supposed to give credit to a visible stock on the premises he ought to have recourse to everything he finds there: judgment of Ashhurst, J. in *Gordon* v. *Faulkner*, 4 T. R., at p. 568. In point of fact, however, while this rule has been rigidly enforced in some directions, it has in others been considerably relaxed. The goods on the demised premises may belong to the tenant, yet not one of them may be distrainable for rent. The goods may not belong to the tenant, yet may be seized and sold to satisfy his debt. So long as the things distrained were merely kept by the landlord as a pledge, to be returned to the owner on payment of the rent, no great hardship was inflicted on third persons, whose property was taken; but since the power of sale has been conferred on the landlord, the operation of this rule is often extremely harsh. An under-tenant or lodger who has paid his rent to his immediate landlord, is liable to have the whole of his goods seized for arrears due to the original landlord. Articles hired by the tenant from tradespeople may be sold to realise the rent. On both sides of the Atlantic this provision of the law has met with strong judicial approbation: (see observations of Blackburn, J., in 39 L. J., Q. B., 173, and of the Chief Justice in *Brown* v. *Sims*, 17 Serg. & Rawle, 138,) and in several States of the American Union it has been abolished. A bill was introduced by Mr. Sheridan into the House of Commons during the present Session to relieve the goods of undertenants and lodgers from the liability to be distrained for rent due to the original landlord, and after being read a second time was referred to a Select Committee. It is to be hoped that this very reasonable reform may speedily be effected. We may remark in passing that while goods belonging to third persons are liable to distress, animals *ferœ naturæ* are exempted from distress on the express ground that they belong to nobody.

From the circumstance that the distress was originally a pledge, to be restored to the tenant when satisfaction was made, it naturally followed that nothing could be taken which was incapable of being restored in the same plight as when it was seized. Hence perishable articles, such as milk and meat, cannot be distrained, and fixtures which cannot be severed without detriment, are also exempt from distress. This doctrine has, however, been extended to the class of things known as tenant's fixtures, an essential attribute of which is, that they are capable of being removed without material damage. Since it was considered unjust to deprive the tenant of the means of redeeming his pledge, a conditional protection was afforded to his implements and stock. The tools of the workman, the cattle and sheep of the farmer, and the books of the scholar can only be seized if there are no other sufficient goods on the premises to satisfy the distress. The exemption of goods from distress while in the hands of a tradesman rests on a different footing, and appears to be based on the benefit derived by the commonwealth from the exercise of a public trade; See *Muspratt* v. *Gregory*, 1 M. & W., p. 645. Originally the protection appears to have been almost exclusively limited to goods sent to the tenant to have labour bestowed upon them and to be returned in an altered condition: (Co. Lit., 47 a.), but the case of *Gilman* v. *Elton*, 3 B. & B., 75, extended it to goods sent in the way of trade for the purpose of sale, and it has been recently decided that articles pledged with a pawnbroker cannot be distrained by his landlord, although they may have remained in the possession of the pawnbroker for more than a year without any payment of interest: *Swire* v. *Leach*, 18 C. B., N. S. 479. By a somewhat arbitrary restriction the exemption from distress is denied to goods placed in the hands of the tenant merely with the intent that they shall remain on the premises: hence horses and carriages sent to a livery stable-keeper: *Parsons* v. *Gingell*, 4 C. B., 545; wine sent to a wine-warehouseman to be matured: *Ex parte Russell*, 18 W. R. 753, and probably also furniture deposited with a furniture warehouseman, may be distrained for rent due by the tenant, although his trade consists exclusively in the reception and care of the articles deposited with him.

Not only must the person distraining exercise the greatest care as to the description, but also to the value of the goods distrained. He is bound to ascertain that such value does not greatly exceed the amount of the arrears of rent. On the other hand he must take sufficient to cover his demand, for, in general, no second distress can be made for the same arrears of rent. He is to estimate the value of the goods seized at the price they would fetch at a broker's sale; but he may be liable to an action for excessive distress, although the goods fairly sold under the distress did not in fact realize the amount of the rent and costs.

The processes of seizure and impounding have long ceased to possess any importance. Almost any equivocal expression of an intention to seize will suffice, without touching the goods or entering upon the demised premises. A mere refusal by the landlord or his agent to permit chattels to be removed until the rent is paid, has been held to amount to a seizure: *Cramer* v. *Mott*, L. R., 5 Q. B., 357. In like manner impounding, which in ancient times necessarily involved the removal of the goods, may now in many cases be effected without the slightest change in their ordinary position, and without locking up the premises or leaving any one in possession: see *Swann* v. *Falmouth*, 8 B. & C. 456. It follows that the acts of seizing and impounding may be simul-

taneously effected, and that the period between these acts during which the tenant might formerly tender the rent and expenses and obtain an immediate return of his goods, has no longer any existence. At common law, a tender after the goods had been impounded was unavailing, and this singular result ensued, that whereas the only object of permitting a landlord to distrain was to enable him to obtain payment of his rent and costs, he might refuse to receive such payment, and in spite of the tender, proceed under the statute to sell the goods distrained. Moved by the grievous hardship to the tenant of this state of the law, the judges have sanctioned an action on the equity of the Stat. 2 W. M., sess. 1, c. 5, in case of the sale of the goods after a tender made within the five days allowed to the tenant to replevy.

The provisions of the statute conferring the power to sell the goods distrained, have, on the whole, been somewhat strictly construed. The notice of distress must be in writing, and the inventory must specify with reasonable certainty the articles taken; the latter must in all cases be appraised by two sworn appraisers, and the landlord is not permitted to appraise the goods, or to buy them under the distress.

In reviewing this subject, the chief point calling for remark is the fact that the whole conduct of the process is left in the hands of the person least concerned to protect the interests of the tenant, and most inclined to exercise harshly the rights given him by law. The power of distress to compel appearance on civil process was at a very early period placed in the hands of the sheriff acting by virtue of the king's writ; but upon a distress for rent, the law still "allows a man to be his own avenger, and to minister redress to himself." To confer on an interested individual the power of seizing and selling the goods of his adversary, is to afford an obvious temptation to unfair dealing: and the existing checks on abuse must be admitted to be entirely inadequate. Notice of the distress is to be given to the tenant; but this notice need not accurately state the amount of rent for which the distress is made. The goods are to be appraised by two sworn appraisers; but since these persons are employed by the landlord, and are permitted to purchase the goods at the appraised value, it is obviously their interest to make as low an appraisement as possible. The landlord is to sell at the best price; but goods sold at the appraised value are presumed to have been sold for the best price. The overplus of the sale is to be left in the hands of the sheriff, under-sheriff, or constable, for the owner's use; but since no scale of charges for distresses for arrears of rent exceeding 20*l.* has been established, the landlord and his bailiff may deduct a large sum for the costs of the distress and sale. On the other hand, the temptation to vexatious litigation on the part of the tenant is scarcely less powerful. The existing process of distress is so full of legal pitfalls that a person who desires to revenge himself upon his landlord for distraining, can hardly fail to find a pretext for involving him in an action. Of all the various sources of litigation, however, the employment of unskilled bailiffs appears to be the most fruitful. Every inexperienced auctioneer deems himself qualified to act in this capacity, and the landlord has frequently to pay heavily for the ignorance of his agent.

But while responsible for any irregularity in the conduct of the distress, the landlord is not liable for illegal acts committed without his knowledge or sanction by the person employed to distrain, and the consequence is that for grave injuries, such as the taking of goods exempted from distress, the tenant's only remedy is against the bailiff, who may be a mere man of straw. It appears to us that much of the evil at present attendant upon the exercise of the right of distress for rent might be obviated by the adoption of a similar provision to that contained in the New York Revised Statutes (Vol. II., 504, ss. 2, 3, 8), under which every distress must be made by the sheriff upon the previous affidavit of the landlord or his agent, stating the amount of rent due, and the time when it became due. The present process of distress, as Lord Mansfield long ago pointed out, is neither more nor less than an execution, and there can be no reason why it should be conducted in a different manner from other executions. As at present conducted it cannot be said to afford a remedy which is either safe for the landlord or just to the tenant.—*Law Magazine.*

Sheriff—Seizure Under Fi. Fa.

Gladstone v. *Padwick*, Ex. 19 W. R. 1064, L. R. 6 Ex. 203.

The question what is an actual seizure or taking of possession, like the question, what is a continuing possession, is one rather of fact than of law, but stands so much upon the border that an illustrative instance is often of great service. In the present case a writ of *fi. fa.* was executed by a seizure at the mansion-house, accompanied by a declaration that it was intended as a seizure of all the goods on the estate; and this was held to be an "actual seizure" of the stock on the home farm (including some outlying fields) and of goods in the farm-house occupied by the bailiff. It was, therefore, held to bind them in favour of the execution creditor, as against the holders of a bill of sale executed half-an-hour afterwards, who claimed the benefit of section 1 of Mercantile Law Amendment Act, 1856. The general rule involved in this decision is that where there is a single holding, the lands of which are continuous or separated by only a moderate interval, a seizure at the principal

place (if there be one) is effectual over the entire extent of the holding. What the effect would be if there were no such principal place, and a seizure were made in some one field in the name of the whole, is another question; it may probably be inferred from the language used by the Court, and from the reason of the thing, that it would be sufficient in a race for priorities; but in such a case it would certainly be prudent to extend the manual possession as far as possible. And in every case an undersheriff who understands his business will take care to follow up his act of seizure as quickly as possible by the usual steps for indicating and retaining his possession; in the present case the fact that he did so was relied on as indicating the character and intention of his act.

A more difficult question might arise if the premises which constituted the single holding were separated by a considerable distance, and the seizure took place at only one of them; and although there seems reason to say that even this would be effectual, if the intention were that the seizure should extend to the whole, and the intention were in due course followed out, the point cannot be considered as clear, and was certainly not decided in the present case.—*Solicitors' Journal.*

An interesting case affecting the rights of unprofessional advocates to appear in court was heard in Easter Term by the Queen's Bench in Ontario. The application to the court was for a prohibition to restrain certain unprofessional persons from conducting suits in the Division Courts, which are tribunals analogous to our County Courts. Looking at the Canadian Statutes the court came to the conclusion that it was manifest that the Legislature intended that only barristers and attorneys should be authorised to conduct or carry on in any court, any kind of litigation, and that consequently unprofessional persons were not entitled to have audience in the prosecution or defending suits in the Division Courts. It was observed by Mr. Justice Wilson that "It can only be a case of great necessity which will warrant a departure from the general, approved, and settled practice of the courts. The policy of the Legislature on this subject has plainly been to exclude all unqualified and non-professional practitioners, and Judges should give effect to that legislation." Although it was held in *Collier* v. *Hicks* (2 B. & Ad. 662), that "any person, whether he be a professional man or not, may attend as a friend of either party, may take notes and quietly make suggestions and give advice," the Judges in *Tribe* v. *Wingfield* said that "they could never lend their authority to support the position that a person who was neither a barrister nor an attorney, might go and play the part of both; and in such a case there was none of that control which was so useful where counsel or attorneys were employed."—*Law Times.*

CANADA REPORTS.

NOVA SCOTIA.

SUPREME COURT.

DODSON v. GRAND TRUNK RAILWAY COMPANY.

Common carriers—Responsibility at common law—Special contract.

As the (English) Carrier's Act of 1830 and the Railway and Canal Traffic Act of 1854, have not been adopted in Canada, the responsibility of a common carrier here rests wholly upon the principles of the common law, and may be so limited by special contract that he shall not be liable, even in cases of gross negligence, misconduct, or fraud on the part of his servants.

[Halifax, August 7, 1871.]

In February, 1868, the plaintiff imported from Montreal, *via* Portland, by the defendants' railway, one hundred dressed hogs, under the usual shipping papers signed by his agent and by the Managing Director of this Company, and forming a special contract which is set out in the amended writ. By the second condition, fresh fish, fruit, meat, dressed hogs and poultry or other perishable articles, were declared to be carried only at the owners' risk; while by the 16th condition in respect to live stock, the owner undertook all risk of loss, injury, damage and other contingencies in loading, unloading, transportation, conveyance and otherwise, no matter how caused.

On arrival the hogs were found to be damaged to the extent of $488, and the jury found upon the trial that the injury was caused by the negligence of the defendant's servants, and gave a verdict for the plaintiff subject to the opinion of the court on all legal objections.

Hon. J. McDonald, Q. C., for the plaintiff.

Hon. H. Blanchard, Q. C., for defendants.

SIR WM. YOUNG, C. J.—There was no imputation, as we read the amended counts, nor was there any evidence, of wilful wrong, destruction, or wanton abuse of the property, but only of mismanagement, carelessness, and neglect which, in the opinion of the jury, rendered the defendants liable; and the court would undoubtedly confirm that finding, unless it should appear that the defendants are protected by the terms of the special contract.

Upon the pleadings and the evidence that is the sole question before us. It is to be decided according to the principles of the common law, neither the English Carriers Act of 11 Geo. 4, & 1 Wm. 4, nor the Railway and Canal Traffic Act of 1854, being in force in this Province.

The numerous cases cited upon the argument have, therefore, only a partial application, and will aid us chiefly by way of illustration and analogy. They are reviewed at much length and with singular ability in the case of *Peek* v. *North Staffordshire Railway Company*, 10 H. L. Cas. 473, decided in 1863. Several of the Common Law Judges were called in to assist the Lords in that case, and Mr. Justice Blackburn delivered an elaborate opinion, which was endorsed by Lord Wensleydale (better known as Baron Parke), both of them, as we all know, very eminent lawyers. Of the opinions in this leading case we will, of course, avail ourselves, as afford-

ing a sounder view of the decisions, and of higher authority than any we could ourselves prepare.

According to Mr. Justice Story, (Commentaries on the Law of Bailments, 5th Ed. sec. 549) "Common carriers cannot by any special agreement exempt themselves from all responsibility, so as to evade altogether the salutary policy of the Common Law. They cannot, therefore, by a special notice, exempt themselves from all responsibility in cases of gross negligence and fraud, or, by demanding an exorbitant price, compel the owners of the goods to yield to unjust and oppressive limitations of their rights. And the carrier will be equally liable in case of the fraud or misconduct of his servants, as he would be in case of his own personal fraud or misconduct." Judge Blackburn (10 H. L. Cas. 494) argued that the weight of authority was in 1832 in favor of this view of the law, but he added that the cases decided in the English Courts between 1832 (*i.e.* two years after the passage of the Carriers Act, but not depending upon it) and the year 1854, established that the doctrine so enounced by Story was not law, and "that a carrier might, by a special notice, make a contract limiting his liability even in the cases there mentioned, of gross negligence, misconduct or fraud on the part of his servants;" and the judge held that "the reason why the Legislature intervened in the Railway and Canal Traffic Act, 1854, was because it thought the companies took advantage of those decisions (in Story's language) to 'evade altogether the salutary policy of the Common Law.'"

