DIARY FOR JUNE.

1. Sat..Last day for delivering appeal books.
3. Mon..Sittings of the Supreme Court begin.
7. Fri ..Law Society Convocation meets.
8. Sat ..Easter Term ends.
11. Tues..County Court sittings begin.
16. Sat ..Sittings of Court of Appeal.
17. Mon..Burton, J., and Patterson, J., sworn in as Judges of Court of Appeal, 1874.
18. Tues..Battle of Waterloo.
20. Thur.Accession of Queen Victoria, 1837.
21. Fri ..Galt, J., sworn in as Judge of C. P., 1869.
23. Sun..Hudson Bay Co. Territory transferred to Dominion, 1870.
25. Tues..Law Society Convocation meets.
28. Queen Victoria crowned, 1837.

CONTENTS.

Canada Law Journal.

Toronto, June, 1878.

We regret to record the death of Mr. H. C. Wethey, Barrister-at-Law, and Reporter of the Court of Queen's Bench, on the 22nd ult. Mr. Wethey was called to the Bar in Hilary Term, 1871, and was appointed Reporter when Mr. Christopher Robinson, Q. C., resigned that position to be made Editor-in-chief. Mr. Wethey had no sinecure in the Reportership, and the illness which resulted in his death may be attributed indirectly to the effect of hard work on a delicate constitution. He was as a reporter most industrious and painstaking, whilst his kind, gentle and obliging disposition made him a great favourite with his professional brethren.

GUARDIAN AND WARD.

The judgment in the recent case of *Collins* v. *Martin*, 41 U. C. R. 602, presents many points of interest, which are, however, not so entirely novel as is on all hands assumed in the report of the case.

It was there held that a guardian appointed by the Surrogate Court is in the nature of an agent or bailiff as to the estate of his ward, and that he had no power to demise in his own name the lands of the estate, inasmuch as the legal estate was in the infant. This same matter was somewhat discussed in the case of *Kinsey* v. *Newcomb*, 17 C. P. 99, where the same conclusion is reached, it being held that while the guardian may sue or defend in the name of the ward, the title to the land is in the ward.

The point is also well established in cases in Chancery that the lease of the

guardian is absolutely void as a matter of law: *Townsley* v. *Neil*, 10 Gr. 72; *Switzer* v. *McMillen*, 23 Gr. 538. Such a guardian may, however, obtain permission from the Court of Chancery to lease the infant's lands under the provisions contained in the 50th section of the Chancery Act (see Rev. Stat. cap. 40, sec. 76). The lease would be of course in the name of the infant, and only in this way can a valid lease be obtained of the lands during his minority. It is to be observed that no lease will be sanctioned by the Court where such a course would be in conflict with the provisions of the instrument under which the infant derives title. The statute further provides (sec. 52) that such a lease shall not be made without the consent of the infant if he is of the age of seven years or upwards. This appears to be a relic of the ancient practice in the Ecclesiastical Courts mentioned by Lee, Justice, in Fitzgib. 164, where he noticed that the course of the Spiritual Court was that if the infant was under seven years they choose a curator, but if he is seven he chooses and the Court confirms. See Co. Litt. 88 B., Harg. u. 16. It is also a legislative recognition of the fact that there is a discretion at that age, which the Court should consult and respect.

Our attention has been called to the great oversight which frequently occurs in the appointment of guardians by Surrogate Courts. No provision is made in the order of appointment, for the regular passing of the guardian's accounts at stated periods before the Court. It as often happened that the greatest perplexity and expense in unravelling the accounts has resulted from the failure to interpose such a safeguard. It may be that no accounting takes place till the termination of the guardianship, at the majority of the ward, and then it is often impossible properly to vouch the accounts. This might be avoided and the interests of both guardian and ward be better protected by the judge having regular times annually or bi-ennially as the case might be for the supervision and allowance of these accounts, and making it a term of his order that this accounting should be duly observed; and there should be some provision that if the accounts were, in the discretion of the judge and after proper notification to all parties interested, duly proved, that in the absence of fraud the guardian should be relieved from further liability to account.

It may be urged against this that County Judges have already duties of an over-multifarious character to perform. But the remedy for this is to carry out more systematically the appointing of junior or deputy judges, and making such arrangements as would invest them with the office of local masters in Chancery. Sooner or later the system of payment to officials by fees must be abolished: and if some such consolidation of judicial offices as are here indicated were effected then a respectable remuneration could be afforded, which would secure competent men for the work.

ACTS OF LAST SESSION.

The Acts passed by the Dominion Parliament at its last Session which are of interest to the profession at large are not very numerous, we are glad to say. There is sufficient strain upon the average intellect in keeping track of the amendments, &c., of the Provincial Legislature. Let it suffice therefore, at present, to say that the Acts which the practising lawyer in Ontario should note are as follows:

An Act respecting the Maritime Court of Ontario.

An Act to amend the Act respecting

the Elections of Members of the House of Commons.

An Act to amend the Law relating to Stamps on Promissory Notes and Bills of Exchange.

An Act for the better prevention of crimes of violence in certain parts of Canada, until the end of the next Session of Parliament, which has since been declared in force in Montreal.

An Act to provide that persons charged with common assault shall be competent as witnesses.

An Act respecting persons imprisoned in default of giving securities to keep the peace.

The provisions of chap. 18, which is already in force are as follows:

1. On the summary or other trial of any person upon any complaint, information or indictment for common assault, the defendant shall be a competent witness for the prosecution or on his own behalf.

2. On any such trial the wife or husband of the defendant shall be a competent witness on behalf of the defendant.

3. Where another crime is charged and the Court having power to try the same is of opinion at the close of the evidence for the prosecution that the only case apparently made out is one for common assault, the defendant shall be a competent witness for the prosecution or on his own behalf, and his wife, or her husband if the defendant be a woman, shall be a competent witness on behalf of the defendant in respect of the charge of common assault: Provided, that this section shall only apply to cases tried without the intervention of a jury.

4. Except as in the next preceding section mentioned, this Act shall not apply to any prosecution where any other crime than common assault is charged in the information or indictment.

We have not space to publish chap. 10 as to Stamps on Bills and Notes; it will however be found in a supplement to the *Canada Gazette*, together with some other Acts of general interest.

Of the Law bills that did *not* pass, the principal were, Bill to amend the Supreme Court Act, which was lost in the Senate; Bill to make better provision for the trial of Controverted Elections, which was withdrawn for further consideration; Bill to amend the Law of Evidence in cases of misdemeanor, which was lost in the Senate; Bills respecting registration of titles, &c., and to declare the rule of decision in the North-West Territories, which were withdrawn as time did not obtain to pass them this Session. It is a pity that a system of registration which can only be completely satisfactory which begins at the beginning of a title is not already in full force in these new countries. We have not examined the first of these North-West bills, but the second seems to have been carefully prepared, and bears internal evidence that the learned and veteran Law Clerk of the House, Mr. Wicksteed, Q.C., has had a good deal to say to it.