It is to be observed, however, while recognizing such power, that the right of making special contracts or qualified acceptances by common carriers, seems to have been asserted in early times. Lord Coke declared it in *Southcote's Case*, 4 Co. Rep. 84 (Vol. 2 p. 487), where he says "that if goods are delivered to one to be delivered over, it is good policy to provide for himself in such special manner, for doubt of being charged by his general acceptance." See also the case of *Mors* v. *Slue*, 1 Ventr. 238. This, says Story, is now fully recognized and settled beyond any reasonable doubt; and he cites a whole array of cases. See also 1 Parsons on Contracts, 708–715.

In *Nicholson* v. *Willan*, 5 East 512, decided long before the passage of the Carriers Act, Lord Ellenborough said that there is no case to be met with in the books in which the right of a carrier to limit by special contract his own responsibility has ever been by express decision denied,—the Court "cannot do otherwise than sustain such right, however liable to abuse and productive of inconvenience it may be, leaving to the Legislature, if it shall think fit, to apply such remedy hereafter as the evil may require." It is remarkable that just fifty years elapsed after this wise suggestion in the courts before it was adopted in Parliament.

In *Carr* v. *Lancashire & Yorkshire Railroad Company*, 7 Ex. 707, decided in 1852, on which the 16th condition we have cited as to live stock is plainly founded, where the jury found as a fact that the plaintiff's horse had been injured through the gross carelessness of the defendants, they had guarded themselves by a notice in these words: "This ticket is issued subject to the owner's undertaking all risks of conveyance whatsoever, as the company will not be responsible for any injury or damage, (howsoever caused) occurring to live stock of any description travelling upon the Lancashire and Yorkshire Railway, or in their vehicles." The finding of the jury was not complained of, just as we approve of the finding of the jury here, yet the Court of Exchequer held that this was a special contract by which the plaintiff had taken upon himself all risk, just as in this case the defendants stipulated that the hogs were carried "only at the owner's risk"—the only difference being in the words "howsoever caused," or "no matter how caused" on which we will presently remark. "It is not for us," said Baron Parke, "to fritter away the true sense and meaning of these contracts. * * * If any inconvenience should arise from their being entered into, that is not a matter for our interference, but it must be left to the Legislature, who may, if they please, put a stop to this mode which the carriers have adopted of limiting their liability. We are bound to construe the words used according to their proper meaning; and according to the true intention of the parties as here expressed, I think the defendants are not liable."

This case was much relied on by the defendants' counsel, with that of *Wilton* v. *Atlantic Mail Steam Company*, 10 C. B. N. S. 453, where the same principles were applied to carriers by sea, and the company was relieved of liability for the negligence of the master, by virtue of a special contract which provided that they should not be accountable for luggage unless a bill of lading had been signed therefor.

The decisions in favour of railroad companies, culminating in the case from 7 Ex., brought down upon them,—to use the strong expression of one of the English judges,—the Railway and Canal Traffic Act of 1854, 17 & 18 Vic. chap. 31, by the 7th section of which, "Every such company shall be liable for the loss of, or for any injury done to live stock or goods, occasioned by the negligence of their servants, notwithstanding any notice, condition, or declaration made and given by such company, contrary thereto, or in any way limiting such liability —every such notice, condition, and declaration being hereby declared to be null and void." Then follow five provisos, the first of which declares that "Nothing herein contained shall be construed to prevent said companies from making such conditions in the premises, as shall be adjudged by the court or a judge, before whom any question relating thereto shall be tried, to be just and reasonable."

The fourth proviso declares that "No special contract between such company and any other person respecting the forwarding or delivery of live stock or goods shall be binding upon or affect any such party, unless the same be signed by him or by the person delivering such animals or goods respectively for carriage." This proviso and the practice under it, have doubtless suggested the form of the shipping papers or contracts used by the Grand Trunk Railway Company.

Subsequent to this Act of 1854, the cases have mainly turned on the justice and reasonableness of the conditions imposed by railroad companies, and the fact that this is to be settled by the

courts, affords to the public an effective and most valuable protection. It is true that the 7th section, with its host of provisos, is not spoken of in the most complimentary terms. Lord Westbury assails it for its cumbrous language, and Mr. Justice Willes calls it "an element of confusion." Its true construction, too, has led to great variety of opinion. Still, though susceptible of improvement, it has been found a valuable enactment, and in the principal case from the House of Lords, it will be instructive to review the terms of the condition then in controversy, and the opinions it elicited.

The action was brought for injury done to three marble chimney pieces sent by railway, and the Company sought to protect themselves by the following condition, "That the company shall not be responsible for the loss of or injury to any marbles, musical instruments, toys, or other articles, which from their brittleness, fragility, delicacy, or liability to ignition, are more than ordinarily hazardous, unless declared and insured according to their value." It appeared by the evidence that the price of the carriage was 55s. stg., per ton. Ten per cent. of the value was demanded for insurance, which the consignor declined paying and sent the chimney pieces uninsured—their value was £210, and the injury done to them was estimated at £52.

To persons who are sometimes astonished at the difference of opinions in the courts of justice, it may give a curious and useful lesson, to mark the variety in this case. It was tried before Mr. Justice Erle, who thought the condition reasonable and just, and directed a verdict to be entered for the defendants. Upon argument in the Queen's Bench, (1 E. B. & E. 958) Lord Campbell and Mr. Justice Crompton took the opposite view, and judgment was given for the plaintiff. This decision was reversed in the Exchequer Chamber (Ib. 980), by Chief Baron Pollock, Mr. Baron Martin, Mr. Justice Willes, Mr. Baron Watson, and Mr. Baron Channel, the judgment was given for the defendants, Mr. Justice Williams dissenting. Of the judges in the House of Lords, besides some of the above called in to assist, Chief Justice Cockburn and Mr. Justice Blackburn gave their opinions for the plaintiff. So that of these common law judges, including two Chief Justices and the Chief Baron, it turned out that five were in favor of the plaintiff and six for the defendants. In the House of Lords, the then Lord Chancellor (Lord Westbury) after remarking with deference that he could not believe that there was in the matter itself any very serious difficulty, combined with Lords Cranworth and Wensleydale in giving judgment for the plaintiff, thus reverting to the original judgment which had been reversed in the Exchequer Chamber; while Lord Chelmsford thought the judgment should be for the company.

Now as to the condition itself, which is the converse of the second condition in the case in hand, it was remarked that the defendants had chosen the very words used by the Legislature in the Carriers Act, and that these very words were determined in *Hinton* v. *Dibdin*, 2 Q. B. 646, to exempt the carrier from liability for loss or injury occasioned by gross negligence of the carrier's servants. Mr. Justice Crompton observed, that he had great difficulty in making a refined distinction between a stipulation to be free from any loss or injury, and to be free from responsibility for any injury or damage, "however caused," which the Court of Exchequer decided in *Carr* v. *The Lancashire & Yorkshire Railroad Company*, to include cases of gross negligence, "but," he added, "I think that a condition that the company shall not be responsible for losses (which appears to me to include losses by every species of gross negligence,) ought not to be held just and reasonable." It is to be noted that the judges, who were for the defendants, did not dissent in substance from this view, but thought that in the true construction of the condition, losses occasioned by gross negligence did not come within it.

The court of ultimate appeal, by a majority of three to one, forming with the other judges a majority of eight to seven of the judicial minds employed upon this important case, decided that the condition imposed by this company was unreasonable and unjust, and the minority did not differ with them as to its essential character. Now, this is an inquiry of the highest practical importance to us. This court has now unanimously held that by the law as it obtains in this Province, and probably in all the other Provinces of the Dominion, there is no law to restrain the Grand Trunk Railway Company from exacting such terms and imposing such conditions as they think fit, in their printed papers which the public using the railway must accede to. We give no opinion whether the condition in the case in hand is reasonable or otherwise; much is to be said for, and something against it. But as it is essentially the same with the condition in *Peek* v. *North Staffordshire Railway Company*, it is well to ponder on the significant words of the Lord Chancellor that "the necessary effect of such a contract would be, that it would exempt the company from responsibility for injury however caused, including therefore, gross negligence and even fraud or dishonesty on the part of the servants of the company; for the condition is expressed without any limitation or exception" (p. 567). In a passage we have already cited, Mr. Justice Blackburn, with the apparent assent of the Law Lords, and certainly with that of Lord Wensleydale, declared that at common law a carrier might by a special notice make a contract, (and the Queen's Bench of Ontario has decided that there is no distinction between a notice and a condition forming a part of a special contract*) limiting his responsibility even in the cases of gross negligence, misconduct or fraud on the part of servants!

We are far from thinking that the Grand Trunk Railway Company would push its advantages or avail itself of the law to such extremes. But as the British North America Act, 1867, in the 91st and 92nd sections declares that exclusive legislative authority belongs to the Parliament of Canada over "lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Provinces with any other or others of the Provinces, or extending beyond the limits of the Province," we think it

* *La Pointe* v. *The Grand Trunk Railway Company*, 26 U. C. Q. B. 479.—Eds. L. J.

right to call the attention of the Dominion Government and the Legislature to what we conceive to be the actual state of the law upon a question so deeply affecting the trade and commerce of the country.

It may be that with a view to their protection, Parliament may deem it advisable to enact a law for the whole Dominion, founded on the Imperial Act of 1854, with such modifications as the experience of the mother country and the decisions since that period will naturally suggest.

In the case in hand, we are constrained by the authorities to set aside the verdict for the plaintiff, and award the defendants a new trial with costs of argument.

Rule absolute.

Plaintiff's attorney, *Mr. Peter Lynch.*

Defendant's attorney, *Mr. J. N. Ritchie.*

[We are indebted to Mr. N. H. Meagher, student-at-law, Halifax, as well for the above report as for others previously received.—Eds. L. J.]

ENGLISH REPORTS.

COMMON PLEAS.

The Queen v. White.

Abandoning child whereby life was endangered—Child allowed by father to remain in danger—Misdemeanour—24 & 25 Vic. c. 100, s. 27.

The prisoner was convicted under section 27 of 24 & 25 Vic. c. 100, of having unlawfully abandoned and exposed a certain infant under the age of two years whereby its life was endangered.

The prisoner and his wife were the parents of the child, which was about nine months old on the 1st of September, 1870, the time mentioned in the indictment. They had been living apart for three weeks, when the mother came to the house of the prisoner at seven o'clock in the evening, laid the child down outside the door, and called out, "Bill, here's your child; I can't keep it; I am gone." She then went away, and was not seen again that night. Shortly afterwards the prisoner came out, stepped over the child, and walked away. About ten o'clock the prisoner returned, and was told that the child was lying outside the house, in the road; he then refused to take it in. About one a.m. a police constable who had been sent for found the child lying in the road, cold and stiff; he took charge of it, and by his care it was restored to animation. At 4.30 a.m. the prisoner admitted to the constable that he knew the child was in the road.

Held, that the prisoner was properly convicted.

[19 W. R. 783, C. C.R.]

Case stated by the Chairman of Quarter Sessions for the County of Southampton. The prisoner was indicted at the Quarter Sessions for the County of Southampton, held at Winchester, on the 19th day of October, 1870, under the Act 24th and 25th Vic. c. 100, s. 27, for that he did on the 1st day of September, 1870, unlawfully and wilfully expose and abandon a certain child, then being under the age of two years, whereby the life of the said child was endangered. It appeared from the evidence that Emily White (the wife of the prisoner) was the mother of the child, which was about nine months old at the time mentioned in the indictment. On that day she had an interview with her husband from whom she had been living apart since the 11th of August of the same year, and asked him if he intended to give her money or victuals, he passed by her without answering, and went into his house; this was about 7 p.m.; his mother shut the wicket of the garden and forbade his wife from coming in. The wife then went to the door of the house, laid the child down close to the door, and called out "Bill, here's your child, I can't keep it, I am gone," she left and was seen no more that night. Shortly after the prisoner came out of the house, stepped over the child, and went away. About 8.30 two witnesses found the child lying in the road outside the wicket of the garden, which was a few yards from the house door, it was dressed in short clothes with nothing on its head; they remained at the spot till about 10 p.m.; when the prisoner came home, they told him that his child was lying in the road, his answer was "it must bide there for what he knew and then the mother ought to be taken up for the murder of it." Another witness Maria Thorn (the mother of the wife) deposed also to the fact that about the same time in answer to her observation that he ought to take the child in, he said "he should not touch it, those that put it there must come and take it." She then went into the house. About 11 p.m. one of the two witnesses went for a police-constable and returned with him to the place about 1 a.m., when the child was found lying on its face in the road with its clothes blown over its waist and cold and stiff. The constable took charge of it, and by his care it was restored to animation. At 4.30 a.m. the constable went to the house and asked the prisoner if he knew where his child was; he said "no." On being asked if he knew it was in the road he answered "yes." It appeared that during the time which elapsed between the prisoner leaving his house about 7 p.m. and his return about 10 p.m., he had been to the police-constable stationed at Beaulien, and told him that there had been a disturbance between him and his wife, and wished him to come up and settle it, but he did not say anything about the child.

The prisoner's counsel objected that upon these facts there was no evidence of abandonment or exposure under the Act by the prisoner.

The Court overruled the objection. The jury found the prisoner guilty.

The question for the Court is, whether the prisoner was or was not properly convicted.

April 29.—No counsel appeared.

Cur. adv. vult.

May 6.—Bovill, C. J.—We have considered this case and are of opinion that the conviction was right. Section 27 of 24 & 25 Vic. c. 100, declares it to be a misdemeanour unlawfully to abandon or expose any child under the age of two years, whereby the life of the child shall be endangered. The words are in the alternative, and if either abandonment or exposure is proved, the offence is complete. The prisoner was the father of the child, and was bound, not only morally, but legally, to provide for and protect it; he was aware that it had been deserted by its mother, and the evidence is clear that he had the opportunity of taking it under his protection. The only question which we have had to consider is, whether there was any evidence to go to the jury of abandonment or exposure by the prisoner, whereby the child's life was endangered. I am clearly of opinion that upon the facts stated the jury not only might, but ought to have convicted.

The life of the child was in danger. The prisoner must have been well aware that this was the case, and his responsibility and duty with respect to it were very different from that of a stranger.

Martin, B.—I concur, though at first I felt some doubt whether without extending the words of the statute beyond their ordinary meaning, we could hold that the father, not having the actual possession of the child, could be said to have abandoned or exposed it. But he was legally bound to protect the child, and failed to do so, and on the facts I think he did abandon it.