Four Bills were reserved for the signification of Her Majesty's pleasure thereon; three of them private bills, and the fourth an Act to repeal sec. 23 of the Merchant Shipping Act, which would seem to be *ultra vires*.

THE ANTWERP CONFERENCE.

The fifth Annual Conference for the Reform and Codification of the Law of Nations was held at Antwerp, from the 30th August to the 3rd September of last year (1877), and we have before us a pamphlet containing a report of the proceedings published for the use of members.

It may perhaps be desirable before noticing the proceedings of this particular meeting of the Association to give some slight sketch of the Association itself, its history and objects. It had its origin in America, springing at first

from the idea suggested by the Washington Treaty and the Geneva Arbitration, that it was possible to form by the friendly counsel of Publicists, Statesmen, and leading Commercial men an International Code and International Tribunals by which the various laws and usages which affect nations in their mutual transactions (as distinguished from the Municipal laws of different States) might be brought at least to some extent into harmony, and so diminish the occasions of contention between them. "Substituting," as was said in the Society's original resolution, "the Arbitrament of Reason and Justice for the Arbitrament of the Sword."

The Association held its first meeting at Brussels on October 10th, 1873, and while not neglecting the original intention of its Founders, wisely determined first to deal with questions of law and usage affecting individual interests throughout the world. The special subjects upon which at this meeting that we are now discussing it has made its report are those of General Average and of Bills of Exchange, both, it is hardly necessary to say, of the utmost importance to mercantile men throughout the civilized world. "All nations," says the Right Hon. Lord O'Hagan, President of the Association (speaking of bills of exchange), "in which such instruments are employed for the purposes of commerce, have a common interest in making them by a simple, speedy, and universally intelligible procedure promptly negotiable and easily convertible." He further pointed out that the various German States as far back as 1849 have, under the auspices of Prussia, drawn up a Code of Laws affecting these instruments, which at this moment arranges the commercial dealings, not only of Germany, but also of Austria, Hungary, Sweden, Switzerland, Finland and Servia; and that Spain and some of the South American States have in like manner adopted the French Code on these points. He went on to say that encouraged by these precedents the Association formed a Commission for considering the principles on which such an International Code should be based, and they issued a statement of their opinions on the subject which was adopted in 1876 at Bremen.

The subject of General Average is of scarcely less importance to mercantile men and is equally involved in difficulty from the variance of the laws and customs of different States, which variance often produces much delay and injustice. It is then, these two great subjects of almost universal interest that the Association at their last meeting proposed to examine and report upon, in the hope of inducing the various mercantile communities to make an effort to bring their differing laws into conformity one with another. During the year 1876-77 the following subjects have been discussed and reported on by the Committees of the Association: International Patent Law and the Laws of Copyright. The possibility of introducing an International Coinage, the question of Maritime Capture, the principles of Extradition and International Criminal Law, International Arbitration and the Law of Collisions at Sea. All questions of vital importance and concerning which the laws of different States are in their relation to one another various and vague.

The proceedings of each day's sitting were briefly as follows: Thursday, Aug. 30th, Dr. Tristram, Judge of the Consistory Court of London, read an able paper on "the execution of Judgments and Orders of Foreign Courts," which paper and the subject generally was referred to a Committee. Friday, Aug. 31st, Mr. H. Richard, M.P., read a paper

on "The Obligation of Foreign Treaties," and a motion suggesting that all Treaties should contain an Arbitration Clause was adopted.

Dr. S. Borchardt presented to the meeting the report of the Committee upon Bills of Exchange, embodied in six articles which after some discussion, were carried. The assimilation of the Bankruptcy Law of different nations was then discussed and committees appointed to consider and report on it.

On Saturday, Sept. 1st, Sir Travers Twiss read a paper on Continuous Voyages—Belligerent Maritime Law. Dr. Thompson reported on Copyright. Mr. J. C. Colfavru, Advocate of the Court of Appeal of Cairo, communicated the contents of papers by various gentlemen on the subject of "International Tribunals." Mr. Engels submitted the report of the Committee on General Average.

Monday, Sept. 3rd, Mr. H. Richard laid on the table the report of the Committee upon "Principles of International Law to govern the intercourse between christian and non-christian peoples."

Mr. Alexander read the report of the Committee on Patents and Inventions.

Count Maillard de Marafy submitted to the meeting a draft law on Trade Marks prepared by the Manufacturers' Union of Paris to consider which a committee was formed.

Mr. Edgar Hyde read a paper on Extradition. Mr. Heemskerk read an essay as to "Treaties to succour Shipwrecked Mariners."

A committee was formed on the motion of Dr. Bredius to consider the subject of International Coinage.

After these papers were read and discussed and committees appointed to examine and report upon them, a vote of thanks was tendered to the President, and the meeting of the Association was closed. The next meeting will be held at Frankfort-on-the-Main about the 20th August, 1878.

The Dominion of Canada, as appears by the list of officers of the Association was represented by the Honorable Sir W. B. Richards, the Hon. J. S. Sanborn, LL. D., and the Hon. Sir W. Young. We understand, however, that they were not present at the Conference.

The foregoing is a very short review of the various important subjects which were discussed at this meeting of the Association of which it is not too much to say that its objects are some of the grandest which ever occupied the attention of civilized man, namely, the bringing into universal brotherhood the various nations of the world, and substituting the reign of peace and law for that of war and brute force.

It is incumbent on every civilized nation and individual to encourage by every means in their power the work of a society whose labours are so essentially connected with the welfare of mankind, and we heartily wish it all prosperity and success. It is earnestly to be hoped that urged by the labours and efforts of this Association, the Governments of the civilized world may see the value of, and agree in adopting a Common Code on some at least of these and other subjects of International disagreement. We are not sanguine that these means will render possible "the Parliament of Man," or "the Federation of the World," which have existed in the dreams of Poets and Poetical Enthusiasts. A mightier force is required for that; nor do we believe that any conference will ever prevent "nation from rising against nation," nor can it be contended that the last conflict is any evidence of great success in the attempt to ameliorate the horrors of war; but if the labours of those learned and hopeful men who compose these coaferences has the effect in the

slightest degree of mitigating those horrors or rendering them less frequent, they will have deserved well of humanity.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

(Reported for the *Law Journal*, by N. D. Beck, Student-at-Law.)

Trotter v. Toronto Water-Works Commission.

Corporation—Transfer of rights—Liabilities of successors—Amendment.

The defendants were incorporated by 35 Vict. c. 79, and a time was by that Act limited for the completion by them of the water-works. 39 Vict. cap. 64, amended this Act, and by section 4 it was enacted that the time for the completion of the water-works should be extended till December 31, 1877, and that upon that day the said commission and the powers and duties thereof should cease and be determined, and the said water-works should thenceforth be controlled by a committee to be annually appointed for that purpose by the Corporation of the City of Toronto; provided that the provisions of this section, except as to the extension of the time for the completion of the works, should not come into operation unless and until on or before Dec. 31, 1877, the assent of the ratepayers should be obtained thereto. A by-law to this effect was passed. This action was commenced before the passing of the by-law.

Held, 1. On a consideration of all the statutes relating to the defendants that they were properly sued.

2. That though it was not expressly provided that the liabilities of the defendants should be transferred to the city, it was necessarily implied by the transfer of their rights.

3. That under the extensive powers of amendment conferred by recent statutes, there was power to substitute the city as defendants.

[Mr. Dalton.—Hagarty, C.J.—March 2.

Galt obtained a summons calling upon the defendants and the City of Toronto to show cause why the latter should not be substituted as defendants.

The circumstances under which the application was made appear from the head-note and the arguments.

On the return of the summons,

Biggar showed cause. The plaintiff has been too dilatory in all his proceedings. The writ issued Dec. 8, 1876. The declaration was not filed until Nov. 29, 1877. Issue was joined on Dec. 22, and on Dec. 31 the defendants ceased to exist. It is said the statute gave the right to sue the Commissioners, but it also takes away the right and leaves plaintiff without remedy. The plaintiff should have brought his action against the city; if not, he is at all events bound by his election in suing the Commissioners. If the amendment asked be made, it will necessitate an entire remodelling of the pleadings.

Galt, contra. All the statutes relating to the Commissioners show that the plaintiff was right in commencing his action against them: 35 Vict. c. 79; 37 Vict. c. 75; 39 Vict. c. 64: 40 Vict. c. 39. The defendants having been dissolved and their rights having been transferred to the city, their liabilities are also transferred: *Cayley* v. *C. P. & M. R. & M. Co*, 14 Gr. 571; Dillon on Corporations, 2nd ed., sec. 114 and note. Under the provisions of the Administration of Justice Act, this order should be made.

Mr. Dalton.—On a consideration of all the statutes mentioned, I think the plaintiff proceeded properly in issuing his writ against the Commissioners. They are a corporation independent and separate from the city. The words of 39 Vict. c. 64, s. 4, may not be wide enough expressly to transfer the liabilities of the Commissioners to the city, but it follows as a legal effect from the transfer of their rights. This being so, the only question is whether I have power to amend the proceedings by substituting the city as defendants. I think I have this power under the Administration of Justice Act (now C. L. P. A.)

On appeal from this decision,

Hagarty, C.J., varied this order by providing that if it should be held that the plaintiff should have commenced his action against the city and not against the Commissioners, the plaintiff should be considered as having commenced his action against the city on the date of the order.

Order accordingly.

Ginty v. Rich.

Costs of examination of judgment debtor.

Held, that on an application for that purpose merely, a judgment debtor cannot be ordered to pay the costs of his examination.

Such an order can be made only on an application to commit, and then only by way of punishment.

[Mr. Dalton—March 25, 27.

A summons had been taken out calling upon a judgment debtor to shew cause why he

should not pay the costs of, and incidental to an order for his examination, and of and incidental to his examination thereon.

Holman moved the summons absolute. There is no reason, except that it has not been the practice, why the order for the examination should not, in the first instance, be made with costs, and if it be shown, as it is here, that the examination enabled the judgment creditor to collect his debt, there can be no possible reason why the order for costs should not be made now.

Haggart, contra. A Judge in Chambers has no jurisdiction to make an order.

MR. DALTON.—If there were any jurisdiction to make an order such as is asked, I should most certainly do so in this case; but the statute gives no power, nor can I find any case in which such an order has been granted in Chambers. I believe I have known judges direct a judgment debtor, who has been examined, to pay the costs of his examination, but only on applications to commit, where an order against him is by way of punishment, and not as a matter of right to the judgment creditor. As to this direct application for costs, there is no authority in the Statute—nor outside of it, so far as I know—to make the judgment debtor pay them. I discharge the summons, but without costs.

Order accordingly.

BUILDER V. KERR.

Attachment of debts—Affidavit—Filing nunc pro tunc.

Held, 1. That an affidavit to obtain an attaching order must be made by the execution creditor or his attorney; an affidavit made by a managing clerk is insufficient.

2. That where the debt attached was still in the hands of the garnishee, and still in *statu quo*, the judgment creditor should be allowed to file a proper affidavit *nunc pro tunc*.

3. That an attaching order will not be set aside for irregularity on the argument of the summons to pay over, but only on a substantive application.

[MR. DALTON—April 15.

An attaching order and summons to pay over were granted in this case.

On the return of the summons,

Aylesworth, for the garnishee, showed cause. Sec. 307, C. L. P. A. (Rev. Stat.) requires the affidavit on which an attaching order issues, to be made by the judgment creditor or his attorney. This affidavit is made by a managing clerk and is therefore insufficient.

MR. W. READ (Read & Keefer), contra.

The affidavit is sufficient. It has been decided that an affidavit under the A. J. Act to obtain an order to examine is sufficient if made by a managing clerk. I ask leave to file an amended affidavit now.

Aylesworth in reply. In the A. J. Act the word "agent" is used, which does not occur in this section. The judgment creditor cannot now file an amended affidavit. Both the attaching order and the summons must be discharged.

MR. DALTON.—I think that, to comply with the Act, the affidavit should have been made by the judgment creditor or his attorney, and therefore the affidavit filed is not sufficient. In looking through the cases, I found none in which the attaching order has been set aside, except on a motion expressly made for that purpose, and I think it cannot be attacked on showing cause to the summons to pay over. At all events, as the money in dispute here is still in the hands of the garnishee, and the relation of the parties remains unchanged, I shall give the judgment creditor leave to file a proper affidavit now, and make the summons absolute.

Order accordingly.

CLARK V. CLIFFORD.

County Court case directed to be tried at Assizes—Notice of trial—Irregularity.

Held, that where a County Court case was ordered to be tried at the sittings of Assize and Nisi Prius, a notice of trial given under the order, but not in accordance with the terms of the order, must be moved against in the County Court.

[MR. DALTON—April 19.

An order had been made under the A. J. Act, sec. 32, that this case should be tried at the sittings of Assize and Nisi Prius for a certain county. The plaintiff having given notice of trial for the next sittings, the defendant moved against it as being too short notice by the practice of the Court, and by the terms of the order for trial in the County Court.

Holman shewed cause. The application should be made to the County Court Judge, and not here: sec. 34.

Watson, contra. Sec. 34 gives the County Court Judge power only to entertain motions to postpone the trial, not to set aside the proceedings for irregularity.

MR. DALTON.—This is a County Court case. I have, therefore, no jurisdiction over it, unless it be given by the statute. Any application against the notice of trial as being given too late should be made to the County Court.

Summons discharged, without costs.

DUIT V. COSSETT.

Reference to arbitration.

Where an application is made to refer a case to arbitration after writ issued and before plea, and the defendant desires to plead payment into Court, the proper course is, not to order the cause to proceed that the payment may be set up by plea, but, from analogy to the old practice on payment into Court to strike the amount paid into Court out of the plaintiff's claim.