Bramwell, B.—I am of the same opinion.

Channell, B.—I have been requested by my brother Byles, who was present on Saturday last, to say that he agrees that the conviction was right. I also have considered the case and am of the same opinion.

Blackburn, J.—I think there was evidence for the jury that the prisoner abandoned the child. If a stranger to it had been charged with the same offence under similar circumstances, I think he would have been under no legal obligation to protect it, and would have been entitled to an acquittal. There might be a moral duty, but it would be one of imperfect obligation, for breach of which he could not be convicted. But the father was legally bound to protect and maintain his own child, and if he had failed to do so, and it had in consequence died, there can be no doubt that he would have been guilty of manslaughter. He is bound to protect the child, and though no mischief may in fact have happened to it, I think that if it was in danger, and he wilfully left it in that condition, he abandoned it by neglecting a duty, which it is clear that physically he was in a position to perform.

Conviction affirmed.

QUEEN'S BENCH.

Re An Articled Clerk.

Attorney—Articled clerk—Sufficiency of service—6 & 7 Vic. c. 73, ss. 3, 6, 13.

On application by an articled clerk to be admitted as an attorney it appeared that, upon the execution of the articles and without any service under them, he became pupil to a conveyancer and continued so for more than a year. Upon the expiration of his pupilage the articles were assigned to another attorney, and he served under that and subsequent assignments for more than four years.

Held, that a year of the pupilage was equivalent to a year's service under the articles, and that he was entitled to admission.

[19 W. R. 780.—Bail Court.]

C. Wood, on behalf of an articled clerk, applied that he might be admitted as an attorney. It appeared by the affidavit that the applicant had been articled to his father, an attorney, and that immediately upon the execution of the articles, and without service under them, he entered the chambers of a conveyancer as a pupil. He remained there more than a year, and upon the expiration of that time his articles were assigned to another attorney; he served under that and subsequent assignments for more than four years. The Incorporated Law Society refused to admit the applicant on the ground that as he had not served at all under the articles to his father, but had been a pupil to a conveyancer during the whole continuance of those articles, he was not entitled, by section 6 of 6 & 7 Vic. c. 73, to reckon twelve months' pupilage with the conveyancer as service under those articles.

6 & 7 Vic. c. 73, s. 3 enacts that, except as thereinafter mentioned, no person shall, after the passing of the Act be admitted as an attorney, unless he shall have been bound by contract in writing to serve as clerk for and during the term of five years to a practising attorney or solicitor, and shall have duly served under such contract for and during the said term of five years.

Section 6 provides that any person so bound, and who shall be and continue as pupil with any practising barrister for any part of the said term not exceeding one whole year, shall be capable of being admitted as if he had served the whole period of the five years with the attorney or solicitor to whom he was bound.

Section 13 provides for an assignment of the articles in certain cases, and enacts that service under the new contract shall be good and effectual.

Blackburn, J.—was of opinion that by section 6, a year of the period spent by the applicant as a pupil was equivalent to a year spent under the original articles, though there had been no actual service under those articles: and that, as by section 13. four years' service under assignment was as effectual as four years' service under the original articles, the applicant was entitled to admission.

Order accordingly.

CHANCERY.

Joyce v. Cottrell.

Administration—Maintenance—Claim by mother.

Advances made by a mother for the maintenance of a son during his minority will be regarded as acts of bounty, unless there is evidence of an intention of claiming repayment.

In order to establish a claim for repayment of money expended for maintenance subsequent to majority, a contract must be shown.

[19 W. R. 1076—V. C. W.]

This suit, which now came before the Court on further consideration, was one for the administration of the estate of Joseph Cottrell, who died intestate in September, 1861, and the question which now arose was whether his mother was entitled to claim out of her son's estate a sum of £920, which she had expended for his maintenance during his minority and after he attained twenty-one years of age.

A suit of *Cottrell* v. *Cottrell*, had previously been instituted for the administration of the estate of Samuel Cottrell, the father of the intestate, who had by his will bequeathed a sum of £100 to each of his children, and a further sum of £1,000 to his son Joseph. The will contained a declaration that the legacy should not be paid to his son Joseph until he attained the age of twenty-eight years, at the discretion of his guardians, but the interest was directed to be applied for his maintenance and education. Accordingly in that suit an inquiry was directed as to who had maintained Joseph Cottrell from the date of his father's death, and what was proper to be allowed in that respect, and to what date, and the chief clerk certified that Joseph Cottrell had been

maintained by his mother until his death, and £920 was a proper sum to be allowed in respect thereof. In the order made on further consideration the question was left open.

In the present suit the claim was again brought forward against the estate of Joseph Cottrell.

E. Russell Roberts stated the case for the opinion of the Court.

Dickenson, Q. C., and *Lake*, for the widow, submitted that the finding of the chief clerk, which must be taken to have been made on the request of all parties, was decisive, and that the claim must be allowed. They relied upon *Bruin* v. *Knott*, 1 Phillips, 572.

Chapman Barber and *Bedwell*, for a brother of the intestate, the administrator, contended that there was no necessity for the inquiry—no claim could be made by the mother after she had allowed her son to receive his legacy, which she might have retained in respect of his maintenance during his minority. After he attained twenty-one she must show a contract. There was no evidence in support of any such contract.

Langley, for a sister of the intestate, contended that the certificate was not binding. If the son had been maintained by a stranger to the suit of *Cottrell* v. *Cottrell* he could not, as a creditor against Joseph's estate, be bound by a certificate made in a suit when he was not represented on the merits, but the question must in this cause be tried over again. The maintenance was an act of kindness and charity, and the claim must be disallowed: *Worthington* v. *M'Craw*, 5 W. R. 124, 23 Beav. 81; *Grove* v. *Price*, 26 Beav. 105, 8 W. R. Ch. Dig. 84.

Dickinson, Q. C., in reply.

Wickens, V.C.—The only question in this case is, whether there is or is not a debt against the estate of Joseph Cottrell, in respect of the sums expended for his maintenance by his mother. That question resolves itself into two heads; first, with reference to the sums expended during his minority for maintenance, and secondly, the sums expended after majority.

In general I think it may be said that when a mother maintains a child, although not under any legal liability, she does so under one of three different views—first, with the intention of afterwards claiming the amount as a debt due to her; secondly, as an act of maternal duty, kindness, or bounty, that is, as a gift; or, thirdly, she may make the advance on an intermediate footing, that is to say, in the expectation of being recouped out of some fund under the jurisdiction of the Court, which it would allow to be so applied, although such expenditure had not been previously sanctioned by the Court.

Of course I apprehend that if a mother or any other person confers a gift, intending it as a gift at the time, she cannot afterwards, under a changed state of circumstances, come to this Court and say it was a loan. In the present case the question is, first, did the mother make the advances during the minority with the intention of afterwards claiming as a creditor? I see no reason to believe that she did so, and therefore I hold in this respect that there was no debt for maintenance during the minority. It is probably not necessary to consider whether she made these advances during minority with the intention of afterwards claiming them out of a fund under the control of the Court, but in my opinion it is clear she did not from what took place after the son came of age; for I cannot conceive stronger intimation of an intention not to claim any repayment than is manifested by her handing over the sum of £1,000 as she did. I take it, therefore, as clear for the present purpose that, whether these advances were actually intended as bounty or not during the minority, there was nothing to create a debt. The fund I am now dealing with is not under the control of the Court otherwise than for the purpose of administration of the intestate's estate, and I am now trying the question as against the fund, as a jury would try the question in an action of *assumpsit*.

As to what took place after majority, the claim has entirely failed. What the mother has to show is a contract, and she shows none. I am perfectly convinced in my own mind that she never, during these six years between the minority and the death of Joseph Cottrell, had the smallest idea of claiming repayment of anything from him. Nothing would have surprised him more than if she had intimated such an intention to him, and it would probably have caused an alteration in their arrangements. She was bound to intimate such an intention to him; but she never, as I believe, formed such an intention, and certainly never intimated it.

As to what took place before my predecessor, there is a little difficulty, because some part of the case was dealt with in the former suit; but I do not know that I am technically bound, by the finding upon the certificate that the sum was proper to be allowed, to hold that that constituted it a debt against this estate. Although all the parties were present, the precise question before me could not have arisen in the former suit, and I do not think that the certificate is conclusive upon me to hold that there was any debt, and being convinced that there was none, I dismiss the summons. The claim will be disallowed.

Bain v. Sadler.

Administration suit—Legal and equitable assets—Trustee and executor—Retainer.

A trustee for sale of a testator's real estate for the payment of debts has no right of retainer for a debt due to him from the testator, although he may be also executor.

Hall v. *Macdonald*, 14 Sim. 1, discussed.

Proceeds of sale of testator's real estate directed by him to be sold for payment of debts, the sale being made under an order of the Court in an administration suit, are equitable assets. [19 W. R. 1077—V. C. W.]

This was a creditor's suit for the administration of the estate of Henry Dike, who died in 1867, having by his will devised his real and personal estate to the defendant, John Sadler, and another, upon trust to sell so much as might be necessary for the payment of his debts. The will was proved by John Sadler alone.

The testator was indebted to the plaintiff, William Bain, and various other persons at the time of his death. By a decree made at the hearing of the cause various accounts and inquiries were directed.

It appeared from the certificate of the chief clerk that the personal estate of the testator was insufficient for the payment of his debts; that John Sadler had received the personal estate of

the testator which, after deducting certain sums allowed to him, left a balance in his hands; this he claimed to retain in part payment of a debt of much larger amount due him from the testator.

Part of the testator's real estate had, previously to the filing of the bill, been sold, and subsequently the residue was sold by order of the Court; the proceeds of these sales were received by the defendant, John Sadler, and out of them he claimed to be entitled to retain a sum sufficient to satisfy the balance of the debt due to him.

On a summons taken out for the payment of the proceeds of the real estate into court, the Vice-Chancellor Stuart decided in favour of the right of retainer, subject to the taking of certain accounts.

It was admitted that the defendant John Sadler was entitled to retain the balance of the personal estate as legal assets, and the question was now brought before the Court whether he had any right of retainer as executor over any part of the proceeds of the real estate, for the payment of which into court a summons had now been taken out.

Dickinson, Q. C., and *W. C. Harvey*.—This trustee has no right to retain anything out of equitable assets until the other creditors have been put on an equality with him. These are clearly equitable assets. *Lovegrove* v. *Cooper*, 2 Sm. & Giff 271, has often been commented upon as not being consistent with other authorities. They referred to *Silk* v. *Prime*, 1 Bro. C. C. 138; 2 L. C. in Eq. 123; *Cook* v. *Gregson*, 4 W. R. 581, 3 Drew. 547; Wms. on Exrs. 1555.

E. K. Karslake, Q. C., and *Freeman*.—*Hall* v. *Macdonald*, 14 Sim. 1, is an authority precisely in point. *Lovegrove* v. *Cooper* (*ubi sup.*) is perfectly good law. These assets are not equitable. The devisee in trust for sale cannot proceed against himself to have the property administered in a court of equity; he should proceed to sell and then satisfy his own debt.

Dickinson, Q. C., in reply.

Wickens, V. C.—This case is one of some importance. There is a difficulty created by the case of *Hall* v. *Macdonald*, but I am bound to say that for a great many years I have thought that case was not law. I remember making a note against the case when it was first reported. I have no doubt whatever that the Vice-Chancellor Shadwell's decision was right, but I cannot help thinking that Mr. Simons has misconceived what was precisely the point of the case, and, in fact, he did not report the case for that point. It is mentioned incidentally, and I can easily conceive certain states of circumstances in which the decision would have been perfectly right, without that precise expression having been necessary, or having been used.

It seems to me that the case, in fact, is settled by principle, and the principle is so well established that I may venture to depart even from so great an authority as the Vice-Chancellor Shadwell in that case. There is no doubt as to the right of retainer as against legal assets on the part of an executor; and there is also, I think, such a preponderance of authority in favor of holding that assets like these are equitable; that, notwithstanding the decision in *Lovegrove* v. *Cooper*, I may so hold them.

The right of the heir under the statute is anomalous; I believe myself that that cannot be reconciled with the principles of equity, but that it must be rested entirely upon decision, and upon the words of the statute. But I take it to be perfectly well settled that a trustee for sale who is not executor, has no right whatever analogous to a creditor. I take it as perfectly well settled that, if an estate is devised to a trustee for sale, or if it is conveyed to a trustee for sale for the purpose of paying debts, in neither case would there be any right analogous to the right of retainer. That being so, is it possible to say that the characters of trustee for sale and executor becoming united in one and the same person shall give to the trustee rights in his character of executor which in his character of trustee *per se* he could not have had? There would be a want of symmetry in that which almost makes it conclusive that it could not be the case.

Of course one might put cases which would lead to results more or less absurd; for instance, one might obviously put the case of an executor, who was not an original trustee, but a derivative trustee, as for instance an executor who was appointed trustee under a power before the sale; or you might put the case of a trustee for sale, who became personal representative, not having been so appointed, but by being executor of the original executor.

I do not see where you are to stop if you once say that the union of the two distinct offices of executor and trustee in the same person gives to the trustee rights analogous to those he would have as executor, but which he would in no way have as being merely trustee. Therefore I think the true view is to hold, as against assets like these, that his rights are precisely the same, whether he is executor *plus* trustee or not, and that therefore he has no right of retainer. The consequence will be, I take it, according to Mr. Dickinson's statement; that is to say, that equality must be established with respect to the equitable assets by paying the other creditors up to an equality with this executor, and then there will be a rateable distribution.

Fazakerley v. Culshaw.

Trustee—Real estate—Power to apply rents in repairing—Power to borrow.

A testatrix devised all her real estate to trustees upon certain trusts, and empowered them to lay out the rents thereof in repairing a certain dwelling-house (part of the real estate), and in erecting and making such alterations and additions thereto as they might think fit.

Held, that the trustees had no power to borrow money for repairing the house, and consequently that they should not be allowed interest on a sum which they had borrowed for that purpose.

[24 L. T. Rep. N. S. 773.]

This was an administration suit.

By her will, dated the 7th June, 1854, Agnes Culshaw, widow, gave and devised all her messuages, lands, tenements and hereditaments, situate and being in Ormskirk, in the county of Lancaster, and all other her real estate whatsoever, to Robert Neilson, his heirs and assigns, upon trust from time to time to pay the rents and profits thereof unto and equally amongst her grandchildren, Ellen Elizabeth Culshaw, Margaret Culshaw, Sarah Culshaw, and John Culshaw, as tenants in common during their respective lives, with divers remainders over for the benefit of the children and issue of all her said grandchildren.