[Mr. DALTON—April 20.

This was an application to refer the cause to arbitration under C. L. P. A. (Rev. Stats.) sec. 189.

Ewart moved the summons absolute.

Mr. Bull (Beaty, Chadwick & Biggar), *contra*, was willing to consent, but said that the defendant wished to plead payment into Court as to a portion of the demand, and asked that the cause should first be allowed to go to issue.

MR. DALTON.—There is no need that the case should go to issue. I have, in other such cases, followed the practice which was formerly pursued before payment into Court was pleaded. That practice was to obtain an order to "strike the amount out of the declaration." The order of reference will direct that the amount paid in be deducted from the amount of the plaintiff's claim.

Order accordingly.

WATTS V. HOBSON.

Sale of equitable interests under execution—Costs.

Costs of an application to sell an equitable interest in lands under *fi. fa.* ordered to be taxed and endorsed as part of the costs of execution.

[Mr. DALTON—April 29, May 2.

A summons had been taken out calling on the defendant to shew cause why his equitable interest in a certain parcel of land should not be sold by the sheriff under writ of *fieri facias* against the defendant's lands, under A. J. Act Rev. Stat. O., cap. 49, sec. 11.

Ogden moved the summons absolute, and asked for the costs of the application.

No cause was shewn.

MR. DALTON.—I do not feel sure, but I think that the defendant should pay the costs of this application; but, to save expense, I direct that they be taxed, and inserted in the endorsement as part of the costs to be levied under the writ.

Order accordingly.

CERRIBY V. WELLS.

Order to examine—At issue.

An order to examine defendant granted in an action of tort where interlocutory judgment had been signed for want of a plea.

[Mr. DALTON—May 1.

Mr. Chamberlen (Richards & Smith) moved for an order to examine the defendant under the C. L. P. A. sec. 156, on an affidavit shewing that the action was an action for seduction, and that interlocutory judgment had been signed against the defendant default of plea.

MR. DALTON.—I will make the order; I do not think that the words "at issue," used in the statute, were intended to have any technical meaning, but were merely intended to mark the stage of the proceedings at which the order should be granted—*i.e.*, when the question which would be in issue at the trial should be known.

Order made.

WALKER V. TERRY.

Notice of trial—Irregularity—Amendment.

An irregular notice of trial was amended *nunc pro tunc* on the plaintiff's application, it not being shewn that the party served was misled.

[Mr. DALTON—May 13.

A notice of trial was given for "the next sittings of Assize and Nisi Prius to be holden at the City of Belleville, in and for the County of Prince Edward, on," &c. (mentioning the day fixed for the sittings at Picton, in the County of Prince Edward). The venue in the action was laid in the County of Prince Edward, and the Belleville assizes were over when the notice was served.

Watson moved absolute a summons to allow the notice to stand good and to amend it *nunc pro tunc*.

Mr. Chamberlen (Richards and Smith), contra. Irregular proceedings have been allowed to be amended; but only in cases where defendants have applied to set aside proceedings. The defendant has a right to treat this as no notice at all. Moreover, his attorney swears that he cannot tell from it where the plaintiff intends going to trial.

MR. DALTON.—From the notice alone perhaps the attorney is unable to discover where the plaintiff intended going to trial, but with his knowledge of the facts of the case, there can be no pretence that he has been misled. The practice is settled that, unless it is shewn that the party served is misled, the notice will be allowed to be amended *nunc pro tunc* on payment of costs. I allow the notice to be amended, and to stand good as of the date of its service, on payment of costs, which I fix at $1.

Order accordingly.

NICOL v. EWIN.

(In the County Court of the County of Simcoe.)

LINDSAY v. EWIN.
DARRAGH v. EWIN.

(In the County Court of the County of Wellington.)

Absconding Debtors' Act—Non-personal service of writ of summons—Priority of executions—Surplus proceeds of sale of land by mortgagee.

Some time prior to the 2nd of March 1876, defendant, having previously mortgaged his real estate, absconded from this Province. On that day Nicol commenced his action by writ of summons, and on the 31st of March, after attempts at personal service, served defendant's wife. On the 20th of April an order was obtained for leave to proceed as if personal service had been effected. On the 8th of May judgment was signed, and *fi. fa.* lands placed in the hands of the Sheriff of Simcoe. On the 8th of April, 1876, Lindsay and Darragh issued writs of attachment against defendant, and on the 30th of November placed *fi. fa.* lands in the said Sheriff's hands. On the 7th of May, 1877, the mortgagees sold under their power of sale, from the proceeds of which there remained a surplus.

Held, 1. That Nicol's writ of summons was "served" within the meaning of section 20 of the Absconding Debtors' Act before the issue of the attachments, and he, having obtained judgment first, was entitled to be paid in full.

2. That the rights of the execution creditors in respect of the defendant's equity of redemption remained unchanged by the sale by the mortgagees.

[April 26, May 1—Mr. DALTON.

This was a special case, stated by consent, for the opinion of Mr. Dalton in Chambers.

The facts, as stated more at length in the special case, were shortly as follows:—

1. Ewin absconded from the Province prior to the 2nd of March, 1876. Nicol, on that day, issued a specially endorsed writ against Ewin and one H. Interlocutory judgment was entered against H. for default of appearance. On the 31st of March Ewin's wife was served, and on the 20th of April an order obtained to proceed as if personal service had been effected. On the 8th of May writs of *fi. fa.* goods and lands were placed in the hands of the Sheriff of Simcoe.

2. On the 8th of April, 1876, Lindsay issued an attachment in the County Court of Wellington, under the Absconding Debtors' Act, against Ewin, and placed it in the said Sheriff's hands on the 13th of April. On the 30th of November *fi. fa.* goods and lands were placed in the said Sheriff's hands.

3. Exactly the same proceedings were taken in Darragh's case.

4. At the time Ewin absconded he was the owner of the equity of redemption in a certain parcel of land in the County of Simcoe.

5. The mortgagees of Ewin, on the 7th of May, 1877, sold the lands under the power of sale contained in their mortgage, and realized more than enough to pay the mortgage.

6. Ewin had no other available assets.

7. There were no other incumbrancers except those mentioned.

8. The question for the decision of Mr. Dalton was — whether Nicol was entitled to be paid in full out of the surplus in the hands of the mortgagees, or should rank *pari passu* with Lindsay and Darragh?

O'Brien for Nicol.

Creelman for Lindsay and Darragh.

The following authorities were referred to:—Absconding Debtors' Act, secs. 20, 28, 30; *Potter* v. *Carrol*, 9 C. P. 442, 448. *Daniel* v. *Fitzell*, 17 U. C. R. 369; *McKay* v. *Mitchell*, 6 U. C. L. J. 61; *Smith* v. *Trust and Loan Co.* 22 U. C. R. 525,

MR. DALTON.—I think the process in Nicol's case was served in the terms of the statute before the suing out of the writs of attachment. I do not think personal service was necessary.

This being so, unless the fact of the sale by mortgagees alters the position of the parties, Nicol is entitled to be paid in full. It appears to me that the right to surplus must follow the course of the property out of which it arose, as if it had continued in its original condition as land. Nicol could have redeemed the mortgagees, because his *fi. fa.* was a lien and encumbrance on Ewin's land; or suppose Ewin dead, the rights of Ewin's heir and executor as to the surplus would have stood thus: Had the mortgagees sold during Ewin's life time, the executor would have been entitled to the surplus, if after Ewin's death his heir; because, in the first case, Ewin would have died owning personal property: in the latter, owning real property; and so in the different cases the executor or heir would have been entitled accordingly. The reason is, that the Building Society could not change the nature of the property beyond their own interest in it adversely to the interests of others concerned, nor alter the legal devolution of the title to the surplus in prejudice of the vested interest of another. In this case the writs of *fi. fa.* were all in the Sheriff's hands, while the equity of redemption was yet in Ewin, and bound the property as realty, subject to the claims of the mortgagees

The surplus, therefore, falls to the first execution creditor, to the extent of his charge, and it is to him, as it seems to me, that the mortgagees are bound first to account.

The case of *McKay* v. *Mitchell*, 6 L. J. U. C. 61, is at first sight startling; it has, indeed, occasioned the only difficulty I have felt, and it seemed to me at first a great difficulty, which will be well understood when it is considered who decided that case.

This case does, in effect, if taken absolutely, decide that the lien of a registered judgment was defeated by such a sale as the present, and that the surplus was garnishable as a debt to the mortgagor by the first comer. Now, I take the registered judgment there to have been just in the position of Nicol's execution here, in so far as respects the present question, and the case, therefore, seems to be exactly in point against the propositions I have stated above. But, on reading carefully the judgment of the learned Chief Justice, it is apparent that he is dealing only with the rights of the parties who were then before him and with those rights as they existed strictly at law. Here, however, the whole rights of the parties in law and equity are referred to me, and I think I act upon well understood principles in deciding that Nicol is entitled to be paid in full out of the surplus in the hands of the mortgagees as is claimed by him. That is my conclusion upon the facts of the case.

I refer to Fisher on Mortgages, 2nd Ed. 674, and to Coote on Mortgages, 3rd Ed., 516.

CHANCERY CHAMBERS.

JAMESON v. LAING.

Illusory suit—Taking bill off the files.

A plaintiff in an action at law filed a bill and registered a *lis pendens* against defendant's lands for the sole purpose, as was clearly shown by affidavits filed, of preventing a disposal of them before plaintiff should obtain execution. *Held*, that in the absence of a direct admission by the plaintiff that the suit was a fictitious one, the bill could not be taken off the files, nor the *lis pendens* discharged. The proper course, where the affidavits filed make out a clear case, is for the judge to direct the cause to come on for hearing at the earliest day.

[REFEREE, April 4—BLAKE, V.C.—April 29.

Plaintiff, having sued defendant at law and fearing that defendant might dispose of certain real property before he could obtain judgment, filed a bill setting up a fictitious contract for sale of the property, and issued and registered a *lis pendens* against it. The defendant moved to take the bill off the files and to vacate the *lis pendens*.

Watson, for plaintiff, referred to several unreported cases.

Hoyles, for defendant, referred to *Seaton* v. *Grant*, L. R. 2 Ch. Ap. 459; *Robson* v. *Dodds*, L. R. 8 Eq. 301; *Mortlock* v. *Mortlock*, 20 L. J., N. S., 773; Daniel Ch. Pr., 5th Ed., 326-7.

MR. STEPHENS, Referee, refused the motion with costs.

There was an appeal from this decision which was heard before

BLAKE, V.C.—The material necessary to support an application like the present must contain, as on an application at law to strike out a defendant's plea, a direct admission by the party himself. There being no such admission here, I must refuse to remove the bill; but having no doubt of the facts stated in the affidavits, I direct the cause to be brought to a hearing at the earliest opportunity. When such an application comes before the Referee in Chambers, and there is no doubt of its being a fictitious suit, a convenient course to pursue would be to enlarge the motion before a judge who might then direct an early hearing.

The question of the costs of the motion and appeal were reserved until the hearing*.

Order accordingly.

IN THE FIRST DIVISION COURT OF THE COUNTY OF MIDDLESEX.

(Reported for the *Law Journal* by G. GIBSON, M.A., Student-at-Law.)

RALPH v. GREAT WESTERN R. W. Co.

Jurisdiction—Cause of action—Residence—Railway.

Held, 1. That where a person having a return ticket for a passage from one place to another on a railway line is put off the train at an intermediate point, the cause of action arises at this latter place, and not where the ticket is issued.

2. That a railway company cannot be said to "reside or carry on business" except where their head office is situated.

[London—February 20.

The facts of this case, as they appeared in

*The plaintiff afterwards himself dismissed his own bill on præcipe before the hearing.

evidence, were these: The plaintiff bought a ticket for a passage on defendants' railway from London to Ingersoll and return. On going from London to Ingersoll, plaintiff gave one part of his ticket to the conductor, and on returning presented the other part to the conductor, who refused, as it was for a passage for the opposite direction—from London to Ingersoll. The plaintiff refusing to pay his fare, the conductor put him off the train at Dorchester, a distance of ten miles from London, but without the jurisdiction of this Court. The head office of defendants is at Hamilton.

When the case came on for trial, exception was taken to the jurisdiction, on the ground that the cause of action (if any) did not arise, nor did the defendants "reside or carry on business" within the jurisdiction of the London Division Court. By consent, this question was reserved for argument, and the trial was proceeded with, when a verdict was given for plaintiff, with $15 damages. The question of the jurisdiction was afterwards argued by

E. Meredith, for plaintiff.

H. Becher, for defendants.

ELLIOTT, Co. J.—Suits in the Division Court must be entered and tried in the division in which the cause of action arose, or in which the defendant resides or carries on business: Rev. Stat., cap. 47, sec. 62.

The "cause of action" means the whole cause of action: *Watt* v. *Van Every*, 23 U. C. R. 196; *Kemp* v. *Owen*, 14 C. P. 432; *Carsley* v. *Fisken*, 4 Prac. R. 255; *Noxon* v. *Holmes*, 24 C. P. 541.

In this case the contract was to carry the plaintiff from London to Ingersoll and back to London, and it is alleged that the defendants duly carried the plaintiff to Ingersoll, but on the return wrongfully ejected and forced the plaintiff from the cars at Dorchester, a distance of ten miles from London, whereby, &c.

Dorchester and London are in different divisions. Can it be said that the whole cause of action arose in the London division? It is contended on behalf of the plaintiff that it can—that the whole cause of action is comprised in the contract to carry the plaintiff to Ingersoll and back to London, and that the breach *is the default to carry him back to London*, and that thus the whole cause of action must be considered as having arisen in London. I cannot take this view of the case.