By a codicil to her will, dated the 16th July, 1855, the testatrix appointed John Fazakerley a trustee and executor of her will, along with Robert Neilson; and she thereby authorised her trustees and executors to lay out all or any part of her personal estate (which by her will she had given upon trust for her four grandchildren on attaining twenty-one, in equal shares), and the rents of her real estate, in repairing the dwelling-house and premises where she then lived, and in erecting and making such alterations and additions thereto as might from time to time appear necessary to them for letting the same to advantage.

The testatrix died on the 21st July, 1855, and her will and codicil were, in the following October, duly proved by John Fazakerley alone.

The four grandchildren were all infants at the death of the testatrix.

The dwelling-house and premises referred to in the codicil consisted of a dwelling-house known as Vine Cottage, and three small plots of land adjoining it, and situate in Buscough-street, Ormskirk. At the date of the testatrix's death, Vine Cottage was in a very dilapidated condition; and Fazakerley, not having in his hands sufficient money belonging to the testatrix to put the cottage into a thorough state of repair, borrowed sums amounting in the whole to 1,018*l.* 15*s.* 4*d.*, which he expended upon the repair of the premises, whereby he alleged that he had increased the letting value thereof from 25*l.* to 90*l.* He had since paid off the amount out of the rents.

Ellen Elizabeth Culshaw, who attained twenty-one in September, 1869, having expressed herself dissatisfied with the expenditure of the sum of 1,018*l.* 15*s.* 4*d.* upon the repairs of the premises, Fazakerley instituted the present suit, praying for the administration of the real and personal estate of the testatrix, and for a declaration that the expenditure of the sum in question on the repairs of the premises was proper and for the benefit of the grandchildren, and that he might be allowed the sum of 1,018*l.* 15*s* 4*d* and interest as a proper disbursement on account of the real and personal estate of the testatrix, in taking the accounts.

Jessel, Q. C., and *A. E. Miller*, for the plaintiff, contended that he ought to be allowed all sums properly expended by him, with interest at the usual rate.

Southgate, Q. C., and *Bedwell*, for the grandchildren, contended that the plaintiff was not entitled to be allowed interest. There ought to be an inquiry as to the amount properly expended, and the plaintiff ought to pay the costs of the inquiry, as in *Re Churchill* (3 Jur. 719), where Lord Cottenham held that the committee of a lunatic, who had expended money in the repair of his estates without having the previous sanction of the court, must bear the costs of a reference to the Master whether the amount had been properly expended. They also referred to *Bridge* v. *Brown* (2 Y. & C. C. C. 181).

Bardwell for the other trustee.

Jessel, Q. C replied.

Lord Romilly said that under the words of the codicil there was no power to raise money by mortgage of the real estate for the purpose of repairing; the trustees were only empowered to apply for that purpose the rents after they received them, and therefore no interest could be allowed to the plaintiff in respect of the money which he had borrowed for the purpose of repairing the cottage. There must be an inquiry what sum was properly expended by the plaintiff in the repair of the cottage.

UNITED STATES REPORTS.

SUPREME JUDICIAL COURT OF MAINE.

Henry Baker and Wife v. City of Portland.
Henry Baker v. Same.

The fact that, when a resident of a city was injured by a defective way, which the city was bound to keep in repair, he was driving at a "faster rate than six miles an hour," in violation of a city ordinance, is no bar to his right to recover damages for such injury, if such driving did not in any way contribute to produce it.

The fact that the jury failed to agree upon the answer to the question whether the plaintiff was driving at a faster rate than six miles an hour, does not render it reasonably certain that a general verdict for the plaintiff, in such action, is erroneous.

This was an action on the case, for an injury occasioned by a defective highway. The plaintiffs suffered serious damage in person and property on the evening of October 13th, 1868, by reason of the upsetting of the carriage in which they were riding, in consequence of running over certain piles of stones which had been dumped in the roadway on Cumberland street, by persons in the employ of the street commissioner, and left there over night, without guards or lights, to protect or warn the traveller. The buggy and harness were well made and in good order, the horse well broken and kind, though spirited, the street much frequented, and the evening too dark for a man in a carriage to see obstacles of that description on the ground.

H. Baker testified that he was driving not over five miles an hour, when the accident occurred. The defendants offered evidence to show that he was driving at a rate exceeding six miles an hour.

There was a city ordinance prohibiting driving at a faster rate than six miles an hour, under a penalty of not less than $5 nor more than $20.

The presiding judge instructed the jury, that if plaintiffs were driving at a faster rate than six miles an hour, when thrown from the carriage, yet if such driving did not in any degree contribute to produce the injuries complained of, would be no bar to their right to recover.

The case now came before this court on exceptions by defendants to this instruction, and also on motion to set aside the verdict (which was for the plaintiffs) as against law and evidence.

Davis & Drummond for plaintiffs.

J. W. Symonds, City Solicitor, for defendants.

The opinion of the court was delivered by

Barrows, J.—Counsel for the defendants cite a strong line of cases, in which our own and other courts have held city ordinances of this and like character, as binding on all who have actual or constructive knowledge of their existence, and as having the force of statute law within the limits to which they apply. And also cases in which it appears to have been held with more or less distinctness, that a party

seeking a remedy in damages against a town or city or other corporation, charged with the maintenance of a way or bridge, is not entitled to recover, if at the time of the accident, the party plaintiff was violating a law of which he was bound to take notice.

But in all this latter class of cases, it will be seen upon examination that the wrongful act of the plaintiffs either was or was not assumed to be, in some manner or degree, contributory to the production of the injury complained of, so that the precise question here presented was not under consideration in any of them. They cannot be deemed authorities adverse to the instruction here given, if the point was not raised or considered. Thus in *Heland* v. *Lowell*, 3 Allen 407, it seems to have been taken for granted on all hands, that the plaintiff's want of care, evinced in the violation of the city ordinance, was one of the efficient causes of the accident. There may have been *something* in the evidence which made it certain that it was so, in which case it would be useless to raise or discuss the question which we are to pass upon. At all events the point was not taken, and the questions presented to the court were whether the plaintiff was bound by the ordinance, if it was not made to appear that he knew of its existence, and whether evidence of his general good character for sobriety was admissible, to rebut the evidence offered in defence that he was intoxicated when the accident occurred. The rulings complained of were the rejection of the evidence of general good character for sobriety, and the instruction, "that if the plaintiff at the time of receiving the accident was driving at a rate faster than a walk, in violation of the city ordinance, he could not recover, although he was using due care in *other* respects." It seems from the very tenor of the instruction, to have been conceded on the part of the plaintiff, that under the circumstances of that case, driving faster than a walk was not the "due care," which the plaintiff was bound to show he was using in *all* respects.

The court recite a dictum from *Worcester* v. *Essex Merrimac Bridge Corporation*, 7 Gray. 459, to the effect that if the plaintiff was, at the time of the accident, violating a public statute or a by-law, of which he had actual or constructive notice, he could not recover damages for the accident; but they immediately refer to the true principle, adding: "and it is the established law, that when a plaintiff's own unlawful act *concurs in causing the damage* that he complains of, he cannot recover compensation for such damage." It is very clear that the court could not have meant that a concurrence merely in point of time between a breach of law by the plaintiff and the accident, would bar the plaintiff to recover, because they had just said in *Alger* v. *Lowell*, 3 Allen 406, that "intoxicated persons are not removed from all protection of law; the plaintiff was bound to show that he was in the exercise of due care, and the jury were so instructed, if he used such care by himself or others, his intoxication had nothing to do with the accident; the city may be liable under some circumstances for an injury sustained by * * * an intoxicated person, if the condition of the injured person does not contribute in any degree to occasion the injury."

Now intoxication in the streets is a misdemeanor, upon which a penalty is imposed by law, as distinctly as it is by the city ordinance upon driving over a bridge faster than a walk, and it appears as likely to contribute to the occurrence of an accident, to say the least of it; yet no one would be likely to contend that a city or town would be relieved from the consequences of its negligence in the care of its ways, merely because the sufferer was intoxicated at the time of the accident, if it were made to appear that his breach of the law, in that respect, had nothing to do with its occurrence. It has been settled that intoxication is not conclusive evidence of a want of ordinary care: *Stuart* v. *Machias Port*, 48 Maine 477. In fine, recrimination is not a good plea in bar in actions of this kind, unless the plaintiff's claim originates in his offence, and he is obliged to prove the offence in order to establish his claim, or unless the commission of the offence has in some degree contributed to produce the injury, or necessarily negatives some point which the plaintiff is bound to establish in proof, in order to entitle him to a verdict.

The defendants' counsel contends that the simple fact that the plaintiff is in the act of violating the law, at the time of the injury, is a bar to the right of recovery. Undoubtedly there are many casss where the contemporaneous violation of the law by the plaintiff is so connected with his claim for damages, as to preclude his recovery; but to lay down such a rule as the counsel claims, and to disregard the distinction implied in the ruling of which he complains, would be productive oftentimes of palpable injustice. The fact that a party plaintiff in an action of this description was at the time of the injury passing another wayfarer on the wrong side of the street or without giving him half the road, or that he was travelling on runners without bells in contravention of the statute, or that he was smoking a cigar in the streets, in violation of a municipal ordinance, while it might subject the offender to a penalty, will not excuse the town for a neglect to make its ways safe and convenient for travellers, if the commission of the plaintiff's offence did not in any degree contribute to produce the injury of which he complains.

The soundness of the distinction recognised by the presiding judge in the instruction now under consideration, has been affirmed by this court in *Bigelow* v. *Reed*, 51 Maine 325, *Hamilton* v. *Goding*, 55 Maine 428, 429. See also *Moeton* v. *Gloster*, 46 Maine 520; *Davis* v. *Mann*, 10 M. & W. 548.

But the defendants' counsel insists that "the finding by the jury, that the illegal driving did not contribute to the injury, was unwarranted by the testimony," and argues that a change in the rate of speed must necessarily increase or diminish the danger, while "the verdict practically holds that the danger would be the same at a rate of less than six miles, as it would be at a rate of more than six miles an hour," inasmuch as the jury declared themselves as unable to agree whether the plaintiff was driving at the rate of more than six miles. It is reasonably certain, then, that the verdict must have been erroneous, because the jury failed to agree upon the answer to the question, whether the plaintiff was driving at a rate exceeding six miles an hour.

Suppose half the jury thought the plaintiff was driving at the rate of six miles and an eighth per hour, and the other half thought his speed did not exceed six miles. They would not agree upon the special finding; but would that prevent them from finding that the rate of speed, whichever of the two rates it was, did not contribute to produce the injury? Might they not well have found upon the testimony here presented, that if the plaintiff was driving at a rate not exceeding five miles an hour, as he testified, the same results, to wit, the frightening the horse, his starting to run, and the upsetting of the carriage would have followed? If so, did it really make any difference as to the issue then on trial if he was going more than six miles an hour? We think the answers to these questions must demonstrate the injustice of making such a test decisive of the plaintiff's right to recover. The true question was (on this part of the case) whether he was using due and reasonable care under all the circumstances, or whether a want of such care on his part contributed to produce the injury.

We have no reason to doubt that this question was submitted to the jury, in a manner calculated to give to the testimony offered by the defendants as to the plaintiff's rate of speed, all its legitimate effect, or that it was passed upon by them in a manner which must preclude our interference with the conclusion at which they arrived. In each case the entry must be

Motion and exceptions overruled.

Note by the Editor of the "American Law Register."

The cases are probably not altogether harmonious in regard to the effect of illegality in a contract or business, upon the right to recover upon any matter merely incidental to the main contract or business. It seems well agreed, that if the action is based upon any matter which is in violation of law, whether it be also *contra bonos mores* or not, it cannot be maintained. There was formerly an attempt to distinguish, in this respect, between *mala prohibita* and *mala in se*, as if contracts against positive law merely, were not to be held illegal to the same extent as if they involved also positive moral turpitude. There seems to have been an opinion somewhat extensively prevalent among men of the better class in our country, that if one peaceably submitted to endure the penalty of a statute, he had answered all the law required of him, and that he thereby obtained full pardon and absolution for his violation of the law. For instance, if in his conscience he felt the law to be in conflict with any higher law, as the constitution of the state, or the Divine law, he was at full liberty to act upon his own impulses, or convictions, and incurred no moral guilt provided he submitted to pay or endure the penalty.

Upon a somewhat similar view, it seems, at one time, to have been considered that Sunday laws, or those requiring abstinence from ordinary secular labor on the Lord's Day, did not render contracts made in violation of the statute void, but only exposed the parties to the penalty of the statute: *Geer* v. *Putnam*, 10 Mass. 312; 2 Parsons on Cont. 762. But later cases have placed the question upon the true ground, that the effect of the statute must be to render all acts done in violation of the statute void for all purposes, so that no action could be maintained upon any contract made in violation of these statutes: *Lyon* v. *Strong*, 6 Vt. 219; *Robeson* v. *French*, 12 Met. 24; *Gregg* v. *Wyman*, 4 Cush. 322. And the same rule has been extended to sales of property in violation of statutory regulations as to inspection, license, and stamping. As in actions for the recovery of the price of lottery tickets sold in violation of statutes: *Hunt* v. *Knickerbacker*, 5 Johns. 327; or for the enforcement of contracts for the sale of lands where a penalty was inflicted by statute; *Mitchell* v. *Smith*, 1 Binn. 110; or where the statute prohibited, under a penalty, the selling of shingles unless of a particular dimension or if not surveyed, and the action was for the recovery of the price of shingles sold in violation of the statute; *Wheeler* v. *Russell*, 17 Mass. 258. Cases of this character are very numerous in the reports, and not be discussed.

It seems, however, in all this class of cases to be considered, that in order to defeat the action, it must appear that it is some way founded upon, or in furtherance of, the illegality. Thus, a contract founded upon the consideration of future cohabitation is held void, as being against public morals: *Walker* v. *Perkins*, 3 Burr. 1568; s. c. 1 Wm. Bl. 517. But contracts founded upon past illicit cohabitation, even where one of the parties is married, have been upheld: *Turner* v *Vaughan*, 2 Will. 339; *Walker* v. *Perkins*, *supra*; *Hill* v. *Spencer*, Amb. 641; *Kaye* v. *Moore*, 2 Sim. & Stu. 260; *Nye* v. *Moreley*, 6 B. & C. 133.