The complaint is, that the plaintiff was expelled from the cars at Dorchester, and the damages, $15, were asked and obtained, not because the plaintiff was not brought back to London, or because he was a few hours later in being brought back, but because of the expulsion at Dorchester. It appears, therefore, that this alleged unlawful expulsion was the most material matter of complaint, and as it took place at Dorchester, the whole cause of action did not arise in the London division.

In this view of the case the action should have been brought in the division where the defendants reside or carry on business. According to *Ahrens* v. *McGilligat*, 23 C. P. 171, this is where the head office is, and the evidence shows that place to be Hamilton. I conclude that this Court has no jurisdiction to try this cause, and, therefore, the proceedings must be regarded as *coram non judice*.

I have no power to give costs.

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

From C. C., Wellington.] [May 14.

AUGER v. THOMPSON.

Exchange—Fraud—Right to sue on common counts.

The defendant gave a note made by one K. to the plaintiff in exchange for a buggy. The note was not paid at maturity, whereupon the plaintiff sued the defendant on the common counts for the price. *Held*, reversing the judgment of the County Court, the plaintiff ould not recover, as no agreement to pay the price could be raised by implication of law.

Bethune, Q.C., for the appellant.

Richards, Q.C., for the respondent.

Appeal allowed.

From C. C. Bruce.] [May 14.

WAMBOLD v. FOOTE.

Promissory Note—Guarantee—Stat. of Frauds.

Held, affirming the judgment of the County Court, that a verbal guarantee that a promissory note made by another would be paid at maturity was within the 4th section of the Stat. of Frauds and therefore invalid.

Cameron, Q. C., for the appellant.

Ferguson, Q. C., for the respondent.

Appeal dismissed.

From C. C. Stormont, D. & G.] [May 14.

Holt v. Carmichael.

Chattel Mortgage—Description.

Held, affirming the judgment of the County Court that the words "one single buggy," in a chattel mortgage, was not a sufficient description to satisfy Rev. Stat. c. 119, sec. 23.

Bethune, Q.C., for the appellant.

Richards, Q.C., for the respondent.

Appeal dismissed.

From Chy.] [May 14.

Blasdell v. Baldwin et al.

Partition—Water mill privilege.

The plaintiff filed her bill for a partition of 200 acres of land on the river Ottawa, and a water mill privilege appurtenant thereto. She and the defendant A. H. had acquired the property in question as tenants in common, and A. H. had subsequently conveyed an undivided one-fifth of his portion to the four other defendants. The evidence showed that in order to divide the water-privilege very complicated structures would have to be made at heavy expense, and that a large sum of money would have to be expended annually in maintaining them. It also appeared the difficulties in carrying out the scheme would be very great.

Held, affirming the decision of Spragge, C., that under the circumstances a partition of the water privilege could not be decreed ; and a sale thereof, together with a quantity of land sufficient for the purpose was ordered.

O'Connor, Q. C., and *Bain* for the appellant.

Moss, for the respondent.

Appeal dismissed.

COURT OF CHANCERY.

V.-C. Blake.] [May 13.

The Queen Insurance Company v. Devinney.

Fire Insurance—Compromise of claim—Fraud.

In order to prevent a compromise of a disputed claim being set aside, there must have been a matter of doubt to be settled, and there must be no fraud on either side : where, therefore, on the destruction of a house by fire, which had been insured, application was made to the Insurance Company for payment who, after investigating the matter, so far as the facts within their knowledge enabled them to do so, compromised with the assured by paying a portion of the sum insured. Some months afterwards the Company, having received information which satisfied them that a fraud had been committed upon them, and that the assured had himself feloniously caused the fire, instituted proceedings to compel repayment. The Court being satisfied that the act as charged had been committed, made the decree as asked, with costs.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR AUGUST, SEPTEMBER, AND OCTOBER, 1877.

(*From the American Law Review.*)

Administrator—See Executors and Administrators.

Appointment—See Power; Trust, 1.

Assignment of Suit.

A creditor of a company began a suit for winding it up, and then assigned his claim and the right to proceed in the winding-up proceedings to a shareholder in the company, who undertook to carry on the suit. *Held*, that such a proceeding could not be allowed. —*In re Paris Skating Rink Co.* 5 Ch. D. 959.

Attorney and Client.—See Solicitor.

Bailment.

Plaintiff (in each case) left his bag, worth more than £10, at the cloak-room of defendant's station, and received a ticket therefor, on the face of which was the date and number of it, and the time of opening and closing the cloak-room, and the words : "See Back." On the back it was stated that the company would be responsible only to the amount of £10. There was also a notice to this effect hung in the cloak-room, in a conspicuous place. The judge left these questions to the jury : "1. Did the plaintiff read or was he aware of the special condition upon which the article was deposited ? 2. Was the plaintiff under the circumstances under any obligation, in the exercise of reasonable and proper caution, to read or make himself aware of the condition ?" Both questions were answered in the negative, and the judge ordered judgment for plaintiff. *Held*, that there must be a new trial. —*Parker* v. *The South Eastern Railway Co ; Gabell* v. *The Same ;* s. c. 1 C. P. D. 618.

Bankruptcy.—See Detinue ; Proxy ; Set-off.

Digest of English Law Reports.

Bequest.

1. Will in the following words: "I . . bequeath to G. all that I have power over, —namely plate, linen, china, pictures, jewellery, lace,—the half of all valued to be given to H . . . The servants . . . to have £10, and clothes divided among them, also, all kitchen utensils." The testatrix had money and much other personal property besides that specified in the will. *Held*, that the will covered all the personal property of the testatrix.—*King* v. *George*, 5 Ch. D. 627; s. c. 4 Ch. D. 435.

2. Testator gave "all debts and sums of money . . . due me . . . by B. unto the said B., his executors, administrators, and assigns," &c. "And I direct that the said trustees . . . shall give and execute unto him or" his executors, &c., "a good and effectual release," &c. At the date of the will and at the date of the testator's death, B. owed him £50, and B. and his partner G. owed him jointly £300, and jointly and severally £2,300. *Held*, that the words of the will covered only the private debt of £50.—*Ex-parte Kirk. In re Bennett*, 5 Ch. D. 800.

See Legacy 1, 2.

Bill of Lading.

One hundred barrels of oil and one hundred and six palm-baskets, consigned to defendants, were shipped under a bill of lading signed by plaintiff, containing the clause: "Not accountable for rust, leakage, or breakage." Some of the oil escaped and caused damage to the baskets. In an action for the balance of freight, the consignees set up a counter-claim for this damage. *Held*, that the exemption in respect of leakage did not extend to the damage caused by the oil which leaked out. *Thrift* v. *Youle*, 2 C. P. D. 432.

See Equitable Charge.

Bills and Notes.

Testator drew a check, a few days before his death, payable to his wife or her order. She indorsed it and deposited it with foreign bankers, and drew against the amount. The checks were not presented for payment at the bank on which they were drawn until after the death of the testator. *Held*, a good *donatio causa mortis*.—*Rolls* v. *Pearce*, 5 Ch. D. 730.

See Equitable Charge.

Breach of Trust.—See Trust 2.

Charitable Bequest.—See Legacy 1.

Check.—See Bills and Notes.

Cloak-room Ticket.—See Bailment.

Condition.—See Contract; Sale; Statute of Frauds, 3,

Conditions on Ticket—See Bailment.

Consideration.

J., a widower, on his second marriage, assigned leasehold property to trustees in trust for himself for life, remainder to his son by his former marriage, and afterwards sold the same leasehold to plaintiff. The latter applied to have the settlement declared voluntary, under 27 Eliz. c. 4, and consequently void. *Held*, that it was a conveyance for consideration, inasmuch as the lease might have been one which it was worth while to get rid of.—*Price* v. *Jenkins*, 5 Ch. D. 619.

See Settlement; Statute of Frauds, 1.

Construction.

1. By Act of Parliament, coal-mining companies have power to make rules by which persons employed in and about the works shall be governed. The H. mine had a regulation that workmen could discharge themselves at a moment's notice, and another by which no one "employed in and about the works" could ascend the pit except with the permission of the hooker-on, or before two o'clock of the afternoon turn. The respondents discharged themselves at eight o'clock in the morning, and against the orders of the hooker-on ascended at one o'clock. *Held*, that they could be convicted of a violation of the special rule in spite of having discharged themselves.—*Higham* v. *Wright et al.* 2 C. P. D. 397.

2. 10 Vict. c. 15. § 6, authorizes certain gas companies to lay down their pipes in the street, and § 7 provides that "nothing herein shall authorize" them "to lay down or place any pipe . . . into, through, or against any building or in any land, not dedicated to the public use, without the consent of the owners or occupiers thereof." Certain arches of masonry, under a road which ran by the plaintiff's premises, used by him for storage purposes, were broken into and damaged by a gas company, in laying pipes. *Held*, that the arches were "buildings" within the meaning of the Act. —*Thompson* v. *The Sunderland Gas Company*, 2 Ex. D. 429.

3. Authority to trustees in a will to invest in "funds of the Government of the United States of America, or of the Government of France, or any other foreign Government," *held* to justify investment in New York, Ohio, and Georgia Bonds.—*Cadett* v. *Earle*, 5 Ch. D. 710.

See Bequest, 1, 2; Contract; Insurance, 1; Jurisdiction, 1; Landlord and Tenant, 2; Power, Will, 1, 2.

Contract.

Contract by defendants to buy from plaintiffs 600 tons of rice, to be "shipped" at Madras, in the months of March and or April, 1874, per ship Rajah. 7,120 bags of the rice were put on board the Rajah between the 23d and 25th of February, and three bills of lading therefor were signed in February. Of the remaining 1,080 bags, 1,030 were put on board February 28, and the rest March 3; and the bill of lading for 1,080 bags bore the latter date. There was evidence that the rice put on board in February was as good as that put on board in March or April. *Held*, that the contract had not been complied with, and the defendants

were not bound to accept the rice.—*Bowes v. Shand*, 2 App. Cas. 455; s. c. 1 Q. B. D. 470; 2 Q. B. D. 112; 11 Am. Law Rev. 279, 689.

See Sale.

Contribution.—See Insurance, 2.

Contributory Negligence.—See Negligence, 2.

Conveyance.—See Vendor and Purchaser.

Covenant.—See Lease 1.

Coverture.—See Husband and Wife, 1, 2.

Damages.—See Injunction, 1; Statute.

Damages, Measure of.—See Measure of Damages.

Debt.—See Bequest, 2; Legacy, 2.

Decree Nisi.—See Husband and Wife. 1.

Detinue.

W. hired a mare of D., and neglected to return her on demand of D., D. sued him in detinue, and got judgment. W. still neglected to return the mare, and Dec. 6 he filed a liquidation petition. Later in the day, D. had his costs in the detinue suit taxed, and at the same time had notice of W.'s petition. Subsequently he got execution, and, finding the mare, had the sheriff seize her under a *fi. fa.* *Held*, that D. was entitled to the mare.—*Ex parte Drake. In Re Ware*, 5 Ch. D. 866.

Discretion.—See Executors and Administrators.

Divorce.—See Husband and Wife, 1.

Domestic Relations.—See Husband and Wife.

Donatio Causa Mortis.—See Bills and Notes.

Equitable Charge.

A. consigned coffee to M., L., & Co., and drew bills on them at ninety days, payable to the order of B., who negotiated them to the plaintiff R. M., L., & Co. refused to accept the bills, and plaintiff had them protested, and held them for maturity. There was nothing on the bills to show that they were drawn against any particular consignment. A., hearing of the refusal to accept, wrote to S., June 17, 1874, asking him to take charge of the consignment, realize on it, get from M., L., & Co. the names of the holders of the bills, honour the bills, and, if they were not sufficient in amount, to telegraph for the balance; and, in general, to conduct the matter so that A.'s reputation would not suffer. The bills became due Aug. 15, and, the day before, S. wrote to R., giving the amount of the bills, and saying, "Please take notice that I expect to receive from M., L., & Co., early next week, delivery of the coffee sent by drawer against the above, and that I will then again write you on this subject." Aug. 17, S. got the warrants for the coffee from M., L., & Co., and wrote to R. to that effect, referring to his letter of Aug. 14, and saying he should dispose of the coffee as instructed by A., and in due time would send R. further particulars. The same day, M., L., & Co. attached the coffee in an action in the Lord Mayor's Court against E., A., & Co., who, they alleged, and had been informed by A. had an interest in the coffee, but whom S. had had no dealings with. S. gave R. notice of the proceedings, and the latter filed his bill against A., S., and M., L., & Co., to have the coffee declared specifically appropriated to satisfy the said bills, and for an injunction. *Held*, reversing the decision of Hall, V. C., that A. had given S. authority to create an equitable charge on the goods, and that S. had acted upon that authority, and that R. could therefore maintain the suit.—*Ranken v. Alfaro*, 5 Ch. D. 786.

Estoppel.—See Landlord and Tenant, 1.

Evidence.