But where a party contributes to the maintenance of anything prohibited by law, or against the policy of the law, as where one lets lodgings to an immodest woman to enable her to carry on illicit cohabitation there, with different men, he cannot recover the rent. But if the woman merely lodge there and receives her visitors elsewhere, it is here said he may recover the rent: *Appleton* v. *Campbell*, 2 C. & P. 347. So, also, he cannot recover in such case, although at the time of letting the plaintiff did not know of the use to which the tenant purposed to put the lodgings, if he suffers her to occupy them after he learns the use: *Jennings* v. *Throgmorton*, R. & M. 251; *Lloyd* v. *Johnston*, 1 B. & P. 340. And it seems to have been held, that one may recover for getting up an expensive dress to be worn by a woman of bad fame, at public places, in furtherance of her vicious mode of life, even when the plaintiff knew the use for which it was intended beforehand: *Lloyd* v. *Johnston*, 1 B. & P. 340. But we should have doubted the entire soundness of the last case on this point. And Lord Ellenborough seems to have held, in *Bowry* v. *Bennett*, 1 Cowp. 348, that in such case the plaintiff cannot recover, where the work is done to forward prostitution, and to be paid out of the avails of such a course of life. And it has been held, that where houses have been leased for brothels, the lessor knowing the use contemplated, no recovery could be had upon the covenants in the lease: *Smith* v. *White*, Law Rep. 1 Eq. 626. And although, as stated above, at one time it seems to have been held that the plaintiff must expect to derive some advantage from the illegality, in order to defeat the action, that is

not now held important: *Pearce* v. *Brooks*, Law Rep. 1 Exch. 213.

Anything done in furtherance of a business carried on in violation of law, can never be made the foundation of an action. As where the action was for services rendered in peddling goods for another, without license as required by law: *Stewartson* v. *Lothrop*, 12 Gray, 52. Nor is the agent of another, in performing an illegal act, liable to an action at the suit of his principal, for damages recovered against him on account of the negligence of the agent: *Baynard* v. *Harrity*, 1 Houston 200. But it would be otherwise if the business had been rendered illegal by the omission of the agent to obtain the proper license, which his principal confided in him to do: Id. And a woman cannot recover upon an implied contract for services performed by her as servant for a man with whom she lived as a mistress: *Walraven* v. *Jones*, Id. 355.

And it has been held that one who is travelling upon the highway on Sunday in violation of the statute cannot recover of the town for damages suffered by defects therein; *Bosworth* v. *Swansey*, 10 Met. 363. And if the plaintiff seeks to recover upon the ground that his travelling was a work of necessity or charity, and not of a secular character, so as to come within the statute, the burden of proof is upon him: Id.: *Jones* v. *Andover*, 10 Allen, 18. Chief Justice Shaw, in *Bosworth* v. *Swansey*, treats the question, as being whether the *illegal act contributed to the injury*. Upon this view, the decision of the principal case would be free from all difficulty, provided the question how far the violation of the city ordinance contributed to the injury, is properly one for the jury. In the case of travelling on Sunday in violation of the statute, it clearly could not be regarded as a proper question to be submitted to the jury, whether the illegal act contributed to the injury. That must be regarded as one of those self-evident propositions to be ruled by the court. In New Hampshire it seems to have been doubted how far the fact that the plaintiff was travelling in violation of the statute will preclude a recovery in such cases: *Corry* v. *Bath*, 35 N. H. 533. And in *Norris* v. *Litchfield*, 35 N. H. 271, Bell, J., is reported to have said, "as a general principle it is wholly immaterial whether the plaintiff was acting in violation of law, unless his wrong-doing has *directly contributed to his damage*." These dicta seem to justify the decision in the principal case. And there are many cases where the plaintiff's illegal act must be considered as having contributed to his injury, where he is not precluded from recovery on that account As where one is injured by spring-guns set by the owner upon his premises for the protection of his property, while the plaintiff is trespassing thereon: *Bird* v. *Holbrook*, 4 Bing. 628; s. c. 15 Eng. C. L. Rep. 91. There is no end to the cases bearing more or less directly upon the question decided in the principal case. The only question, which it seems to us could fairly arise in the case, is how far the plaintiff is competent to use the highways of a town or city differently from the way the law allows him to use them at all, and then claim damages because they are not in complete repair, and ask to have the jury decide, by way of inference merely—since, from the nature of the case, there could be no direct evidence to the point—whether his acknowledged abuse of his legal license to use the highway in a particular manner, had any tendency, or contributed in any degree, to produce or increase the injury. It requires no gift of prophecy to foretell how such questions are likely to be decided by the jury. The present case well illustrates that point. The jury were ready to say that the rate of speed had no connection with the injury: but they could not agree what the rate of speed was, whether more or less than the law required. And as the case now stands upon the record, the plaintiff was using the highway in an illegal manner; but not so as to contribute to his injury, in the opinion of the jury. The only doubt, as we have said, would seem to be, whether the jury, by a mere inference, can purge the plaintiff from the ordinary consequences of his illegal act, that is to increase the peril of travelling as the speed increases, or whether the defendant is fairly entitled to have the benefit of this natural presumption, as one of the presumptions which the law denominates *presumptiones juris et de jure*. The case is somewhat novel, and as it seems to us, is presented by the learned judge with great fairness and ability.

Important if true.—The *American Society* newspaper has a recent article, making the following announcements: First, that an eminent lawyer says that all marriages celebrated on Sunday are void, because marriage is a civil contract, and civil contracts made on Sunday are void; second, that the children of a deceased millionaire are going, for this reason, to contest their father's will, by which he gives his estate to his children by a second wife, to whom he was married on Sunday; and thirdly, that a learned judge has lately decided that marriages between minors, or between an adult and a minor, are void. Now, people should avoid great excitement in warm weather, and although, of course, no lawyer needs to be told any thing about the law in question, yet, to relieve the minds of the laymen and lay-ladies who form and read our foolish "*American Society*," we will state, as gravely as we can, that there is no cause for alarm, at least, to the ladies.. The marriages are all valid, everywhere. Even in this State, although marriage is held to be a civil contract, yet civil contracts made for a lawful purpose, and not tending to disturb the public peace and quiet, are valid and enforceable, although made on Sunday. Now, unless it can be made out that marriage is a contract tending to disturb the public peace and quiet, we see no trouble. Some marriages do have that tendency, undoubtedly, and we advise the female parties thereto to look out for themselves. As to the millionaire, we fancy his will must stand; he might have given his estate to Tom, Dick and Harry, who are not his children at all, even by a Sunday marriage, and they would take it in spite of the children by the week-day marriage. As to marriages of minors, in every community the lawful age at which marriage may be contracted is fixed below the age of majority; in this State it is fourteen for men and twelve for women, the latter being so much smarter, and, we may add, more impatient.—*Albany Law Jour.*

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR FEBRUARY, MARCH AND APRIL.

(Continued from page 171.)

ACCOUNT.

An Act of Parliament provided that, if the income of the defendants, from rates, duties, &c., received, should fall below £1000, the plaintiff should make up the deficiency. There was a deficiency in every year from 1847 to 1858, but no demand was made till 1870; an action at law was then brought to recover it. The plaintiff filed the bill for discovery of the rates, &c., received, and which ought to have been received, and for an injunction against the action at law. *Held*, that the injunction should be granted until the hearing.—*Southampton Dock Co.* v. *Southampton Harbour and Pier Board*, L. R. 11 Eq. 254.

ACTION.

The plaintiff apprenticed his son to a jeweller for six years, and covenanted to pay him £25 premium, which he paid. At the end of the first year the jeweller died. *Held*, that the plaintiff could recover no part of the premium from the executor.—*Whincup* v. *Hughes*, L. R. 6 C. P. 78.

See PAYMENT.

ADEMPTION.—*See* LEGACY.

ANSWER.—*See* EQUITY PLEADING AND PRACTICE, 2.

APPOINTMENT.

There was a trust in a marriage settlement for such of the children of the marriage as the husband should appoint. He appointed a sum to a married daughter for her separate use, without power of anticipation. *Held*, that the appointment was valid, but the restraint on alienation void.—*In re Cunynghame's Settlement*, L. R. 11 Eq. 324.

See SETTLEMENT; WILL, 12.

ASSIGNMENT.

A trader assigned all his property to the defendant as security for an existing debt, and money advanced to pay the debt of another creditor who had a valid mortgage upon the same property. The trader afterwards was adjudged bankrupt on his own petition. *Held*, that the assignment was valid, and not an act of bankruptcy.—*Lomax* v. *Buxton*, L. R. 6 C. P. 107.

See BANKRUPTCY; BOND.

BANKRUPTCY.

R. assigned all his property to the plaintiff in consideration of a pre-existing debt, and under a threat of legal proceedings; R. did not then contemplate bankruptcy, but was hopelessly insolvent, and was afterwards adjudged bankrupt on his own petition. *Held*, that the assignment being made under pressure was valid; and that although an act of bankruptcy, yet there was no relation back to it, the adjudication being on R.'s own petition—*Jones* v. *Harber*, L. R. 6 Q. B. 77.

See ASSIGNMENT.

BOND.

Two bonds were given by a company to H., who assigned them to the holder for value; the interest was once paid by the company upon a judgment obtained in a suit therefor; the holder also recovered judgment in another suit for the principal and interest subsequently accrued. *Held*, that the holder was entitled to prove on the bonds against the company free from equities between it and H.—*Ex parte Chorley*, L. R. 11 Eq. 157.

BUILDING CONTRACT.

A contractor agreed by a specified time to do certain work according to specifications, subject to certain alterations and additions, and to forfeit £3 for every day after that time until completion; and also, that the time for completing any alterations or additions should not exceed the specified period unless an extension were allowed by the clerk of the works. The contractor did not complete within the period, but failed to do so on account of alterations ordered. No extension of time had been allowed. *Held*, that the contractor had subjected himself to the forfeiture.—*Jones* v. *St. John's College*, L. R. 6 Q. B. 115.

BURDEN OF PROOF.—*See* EVIDENCE.

CARRIER.

A passenger by a railway had his portmanteau put into the same carriage with him; at a station he got out for ten minutes, and on his return failed to find the carriage, and completed his journey in another; the portmanteau when found had been robbed. The jury found that his negligence had contributed to his loss. *Held*, that the general liability of the company was modified by the implied condition that the passenger should use reasonable care.—*Talley* v. *Great Western Railway Co.*, L. R. 6 C. P. 44.; s. c. in Appeal, 7 C. L. J. N. S. 20.

CHARGE.—*See* EQUITY, 2.

COMPANY.

1. A shareholder gave to the company in payment for his shares confederate bonds at their market value, which payment was agreed to by the company. *Held*, that this was a valid payment and could not be impeached afterwards.—*Schroder's case*, L. R. 11 Eq. 131.

2. The W. Assurance Society transferred to the A. Company its business and assets, including a lease to a trustee for them, and policies of reassurance, and the A. company agreed to indemnify the W. shareholders against all claims. The A. company was afterwards wound up, and the W. shareholders claimed the lease and policies of reassurance. *Held*, that the W. Society had no lien on the lease nor the policies, either as surety or as unpaid vendors. *Ex parte Western Life Assurance Society*, L. R. 11 Eq. 164.

See Bond.

Condition.—*See* Vendor and Purchaser, 1.

Confederate Bonds.—*See* Company, 1,

Conflict of Laws.—*See* Foreign Judgment.

Construction.—*See* Vendor and Purchaser, 2; Will, 1-10.

Contract.

1. The plaintiff agreed to hire grass-land of the defendant on the terms of a lease to be signed afterwards. He entered and found the land overrun with rabbits. When the lease was presented to him he refused to sign it, unless the defendant undertook to destroy them. The defendant promised to do so, and the plaintiff signed the lease in its original form. The defendant did not destroy the rabbits. *Held*, that the promise was collateral to the lease and founded on a good consideration.—*Morgan* v. *Griffith*, L. R. 6 Ex. 70.

2. R. applied in writing for thirty shares in a company; they were allotted to him and notices of the allotment were posted to his address, but he denied that he had ever received them. *Held*, that the evidence was insufficient to prove notice.—*Reidpath's case*, L. R. 11 Eq. 86.

3. The defendant applied by letter to the plaintiffs for fifty shares; on the next day they were allotted to him, and notice thereof posted to his address, but he never received the notice. *Held*, that he was not a shareholder.—*British and American Telegraph Co.* v. *Colson*, L. R. 6 Ex. 108.

4. By the rules of the Stock Exchange a jobber buying shares is bound by a certain day to pass to the seller the name of a person willing to take them as the ultimate purchaser; the seller may object to the name, and the jobber is liable for the shares until a satisfactory name is given. The plaintiff through his brokers sold shares to the defendant, a jobber; they were subsequently bought by other brokers for S., who procured G., a person of no means, to take a transfer of the shares, and G.'s name was passed to the defendant, and by him to the plaintiff's brokers, who prepared the transfer to G., and the plaintiff executed it. Calls were afterwards made, which the plaintiff was obliged to pay. *Held*, (Lush, J., dissenting), that the defendant was not liable to indemnify him against the calls.—*Maxted* v. *Paine*, (*Second Action*), L. R. 6 Ex. (Ex. Ch.) 132; s. c. L. R. 4 Ex. 203; 4 Am. Law Rev. 112.

See Action; Building Contract; Company, 2; Vendor and Purchaser, 1.

Conversion.—*See* Damages, 2; Will, 2.

Costs.—*See* Equity Pleading and Practice, 1.

Covenant.—*See* Settlement; Vendor and Purchaser, 2.

Criminal Law.

1. The prisoners indecently exposed their persons in a urinal which was on a public footpath in Hyde Park, and open to the public. *Held*, that the jury rightly found that the urinal was a public place.—*Reg.* v. *Harris*, L. R. 1 C. C. 282

2. Indictment that the prisoner "knowingly and without lawful excuse feloniously" had in his possession a die impressed with the resemblance of a sovereign. He ordered two dies of a maker, who communicated with the mint and received permission to let the prisoner have them, which he did. *Held*, that there was no evidence of lawful excuse, and that the prisoner's intention had nothing to do with the offence.—*Reg.* v. *Harvey*, L. R. 1 C. C. 284.

3. It was the prisoner's duty as servant of H. to pay his workmen; by fraudulent representations of the amount due he obtained from his master's cashier 2*s.* 4*d.* more than was really due, and appropriated it to his own use. *Held*, that the money delivered to the prisoner was in the constructive possession of his master, and that the misappropriation of it was larceny.—*Reg.* v. *Cooke*, L. R. 1 C. C. 295.

4. The prisoner induced A. to purchase a chain from him by a statement that it was fifteen carat gold, knowing that the statement was untrue. *Held*, that a conviction for obtaining money on false pretences was good.—*Reg.* v. *Ardley*, L. R. 1 C. C. 301.

See Statute.

Damages.

1. The defendants in working their coal mine passed their boundary, and took coal from the plaintiff's mine. *Held*, that the measure of damages was the value of the coal at the mouth of the pit, making allowance for the cost of raising it, but not for the cost of severing it.—*Llynvi Co.* v. *Brogden*, L. R. 11 Eq. 188.

2. Trover. The plaintiff bought of the de-

fendant one hundred cases of champagne at 14*s.* a dozen, and immediately resold them to A. at 24*s.* a dozen. The defendant refused to deliver them; and as other champagne of the same quality could not be obtained, the plaintiff did not perform his contract with A. The defendant had no notice of the special circumstances. *Held*, that the champagne had acquired a special value of 24*s.*, which was the measure of damages.—*France* v. *Gaudet*, L. R. 6 Q. B. 199.

See Negligence, 1.

Death.—*See* Evidence.

Deposit.—*See* Vendor and Purchaser, 3.

Discovery.—*See* Account; Equity Pleading and Practice, 2.

Easement.

A natural stream flowed through two adjoining pieces of land, A. and B., owned by the same person; in 1860, there was a tank in B. into which the water flowed, and two pipes conducted it from the tank to cattle-sheds in A.; the water thus obtained was purer than that taken from the stream in A. In 1863, A. was conveyed to the plaintiff with all waters, water-courses, rights, privileges, advantages, and appurtenances to the same belonging, or with the same or any part thereof, held, used, enjoyed, or reputed as part thereof or appurtenant thereto; B. was conveyed to the defendant, who stopped the pipes; the cattle-sheds had been removed, and cottages built in their place, and the water used for domestic purposes. *Held*, that the right to the use of the pipes was continuous and passed to the plaintiff by implication; *also*, that it was a watercourse which passed by the words of the conveyance; *also*, that it was necessary for the use of A.; *also*, that when the water arrived at his premises the plaintiff could do what he liked with it.—*Watts* v. *Kelson*, L. R. 6 Ch. 166.

Equity.

1. A bill alleged that the plaintiff had been induced by the fraudulent representations of the defendants to pay money for shares in a company, and sought to make them liable for it. A demurrer to the bill was overruled.—*Hill* v. *Lane*, L. R. 11 Eq. 215.

2. The defendant, while A. was in great necessity, discounted his acceptance for him at an unconscionable rate, and A. charged the debt upon his revsionary property. *Held*, that the charge should stand as security only for the money actually advanced and interest.—*Tyler* v. *Yates*, L. R. 11 Eq. 295.

3. C. granted an annuity out of land, and to secure it granted a term of one hundred years in the land to a trustee; the legal estate was then outstanding in mortgagees. C. by his will devised the land to his sons; they paid off the mortgages, and had the legal estate conveyed to the uses of the will, and then sold it to G. without notice of the annuity. *Held*, that the annuitant had no remedy in equity against the trustee and purchaser, the only question being one of estoppel. *Semble*, that there was no estoppel.—*Clemow* v. *Geach*, L. R 6 Ch. 147.

See Account; Bond; Injunction.

Equity Pleading and Practice.

1. A petition was served on a respondent, whom it was necessary to serve, but who had no interest in the subject-matter of the petition. *Held*, that the petitioner should have tendered the respondent a sum sufficient to enable him to consult a solicitor, and that as he had not done so, the respondent was entitled to costs for appearing.—*Wood* v. *Boucher*, L.R. 6 Ch. 77.

2. A policy issued in 1862 by the defendants upon the plaintiff's life contained a condition that it should be void if he went out of Europe without permission to be obtained on paying an extra premium. He went to India about the same time, but paid the ordinary premiums until 1868, when, he failing to pay, the company refused to reinstate the policy except on the payment of the India premium from its date. It contained a provision for reinstating on payment of the premium with interest. A bill was filed on the ground that the company knowing of his residence in India had not charged the extra rate, and that the policy should be reinstated upon payment of the ordinary premium; an interrogatory asked whether, in respect of the twenty policies granted by the defendant to persons going to India about the same time as the plaintiff's policy, any extra payments were made. *Held*, that the plaintiff was entitled to the discovery,—*Girdlestone* v. *North British Mercantile Insurance Co.*, L. R. 11 Eq. 197.

3. H. was one of the trustees of the real estate of a bank. The deed of settlement provided that the directors should order any action or proceeding to be brought or defended on account of the property of the bank. A suit was brought against the trustees for this property, and the solicitors of the bank entered an appearance for all the trustees. H. moved to have his appearance expunged as entered without his authority. *Held*, that the appearance was rightly entered.—*Heinrich* v. *Sutton*, L. R. 6 Ch. 220.

Estoppel.—*See* Bond; Equity, 3.

Evidence.

L. died in 1860, and by his will gave a legacy to T., who had sailed to Australia and was heard from in 1859, but never afterwards. More than seven years after, the residuary legatee petitioned for payment of the legacy to him. *Held*, that the burden was on those who claimed under T. to prove that he survived the testator.—*In re Leewe's Trusts*, L. R. 11 Eq 236.

See Contract, 1–3; Criminal Law, 1.

Executor.—*See* Will, 1, 2.

Extinguishment.—*See* Power.

False Imprisonment.—*See* Master and Servant, 1.

False Pretences.—*See* Criminal Law, 4, 5.

Foreign Judgment.

1. Action upon a foreign judgment by a court having jurisdiction. The plea set out that the judgment proceeded upon a mistake in English law, and the mistake appeared on the record; the record also showed that the defendants did not bring to the knowledge of the foreign court the provision of English law. *Held*, that the mistake did not prevent the English Court from giving effect to the judgment.—*Goddard* v. *Gray*, L. R. 6 Q. B. 139.

2. By the law of France a resident may sue a foreigner not resident there; the mode of citation is by serving the summons on the Procureur Impérial. The defendants were sued and service made in this manner: they were not French subjects, nor resident in France, nor in France when the obligation upon which they were sued was contracted, but had notice of the suit. Judgment was given against them by default, and an action brought in England on the judgment. *Held*, that the defendants were under no obligation to obey the French judgment.—*Shibsby* v. *Westenholz*, L. R. 6 Q. B. 155.

Forfeiture.—*See* Building Contract.

Fraud.—*See* Bankruptcy; Equity, 1.

Fraudulent Conveyance.—*See* Assignment.

Gift.—*See* Charity; Will, 7.

Hotch-pot.—*See* Will, 5.

Husband and Wife.

The defendant's wife, without his knowledge, bought of the plaintiff goods, such as a gold pencil-case, cigar-case, glove-box, scent-bottle, guitar, music, purse, and the like, to the value of £20. The defendant was a clerk, with a salary of £400 a year. *Held*, that the wife's authority to bind her husband extended only to contract for things suitable to his style of living so far as they were within the domestic department, and that the defendant was not liable.—*Phillipson* v. *Hayter*, L. R. 6 C. P. 38.

Indecent Exposure.—*See* Criminal Law, 1.

Indemnity.—*See* Contract, 4.

Injunction.

An Act under which a railway was constructed enacted that the company should from time to time erect and maintain such works for drainage as should be directed by justices of the peace. *Held*, that the Court of Chancery could not exercise jurisdiction to restrain the company from flowing the adjoining lands by reason of insufficient drainage, the proper remedy being an application to the justices.—*Hood* v. *North Eastern Railway Co.*, L. R. 11 Eq. 116.

See Vendor and Purchaser, 2.

Intention.—*See* Criminal Law, 2; Will, 13.

Investment.—*See* Will, 2.

Invitation.—*See* Negligence, 2.

Jurisdiction.—*See* Equity, 1, 3; Foreign Judgment; Injunction.

Larceny.—*See* Criminal Law, 3.

Lapse.—*See* Evidence.

Legacy.

Testator bequeathed to his wife £200 which he directed to be paid ten days after his decease. During his last illness he gave his wife £200 at her request to meet expenses immediate on his death. *Held*, that the legacy was not given for such a particular purpose that it was satisfied by the gift.—*Parkhurst* v. *Howell*, L. R. 6 Ch. 136.

Letter.—*See* Contract, 2, 3.

License.—*See* Negligence, 2.

Lien.—*See* Company, 2.

Master and Servant.

1. A clerk of a railway company gave the plaintiff into custody, upon a charge that he attempted to rob the till at a station, after the attempt had ceased. *Held*, that as the clerk was not acting in protection of the company's property, he had no implied authority to give the plaintiff into custody, and that the company were not liable for false imprisonment.—*Allen* v. *London and South Western Railway Co.*, L. R. 6 Q. B. 65.

2. At B. three railway stations are open to one another, and the whole area is used as common ground by the passengers of all. The plaintiff, on his way to the booking-office of another company, was standing on the defendants' platform waiting for luggage, when a porter of the defendants' drove a truck laden with luggage so negligently that a trunk fell off and injured the plaintiff. *Held*, that the defendants were liable for the misfeasance o

their servant, although the plaintiff was not a passenger on their line.—*Tebbutt* v. *Bristol and Exeter Railway Co.*, L. R. 6 Q. B. 73.

3. Declaration by the administrator of W. that W. was employed by the defendants in cleaning a machine, that by the negligence of the defendants the machine was defectively constructed, as they knew, and that by reason the premises the machine was set in motion while W. was cleaning it and injured him. *Held*, on demurrer, that the declaration showed sufficiently that the injury was caused by the defendant's default, and that W. did not know the risk.—*Watling* v. *Oastler*, L. R. 6 Ex. 73.

See Criminal Law, 3.

Money had and Received.—*See* Action; Vendor and Purchaser, 3.

Mortgage.

In 1851, trustees advanced the trust funds on security of a mortgage, which recited that the money advanced was trust money. In 1856 the mortgagor gave another mortgage of part of the mortgaged property to other persons to secure an advance; and at the same time, to enable him to obtain the advance, the surviving trustee gave up the title deeds to the mortgagees (who had no notice of the former mortgage), and received from the mortgagor half the advance, and applied it to his own purposes. Just before the last mortgage the surviving trustee executed a reconveyance of this part of the property to the mortgagor, but the mortgagees had no knowledge of it. *Held*, that the second mortgagees could not claim the legal estate under the reconveyance without admitting that it gave them notice of the trust, and that the mortgage of 1851 had priority.

The mortgagor in 1861 executed a deed purporting to convey to the surviving trustee in fee another part of the mortgaged property, no mention being made of the mortgage; the trustee mortgaged this part for his own benefit, suppressing the mortgage of 1851. *Held*, that the mortgagee could not insist on any beefiit from this breach of trust.—*Pilcher* v. *Rawlins*; *Joyce* v. *Rawlins*, L. R. 11 Eq. 53.

Necessaries.—*See* Husband and Wife.

Negligence.

1. J. deposited certificates of railway shares with a banking company who collected dividends for a commission. They kept the certificates with their own securities in a box in the manager's room, of which he had the key. The manager sold the shares, and forged J.'s name to the transfer. The fraud being discovered, J. brought a suit against the holder of the stock and the railway company, in which he obtained relief, but no costs. He then brought this claim against the bank for the amount of his costs. *Held*, that the bank was a bailee for reward, and had been guilty of negligence, but that the loss of the costs was not a natural or ordinary consequence of the neglect.—*Johnston's Claim*, L. R. 6 Ch. 212.

2. At a railway station it was the practice for the consignees of coal to assist in unloading, and for that purpose to go along a flagged path by the waggons; the plaintiff was a consignee, and with the permission of the station-master went to the waggon, and, as he descended to the path with some coal, a flag gave way and he was injured. *Held*, that the railway company was liable.—*Holmes* v. *North Eastern Railway Co.*, L. R. 6 Ex. (Ex. Ch.) 123; s c. L. R. 4 Ex. 254; Am. Law Rev. 108.

See Carrier; Master and Servant, 2, 3.

Notice.—*See* Contract, 2, 3; Mortgage.

Nuisance.—*See* Injunction; Vendor and Purchaser, 2.

Passenger.—*See* Carrier; Master and Servant, 2.

Payment.

The defendant was indebted to the plaintiff, and S. without the defendant's knowledge paid £60 in settlement to the plaintiff, who supposed that S. was acting as the defendant's agent. The plaintiff afterwards returned the £60 to S., and sued the defendant *Held*, that as the defendant had not ratified the payment, it was competent for the plaintiff to return the money and maintain the action.—*Walter* v. *James*, L. R. 6 Ex. 124.

See Company, 1.

Performance.—*See* Action; Building Contract.

Perpetuity.—*See* Appointment.

Pleading.—*See* Master and Servant, 3.

Power.

Real estate was settled to the use of H. for life, remainder to uses in favor of H.'s children, with an ultimate limitation to the use of H. in fee, and the trustees were empowered to sell during the life of H. at his request. H. conveyed his estate to the plaintiff; afterwards the trustees at H.'s request and in execution of the power, sold and conveyed all the estate to the plaintiff. *Held*, that the power was not extinguished by the alienation of H.'s interest, as nothing was done in derogation of the estate of the alienee.—*Alexander* v. *Mills*, L. R. 6 Ch. 124.

See Appointment.

Presumption.—*See* Evidence.

Principal and Agent.—*See* Husband and Wife; Payment; Ratification; Trust.

Priority.—*See* Mortgage.

Probate.—*See* Will, 13, 14.

Promissory Note.—*See* Ratification.

Proximate Cause.—*See* Negligence, 1.

Railway.—*See* Carrier; Injunction; Master and Servant, 1, 2; Negligence, 2.

Ratification.

Action upon a note purporting to be signed by the defendant and J. The defendant's name had been forged by J.; the plaintiff having threatened criminal proceedings against J., the defendant signed the following: "I hold myself responsible for a bill of £20 bearing my signature and J.'s," &c. *Held*, (Martin, B., dissenting) that the defendant was not liable on the note.—*Brook* v. *Hook*, L. R. 6 Ex. 897; C. L. J. N. S. 158.

See Payment.

Remoteness.—*See* Appointment.

Representation.—*See* Criminal Law, 4.

Revocation.—*See* Will, 13.

Sale.—*See* Contract, 4.

Salvage.

A steam-tug agreed to tow a vessel into Liverpool for £45; while she was doing so a heavy gale arose, and both ships were for a long time in great peril; but the master of the tug stayed by the vessel, and at last succeeded in towing her into port; the vessel would have been lost if the tug had left her. *Held*, that the tug was entitled to salvage.—*The I. C. Potter*, L. R. 3 A. & E. 292.

Satisfaction.—*See* Legacy.

Settlement.

By a marriage settlement it was agreed that, if during coverture the wife should become entitled to property of the value of £500 or upwards, it should be settled upon the same trusts. £5499 19*s.* 1*d.* were afterwards bequeathed upon trust as she should appoint, she appointed by each of eleven deeds dated on successive days, but some executed on the same day, £499 19*s.* 11*d.* for her own separate use. *Held*, that she was entitled to the whole fund as she had appointed.—*Bower* v. *Smith*, L. R. 11 Eq. 279.

Solicitor.—*See* Equity Pleading and Practice, 3; Trust.

Specific Performance.—*See* Vendor and Purchaser, 1.

Surety.—*See* Company, 2.

Title.—*See* Power.

Towage.—*See* Salvage.

Trover.—*See* Damages, 2.

Trust.

Trustees advanced trust funds on security of a mortgage, but, by the negligence of their solicitor the existence of a prior mortgage was not discovered, which made the security insufficient. *Held*, that the trustees were answerable for the loss.—*Hopgood* v. *Parkin*, L. R. 11 Eq 74.

See Equity Pleading and Practice, 3; Mortgage; Will, 2.

Ultra Vires.—*See* Company, 1.

Usage.—*See* Contract, 4.

Value.—*See* Damages.

Vendor and Purchaser.

1. A contract of sale of land contained a condition that the vendors might rescind if any objection or requisition was persisted in, and another condition providing for compensation in case of any error or mistake in the description of the property or of the vendors' interest. An objection was made by the purchaser that the vendors were not entitled to certain minerals under the land, and compensation was claimed. The vendors contended that they had a good title, and, the purchaser persisting, they rescinded the contract. *Held*, that they were entitled to rescind, and the purchaser was refused specific performance.—*Mawson* v. *Fletcher*, L. R. 6 Ch. 91; s. c. L.R. 10 Eq. 212.

2. A. sold a piece of land to B., who covenanted not to "do or suffer to be done on" the premises "anything which shall be a nuisance" to any of the owners of the adjoining property. B. divided the land into thirty-four lots, and sold two to T., who covenanted not to do or suffer to be done on the granted premises any thing which should be a nuisance to A. "or any of the tenants, . . . for the time being, of the adjoining property." Other lots were sold to the plaintiffs. The successors of T. were about to use their lots for national schools. *Held*, that "the adjoining property" in T. covenant meant the property adjoining the lots conveyed to him, and the purchasers of other lots were entitled to the benefit of it, but that the establishment of a national school was not a legal "nuisance."—*Harrison* v. *Good*, L. R. 11 Eq. 338.

3. The plaintiff paid £80 deposit as part of the purchase-money for a lease of a tavern, the contract for which was preparing, and was to be signed when completed. A contract was tendered to him to sign which contained unusual and unreasonable stipulations, and he refused to sign it. *Held*, that he was entitled to recover the deposit.—*Moeser* v. *Wisker*, L. L. 6 C. P. 120.

See Power.

Vendor's Lien.—*See* Company, 2.

Voluntary Conveyance.—*See* Bankruptcy.

Watercourse.—*See* Easement.

Will.

1. Bequest to testator's wife for life, and after her decease to all his brothers and sisters; namely, M., E., T., S., and F., equally; but in case any of them should die leaving issue, then the part or share of him, her, or them so dying, to his, her, and their respective issue M. survived the testator, and died in the widow's lifetime leaving children; E. died in the testator's lifetime, leaving four children, all of whom survived the testator, and two survived the widow; T. and S. survived the testator and died in the widow's lifetime, T. without issue, and S. leaving one child, still living; F. died in the testator's lifetime, leaving children who survived him, some of whom died in the widow's lifetime leaving children, and others survived her. *Held*, that the shares of E. and F. (who predeceased the testator) went to their respective issue who were living at the testator's death; that T.'s share went to his personal representative; that the shares of M. and S. went to their respective issue living at their deaths.—*Hobgen* v. *Neale*, L. R. 11 Eq. 48.

2. Testator gave all his residuary estate to trustees upon trust to sell "so much and such part thereof as in their sole discretion they may think necessary for the purpose of paying" all his mortgage and other debts; and out of the proceeds to pay the same, and invest what remained after such payments, and hold it and the other residuary estate upon trust to pay the annual produce thereof to his three daughters for their lives. The residuary estate included certain leaseholds subject to a mortgage, which the trustees paid off. *Held*, that the trustees had the discretion to determine what part should be sold, and were not bound to convert the leaseholds, and that the tenants for life were entitled to the rents of the leaseholds in specie.—*In re Sewell's Estate*, L. R. 11 Eq. 80.

3. Testator devised lands "to all the children or legal issue" of his daughter A., to be divided between them equally after A.'s decease. She had ten children; one of them died before the testator without issue; three survived the testator, and died in A.'s lifetime, two without issue, one leaving children; the remaining six survived and had had children, and some of them grandchildren. *Held*, that "children or legal issue" meant that the children were to take; and where there were not children their issue were to take; and that the children of A., who were living at the testator's death, and those who were born afterwards, took vested interests in fee.—*Holland* v. *Wood*, L. R. 11 Eq. 91.

4. Gift by will to "my great-nephew G., and to such other of my nephews and nieces as shall be living," &c. *Held*, that the great-nephews and great-nieces were entitled to share with the nephews and nieces.—*In re Blower's Trusts*, L, R. 11 Eq. 97.

5. Testator gave his property in trust for his nine children in equal shares, provided that if its value should amount to or exceed £40,000, then the share of each son should be one-twentieth more than the share of each daughter; he also directed that any sum which he was liable to pay to the trustees of the marriage settlement of one of his daughters should be taken in satisfaction *pro tanto* of her share, and should be brought into hotch-pot and accounted for accordingly. The value of the estate exceeded £40,000 if the sum payable to the trustees was included, but not otherwise. *Held*, that the sum payable to the trustees was to be treated as part of the estate.—*Fox* v. *Fox*, L. R. 11 Eq. 142.

6. Legacy in trust for R. "should he survive my sister E.; should he not survive her nor attain his twenty-first year, then over. *Held*, that the intention was clear to make the legacy absolute if he attained twenty-one.—*In re Thompson's Trusts*, L. R. 11 Eq. 146.

7. Bequest of personal property to be equally divided between the testator's two sisters; his sister A. to have immediate control of her share, and his sister S. upon attaining the age of twenty-five years, until which time it should be in trust for her; and in case of the death of either before the testator, or before marrying and having children, the whole to go to the survivor. A. was more than twenty-five at the testator's death; S. afterwards attained that age, but was unmarried. *Held*, that S. had an absolute interest in her share at twenty-five; and that the gift over was intended to take effect only in the event of death happening before that time.—*Clark* v. *Henry*, L. R. 11 Eq. 222.

8. Testator declared that "the income arising from my principal money shall be paid to my wife, while unmarried, for the support of herself and the education of my children; and at her death, or on her marriage, to be divided among them." He left but little cash, but had a large amount of personal property, leaseholds, and freeholds. *Held*, that all the per-

sonal property and leaseholds passed by the bequests, but not the freeholds.—*Prichard* v. *Prichard*, L. R. 11 Eq. 232; 7 C.L.J. N.S. 105.

9. Testatrix gave certain pecuniary legacies and a house (which was leasehold), "and all the rest to be divided" between the daughters of A. *Held*, that "all the rest" included all the other property, real as well as personal. —*Attree* v. *Attree*, L. R. 11 Eq. 280; 7 C. L. J. N. S. 195.

10. Testator gave "all my furniture, &c., with my six freehold houses," to his wife for life; and after her decease, "one-half of the freehold property to my brothers and sisters for their life and then to come to their children and in the same manner to my wife, brother and brother's children and grand-children." He had twenty shares of stock. At the date of the will four of the testator's brothers and sisters were alive, two had died leaving children; at his death all the brothers and sisters were dead; four left children or grand-children. The wife who died before the testator had two brothers, one of whom was dead at the date of the will, but whose grand-children survived the testator; the other survived the testator, and had children. *Held*, that one-half of the property was divisible among the children (living at the testator's death) of his brothers and sistets *per stirpes;* and that the wife's surviving brother took the other half for life, and after his death it went to the children and grand-children (living at the testator's death) of the wife's brothers *per stirpes; also*, that, "&c," did not include the stock.—*Barnaby* v. *Tassell*, L. R. 11 Eq. 363.

11. A master-mariner made his will, viz.: "This is the last will of me, G. R., that in case any thing should happen to me during the remainder of the voyage from hence to Sicily, and back to London, that I give," &c. The voyage was completed by the return of the ship to London; the testator afterwards died.—*Held*, that the will was contingent.—*In the goods of Robinson*, L. R. 2 P. & D. 171.

12. A married woman, having a power of appointment under a settlement, made her will in this form: "I direct the trustees under my marriage settlement to pay" certain legacies, "and to divide the remainder of my property" among certain persons; she also gave the trustees all necessary powers of sale, and to mortgage. *Held*, that the will was only an appointment of the the trust fund, and that the trustees acted under the settlement, not as executors.—*In the goods of Fraser*, L. R. 2 P. & D. 183.

13. A will written on the first sides of seven sheets of paper was found in a box of the deceased, and the first seven or eight lines at the beginning were partly cut and partly torn off. *Held*, that the tearing off of the first lines did not show an intention to revoke the whole will, and the remainder was admitted to probate.—*In the goods of Woodward*, L. R. 2 P. & D. 206.

14. A will was written and executed on the first side of a sheet of paper; it ended with an incomplete sentence followed by an asterisk, and the words, "see over;" on the second side was the remainder of the sentence. *Held*, that the words on the second side of the paper were to be regarded as an interlineation, and as part of the will. — *In the goods of Birt*, L. R. 2 P. & D. 214.

WORDS.

"*Adjoining.*"—*See* VENDOR AND PURCHASER, 2. "*All the Rest.*"—*See* WILL, 9. "*Children or legal issue.*"—*See* WILL, 3. "*Great Nephew, and other Nephews and Nieces.*"—*See* WILL, 4. "*Lawful Excuse.*"—*See* CRIMINAL LAW, 2. "*Money.*"—*See* WILL, 8. "*Nuisance.*"—*See* VENDOR AND PURCHASER, 2. "*Public Place.*" —*See* CRIMINAL LAW, 1. "*&c.*"—*See* WILL, 10.

REVIEWS.

AN INDEX OF REPEALED AND REPEALING STATUTES AFFECTING PRINCIPALLY THE PROVINCE OF ONTARIO. By I. N. Winstanley, Barrister-at-law. Toronto: Henry Rowsell, 1871.

We acknowledge receipt of this Index, which can scarcely fail to be of great use to those for whom it is intended, and will doubtless command a ready sale.

We have for some time past been hoping to see something of this kind; the changes in the statute law are so rapid and confusing that any aid in keeping track of them will be received with satisfaction.

LA REVUE CRITIQUE. July, 1871. Montreal: Dawson Brothers.

The July number of this quarterly commences with an extract from the report of the Hon. J. H. Gray, on the assimilation of the Laws of Ontario, Nova Scotia and New Brunswick. The writer thus concludes:—

"The instructions given to me being simply to prepare for a commission hereafter to be issued—not to recommend or propose any form—I have confined my labor solely to pointing out tha dif-

ferences; but there can be no doubt that an excellent practical Code of Law, simple in its language, easily understood, expeditious and economical in its administration, could be formed from a judicious selection of the best of the laws of each of the Provinces by men who were severally acquainted with each."

The advantages to be derived from one uniform system of judicature in all the Provinces of the Dominion would be immense, and great is the pity that in the Province of Quebec the possibility of any assimilation was considered too remote even to be alluded to in the British North America Act. The Law Reform Commission recently appointed in this Province will do well to keep in view the final end contemplated by that Act in making their report.

The industrious pen of Mr. Girouard contributes a lengthy essay upon the Treaty of Washington, looked at, as he says, in a purely legal point of view, but at the same time he appears to find it difficult to keep clear of its political bearing. Whether we agree with his conclusions or not, it is without doubt a valuable addition to our reading on this important and interesting subject.

The other articles are Le Droit Constitutionnel du Canada—An introductory lecture to the study of the law—Writs of Prohibition, and some others of no special interest in this Province. In an article on the Riel-Scott affair, the question is discussed as to whether the Dominion Government had or has now the power to take any legal steps to secure the punishment of the murderer Riel. The conclusion arrived at is as follows:—

"For these reasons, it does not appear to me that the Dominion Government could have taken, or could now take any legal steps to secure Riel's punishment as long as he is abroad, but as there is no Statute of Limitations with reference to murder, assuredly should he ever come within the Dominion, justice will be found to reach him and hands to take him."

This may be comforting to the writer, but not to the public, for scoundrels like Riel too often go unhung now-a-days to expect such a proper ending for him, and the last news from Manitoba seems to show how fallacious were the hopes of the writer.

La Revue Legale. Sorel, Quebec.

A periodical published entirely in French, and therefore practically useless in Ontario. It appears to have a large circulation in Quebec.

Droit Civil Canadien. Montreal: Alphonse Doutre & Co.

The civil law of Lower Canada, following the order established by the codes, is to be discussed in this volume. It is written in in French, and can never, therefore, be of any general interest outside the limits of the Province of Quebec.

Lower Canada Jurist. Montreal: John Lovell.

We extract from time to time from this volume of reports such decisions as are of interest in this Province.

The Insurance Law Journal. Baker & Voohris, 66 Nassau Street, New York.

This new publication is one of the innumerable publications that abound in the United States. It is to be "devoted to insurance law and the interest of insurance generally." We should suggest to the editor that the publication, or rather one branch of it, is rendered of little practical use, from the want of head notes and digests of the reports of decisions given in it.

Chicago Legal Times. Published every Saturday, by Mrs. Myra Bradwell.

On Saturday, the seventh day of this month, the great fire of Chicago commenced, and on Saturday, the fourteenth day of this month, the *Chicago Legal News* was published in its regular course, with nothing to show (except a reduction in the number of pages) that its office of publication had been consumed, as we are told, "with its entire contents, including a library of nearly two thousand volumes. All were destroyed, with the exception of our subscription book and ledger." Again, on the 21st instant, the usual weekly number was published.

The story of the burning has been told elsewhere; but "the ruins of Chicago" (so speaks an eye-witness) "were yet red-hot when five or six daily newspapers prepared to resume publication, in the midst of the smoke and fire."

In alluding to the losses sustained, the most plucky and enterprising Editor regrets the loss

of so many files of legal exchanges, which were prized very much, and expresses the hope that her brethren of the legal press may as far as possible furnish her with duplicates of the papers destroyed. We most heartily sympathise with our cotemporary upon the losses sustained, and shall have great pleasure in replacing, so far as we can, the lost numbers of the *Canada Law Journal.*

No wonder that Chicago is rising from its ruins with a rapidity scarcely short of miraculous, when even the women there show an enterprise and business capacity that would put to shame those of the other sex in probably any other city in the universe.

Attorneys and solicitors have been accustomed, time out of mind, to form partnerships in business; and the advantages of the practice are manifold and obvious. The thing known as good-will—that is the connection with clients—the use of the name of a firm, with the prestige and influence attached to it, can best be preserved for the purposes of gift or sale by means of a partnership; for the sole possessor thereof may die, and leave only an imaginary succession behind him. So also combination of capital, the power of attracting capital enjoyed in a larger degree by a plurality of persons, the facility of carrying on a business without interruption from the periods of holiday and recreation, arising out of the mutual help of partners; all these considerations induce men to come together and act together as attorneys and solicitors. But on the other hand there are disadvantages incident to the practice which seem to us to be generally overlooked, or at least not sufficiently regarded. We allude specially to the risks attaching to the other partners from the fraud or negligence of a member of the firm. Recent cases have established in a very broad and sweeping manner the responsibility of partners in these matters. Last year we had a case of a well-known Birmingham attorney mulcted in thousands of pounds for the mere negligence of a partner acting in absolute disregard and defiance of the gentleman thus victimised. In 1868 we had the case of two gentlemen of note in the city compelled upon a bill in Chancery to make good more than £5,000 misappropriated by a partner. In a town in the North of England there are at this moment cases pending which involve a partner in a responsibility for many thousands of pounds, in which litigation is only avoided by the promptitude with which the solvent partner is redeeming the frauds of another member of the firm. In a case of *Young* v. *Long*, before Vice-Chancellor Malins, the defendant, a solicitor, was made liable for the sum of £2,723 misappropriated by a partner. Such cases, which we deeply regret to find, are not of unfrequent occurrence, for they inflict irremediable loss and indeed ruin on innocent persons, and tend to dishonor the whole profession, form a terrible set-off to to the advantages arising from solicitors acting together in firms, and at the least suggest the wisdom of exercising the greatest care and caution in the selection of partners, even if they do not prove that solicitors would do well to eschew partnerships altogether, and rely on their own industry and connection for success.—*Law Journal.*

It has been recently held in England that, on an appeal, evidence is not admissible in the Court of Bankruptcy which was not before the Court below, unless for special reasons the Court of Appeal should otherwise direct. —*Weekly Reporter.*

APPOINTMENTS TO OFFICE.

EXECUTIVE COUNCIL OF ONTARIO.

THE HON. STEPHEN RICHARDS, to be Secretary and Registrar of the Province of Ontario, in the room and stead of the Hon. M. C. Cameron, resigned. (Gazetted 29th July, 1871.)

THE HON. MATTHEW CROOKS CAMERON, to be Commissioner of Crown Lands for the Province of Ontario, in the room and stead of the Hon. Stephen Richards, resigned. (Gazetted 29th July, 1871.)

LAW REFORM COMMISSIONERS.

THE HON. ADAM WILSON, one of the Judges of H.M. Court of Queen's Bench for Ontario.

THE HON. JOHN WELLINGTON GWYNNE, one of the Judges of H.M. Court of Common Pleas for Ontario.

THE HON. SAMUEL HENRY STRONG, one of the Vice-Chancellors of the Court of Chancery for Ontario.

HIS HONOR JAMES ROBERT GOWAN, Judge of the County Court of the County of Simcoe, and

CHRISTOPHER SALMON PATTERSON, of Osgoode Hall, Barrister-at-law, Commissioners to inquire into and report upon the present jurisdiction of the several Law and Equity Courts of Ontario, and upon the modes of procedure now adopted in each, and upon such other matters and things therewith connected as are in the commision more fully set forth:—under the name and title of "Law Reform Commissioners." (Gazetted Sept. 23, 1871.)

COMMISSIONER IN EXTRADITION CASES.

FRANCOIS CARON, of the Town of Windsor, in the Province of Ontario, Esq., to be a Commissioner for the purposes contemplated in the Act of the Parliament of Canada, 31st Vic. Cap. 94. (Gazetted 7th October, 1871.)

COUNTY COURT JUDGE.

RICHARD JOHN FITZGERALD, of Osgoode Hall, and of the Town of Picton, in the Province of Ontario, Esq., Barrister-at-law, to be Judge of the County Court of the County of Prince Edward, in the said Province, in the room and stead of David L. Fairfield, Esq., deceased. (Gazetted 9th Sept., 1871.)

STIPENDIARY MAGISTRATE AND REGISTRAR.

DELEVAN D. VAN NORMAN of the Town of Simcoe, Esq., to be Stipendiary Magistrate and Registrar for the Territorial District of Thunder Bay, having his office at Prince Arthur's Landing, in the said district. (Gazetted 3rd June, 1871.)

PATRICK McCURRY, of Osgoods Hall, Esq., Barrister-at-law, to be Stipendiary Magistrate and Registrar for the District of Parry Sound, in the room and stead of Jesse Wright Rose, Esq., deceased. (Gazetted 9th Sept. 1871.)

POLICE MAGISTRATE.

RICHARD H. HOLLAND, of Osgoode Hall, Esq., Barrister-at-law, to be Police Magistrate and Registrar in and for the Town of Port Hope. (Gazetted 9th Sept. 1871.)

MAXWELL W. STRANGE, of the City of Kingston, Esq., Barrister-at-law, to be Police Magistrate in and for

Appointments to Office.

the City of Kingston, in the room and stead of John Creighton, Esq., resigned. (Gazetted 8th July, 1871.)

REGISTRARS.

STEPHEN BLACKBURN, of the City of London, Esq., to be Registrar in and for the West Riding of the County of Middlesex, having his office in the Village of Glencoe, in the said County. (Gazetted 22nd July, 1871.)

THOMAS LAUDER, of the Village of Durham, Esq., to be Registrar for the South Riding of the County of Grey, having his office at the Village of Durham, in the said County. (Gozetted 29th July, 1871.)

WILLIAM TORRANCE HAYS, of the Town of Goderich, Esq., Barrister-at-law, to be Registrar in and for the North Riding of the County of Huron. (Gazetted 30th Sept. 1871.)

SAMUEL ROBB, the elder, of the Town of Stratford, Esq., to be Registrar in and for the North Riding of the County of Perth, in the place and stead of William Smith, Esq., deceased. (Gazetted 30th September, 1871.)

PATRICK WHELIHAN, of the Town of St. Mary's, Esq., to be Registrar in and for the South Riding of the County of Perth. (Gazetted 30th September, 1871.)

JOHN ANDERSON, of the Village of Orangeville, Esq., to be Registrar in and for the North Riding of the County of Wellington. (Gazetted 30th September, 1871.)

DEPUTY CLERK OF THE CROWN, ETC.

JAMES LINDSAY, of the Village of Dunnville, Esq., to be Deputy Clerk of the Crown, and Clerk of the County Court of the County of Haldimand, in the room and stead of Robert N. Griffith, Esq., deceased. (Gazetted 13th May, 1871.)

CLERK OF THE DISTRICT COURT.

JAMES BENNETTS, of Bruce Mines, Esq., to be Clerk of the District Court of the Provisional Judicial District of Algoma, in the room and stead of Henry Pilgrim, Esq., resigned. (Gazetted 23rd September, 1871.)

NOTARIES PUBLIC.

WILLIAM WORTS EVATT, of the Village of Paisley, Esq., Barrister-at-law. EZRA ALBERT BATES, of the Village of Arnprior, Gentleman, Attorney-at-law. (Gazetted 13th May, 1871.)

THOMAS MORPHY, of the Town of Brampton, Gentleman, Attorney-at-law. DUNCAN McGIBBON, of the Town of Milton, Gentleman, Attorney-at-law. ROBERT W. PARKINSON, of the City of Toronto, Gentleman, Attorney-at law. (Gazetted 20th May, 1871.

JAMES BISHOP BROWNING, of the Village of Bracebridge, Gentleman, Attorney-at-law. (Gazetted 3rd June, 1871.)

FREDERICK COLQUHOUN, of the Village of Waterloo, Gentleman, Attorney-at-law. ALEXANDER FINKLE, of the Town of Woodstock, Gentleman, Attorney-at-law. FRED. D. VAN NORMAN, of the Town of Brantford, Gentleman, Attorney-at-law, JOSEPH JOHN MURPHY, of the City of Ottawa, Gentleman, Attorney-at-law. (Gazetted 1st July, 1871.)

JOSEPH E. MACDOUGALL, of the City of Toronto, Esq. Barrister-at-law. WALTER DUDLEY, of the Village of Newmarket, Esq., Barrister-at-law. JAS. J. FOY, of City of Toronto, Esq., Barrister-at-law. JOHN ALEX. GEMMILL, of the City of Ottawa, Gentleman, Attorney-at-law. JOHN SECORD, of the Village of Tilsonburg, Gentleman, Attorney-at-law. (Gazetted 8th July, 1871.)

WILLIAM BELL, of the City of Hamilton, Esq., Barrister-at-law. SETH SOPER SMITH, of the Town of Port Hope, Esq , Barrister-at-law. WILLIAM H. MOORE, of the Town of Peterboro', Gentleman, Attorney-at-law. JOSEPH GODARD HALL, of the Town of Port Hope, Gentleman, Attorney-at-law. (Gazetted 15th July, 1871.

WM. ALEX. HAMILTON DUFF, of the City of Hamilton, Gentleman, Attorney-at-law. (Gazetted 22nd July, 1871.

JAMES H. MACDONALD, of the City of Toronto, Esq., Barrister-at-law. WM. GLENHOLME FALCONBRIDGE, of the City of Toronto, Esq., Barrister-at-law. (Gazetted 29th July, 1871.)

WILLIAM H. BILLINGS, of the Town of Whitby, Gentleman, Attorney-at-law. (Gazetted 26th Aug. 1871.)

ARCHIBALD HENRY MACDONALD, of the Town of Guelph, Esq., Barrister-at-law. FREDERICK JOHN FRENCH, of the Town of Prescott, Esq., Barrister-at-law. DANIEL WADE, of the Town of Pembroke, Esq., Barrister-at-law. DAVID BROWN ROBERTSON, of the Town of Belleville, Esq., Barrister-at-law. WILLIAM J. HANNAH, of the City of Toronto, Esq., Barrister-at-law. THOMAS JAMES WILSON, of the Village of Parkhill, Gentleman, Attorney-at-law. NORMAN FITZHERBERT PATERSON, of the Village of Beaverton, Gentleman, Attorney-at-law. RODERICK STEPHEN ROBLIN, of the Town of Picton, Gentleman, Attorney-at-law. (Gazetted 9th September, 1871.

ROBERT THOMPSON LIVINGSTONE, of the Town of Simcoe, Esq., Barrister-at-law. JAMES F. MACDONALD, of the Town of Ingersoll, Esq., Barrister-at-law. PETER FRANK WALKER, of the Town of Goderich, Gentleman, Attorney-at-law. JAMES FLETCHER, of the Town of Brampton, Gentleman, Attorney-at-law. (Gazetted 16th September, 1871.)

DAVID LYNCH SCOTT, of the Town of Brampton, Esq., Barrister-at-law. WILLIAM HENRY FULLER, of the City of Kingston, Esq., Barrister-at-law. WALTER SCOTT WILLIAMS, of the Town of Napanee, Gentleman, Attorney-at-law. ANGUS BELL, of the Village of Singhampton, Gentleman. (Gazetted 23rd September, 1871.)

NEIL M. MONRO, of the Village of Fergus, Esq., Barrister-at-law. MARK SCANLON, of the Village of Bradford, Gentleman, Attorney-at-law. (Gazetted Oct. 7, 1871.)

HENRY JOSEPH LARKIN, of the City of Toronto, Esq., Barrister-at-law. (Gazetted 14th October, 1871.)

JOHN WILLIAM DOUGLAS, of the Town of Perth, Esq., Barrister-at-law. (Gazetted 21st October, 1871.)

JOHN KENNEDY, of the Village of Mount Forest, Gentleman, Attorney-at-law. (Gazetted 21st Oct., 1871.)

ASSOCIATE CORONERS.

SIDNEY WILLIAM CLEGG, of the Village of Apsley, Esquire, M.D.; within and for the County of Peterborough. (Gazetted 6th May, 1871.)

JAMES HAYES, of the Town of Simcoe, Esquire, M.D.; within and for the Co. of Norfolk. (Gazetted May 6, 1871.)

JOHN M. FOWLER, of the Village of Burford, Esquire, M.D.; within and for the County of Brant. (Gazetted 27th May, 1871.)

JOHN MEARNS, of the Village of Petrolea, Esquire, M.D.; within and for the County of Lambton. (Gazetted 3rd June, 1871.)

DANIEL J. M. HAGARTY, of the City of London, Esquire, M.D.; within and for the County of Middlesex. (Gazetted June 10, 1870.)

DAVID MITCHELL, of the Village of Constance, Esq., M.D.; within and for the County of Huron. (Gazetted June 24, 1871.)

WILLIAM S. CHRISTOE, of the Township of Artemesia, Esquire, M.D.; within and for the County of Grey. (Gazetted July 22, 1871.)

JOHN KELLY, of the Village of Little Britain, Esquire, M.D.; within and for the County of Victoria. (Gazetted July 22, 1871.)

WILLIAM LUMLEY, of the Village of Glencoe, Esquire, M.D.; within and for the County of Middlesex. (Gazetted July 22, 1871.)

EDWARD LOUIS ATKINSON, of the Village of Gananoque, Esquire, M.D.; within and for the County of Grenville. (Gazetted August 3, 1871.)

JOHN GODKIN GILES, of the Village of Farmersville, Esq., M.D.; within and for the United Counties of Leeds and Grenville. (Gazetted 26th August, 1871.)

WILLIAM C. LUNDY, of the Town of Amherstburg, Esq., M.D.; within and for the County of Essex. (Gazetted 26th August, 1871.)

ALBERT WILLIAM SOVEREEN, of the Village of Fredericksburgh, Esq., M.D.; within and for the County of Norfolk. (Gazetted 16th September, 1871.)

HENRY JOSEPH MURPHY, of the Town of Chatham, Esq., M.D.; within and for the the County of Kent. (Gazetted 16th September, 1871.)

ABRAHAM PRATT, of the City of Ottawa, Esq.; within and for the county of Carleton. (Gazetted 23rd September, 1871.)

BRINSLEY MARCIUS WALTON, of the Village of Westmeath, Esq., M.D.; within and for the County of Renfrew. (Gazetted 30th September, 1871.)

JACOB GILBERT TERRYBERRY, of the Village of Burford, Esq , M.D.; within and for the County of Oxford. (Gazetted 21st Oct. 1871.)