1. April 16, 1874, the respondent brought an action against the appellants on a policy of insurance of one N., dated Sept. 28, 1863. N. disappeared in May, 1867, and a sister and brother-in-law testified that none of his family had heard any thing of him since that time, but his niece said she had seen him in December, 1872, or January, 1873, when she was standing in a crowded street in Melbourne; that she started or turned to speak to him, but before she could do so he was lost in the crowd. She had told this circumstance to N.'s other relations. The jury informed the court that they did not consider this evidence conclusive that she had seen N. Counsel for plaintiff asked the court to instruct the jury "that there was evidence that N. had been absent seven years without being heard of, and that he had not been heard of if" the niece "was mistaken in believing that she had seen him:" and if the jury thought she was mistaken, then N. might be presumed dead, having been absent more than seven years without being heard of. This was refused, and the court instructed the jury, *inter alia*, as follows; "You cannot say that a man has never been heard of, when in the first place one of his nearest relations says she saw him . . . within three years; still less . . . when every member of the family states that they heard" so. "You cannot have any one called who saw him die or saw him buried. You have therefore no direct evidence except that he was alive three years ago. . . . You have no evidence whatever upon which you could found the presumption that he is dead, that is, that he has never been heard of by any of his relatives for the space of seven years, when you find that every one of the relatives heard that he was alive." The court added that the presumption of death was removed by the most positive evidence, and finally: "Under these circumstances, unless you are prepared to find that he was dead in April, 1875, and find it upon evidence which tends to prove directly the contrary, and in

the absence of that evidence upon which alone the presumption should be raised of his death, your verdict ought to be for the defendant." *Held*, by the Court of Appeal a misdirection, and on appeal to the House of Lords the Lords were divided, and the holding of the Court of Appeal remained undisturbed.—*Prudential Ins. Co.* v. *Edmonds*, 2 App. Cas. 487.

2. By the Bastardy Laws Amendment Act, 1872, § 4, if the statement of the mother as to the paternity of the child be "corroborated in some material particular by other evidence," the man charged with the paternity may be adjudged to be the putative father. *Held*, under this provision, that evidence of acts of familiarity between the parties amounted to such corroboration, and should be received, although such acts took place at a time before the child could have been begotten.—*Cole* v. *Manning*, 2 Q. B. D. 611.

See FALSE PRETENCES; LANDLORD AND TENANT 1; MORTGAGE; NEGLIGENCE, 1.

EXECUTORS AND ADMINISTRATORS.

Bequest of personal property to executors to divide it equally among four persons. A part of the property was at testator's death in three second mortgage bonds of the Atlantic and Great Western Railway Company of America, of uncertain value and rapidly failing. At that time they were worth £153 each. They rapidly fell until fifteen months afterwards two of them were sold for £52 each, and the one remaining unsold was worth at the time of the suit £20. One of the legatees had urged the executors to dispose of the bonds earlier, but the executors said they held them in the honest expectation that they would rise. *Held*, that the executors could not be required to make good the loss.—*Marsden* v. *Kent*, 5 Ch. D. 598.

FALSE PRETENCES.

Case stated on the conviction of one C. for falsely pretending that he was a responsible dealer in potatoes, and had credit as such, whereby one G. was induced to forward him large quantities of potatoes. The evidence consisted of the following letter from C. to G.: "Sir,—Please send me one truck regents and one rocks as samples, at your prices named in your letter; let them be of good quality, then I am sure a good trade will be done for both of us. I will remit you cash on arrival of goods and invoice. P. S. I may say if you use me well, I shall be a good customer. An answer will oblige, saying when they are put on." *Held*, that the conviction was correct.—*The Queen* v. *Cooper*, 2 Q. B. D. 510.

FIRE INSURANCE.—See INSURANCE, 2.

FOREIGN GOVERNMENT.—See CONSTRUCTION, 3; JURISDICTION, 2.

FORFEITURE.

In a notice by the secretary of a company to a shareholder to pay an overdue call or assessment, the latter was notified to pay the call with five per cent interest from the day when the call was voted, or he would forfeit his stock; whereas the rules of the company prescribed interest in such cases only from the day when the call became payable. *Held*, that such notice was invalid, and no forfeiture took place.—*Johnson* v. *Lyttle's Iron Agency*, 5 Ch. D. 687.

FRAUDS, STATUTE OF.—See STATUTE OF FRAUDS.

HUSBAND AND WIFE.

1. After a decree *nisi* for divorce from her husband obtained by the plaintiff, the defendant seized and took divers goods as the property of the plaintiff. Afterward the decree *nisi* was made absolute, and the plaintiff subsequently brought this action for illegal seizure of the goods. *Held*, that the plea of coverture of plaintiff pleaded by defendant was proved.—*Norman* v. *Villars*, 2 Ex. D. 359.

2. O. was a clothier, and lived with his mather, but owned another house near by, where in 1855 he installed the defendant as housekeeper, and soon after engaged to marry her. In 1861, she began on a small scale the business of fruit preserving. The business gradually increased until it became a large wholesale bustness. In 1874, O. married her, and went to live with her in the house she had occupied. She had carried on the business before the marriage entirely as her own, with her own means, and kept her own bank account, and at the date of the marriage she had over £1,500 on deposit. The husband's account at the same bank was overdrawn, and without his knowledge she drew from her account and deposited the amount to his to make good the deficit. After the marriage she continued to carry on the business in her maiden name as before, and he did not in any way interfere with it, but always referred customers to her. He died intestate, and she claimed the business as her own; but his sister applied for administration on it as his. *Held*, that the widow was entitled to the whole capital and stock in trade of the business as her own.—*Ashworth* v. *Outram*, 5 Ch. 923.

See SETTLEMENT.

INFANT.—See LEGACY, 3.

INJUNCTION.

1. In a suit by one riparian proprietor against another farther up the stream for polluting it to the injury of the plaintiff, an injunction was asked for and also an inquiry as to damages. The defendant claimed that only damages should be awarded as in the case of obstruction of light and air. An injunction was granted.—*Pennington* v. *Brinsop Hall Coal Co.*, 5 Ch. D. 769.

2. 18 and 19 Vict. c. 128, § 9, forbids burials within one hundred yards of a dwelling-house. The plaintiff applied for an injunction to restrain the defendant from using a field, or any part thereof as a cemetery, some portion of which field was within one hundred yards of plaintiff's dwelling. It

appeared that, in 1865, defendant obtained from the Secretary of State permission so to use his field, but had not been able to act on the permission; that he had recently tried to form a company for the purpose, but had failed; that he did not intend to use any of the land within one hundred yards for burials without the plaintiff's consent; that he had offered to give two months' notice to defendant whenever he proposed to act at all in the matter; and that the defendant had offered to suspend proceedings if the plaintiff would agree not to use any of the field for a cemetery. BACON, V. C., granted a temporary injunction. *Held*, that the injunction must be dissolved.—*Lord Cowley* v. *Byas*, 5 Ch. D. 944.

See TRADEMARK.

INSURANCE.

1. Under a policy on "commission and profit" on "ship and ships, steamer and steamers," occurred the clause: "Warranted free from all average, and without benefit of salvage, but to pay loss on such part as shall not arrive." The "commission and profit" referred to was that on goods shipped on a British ship. By 19 Geo. II. c. 27, § 1, it is provided that "no assurance . . . shall be made . . . on any ship . . . belonging to his Majesty or any of his subjects, or on any goods . . . on such ship, . . . interest or no interest, . . . or without benefit of salvage to the assurer: and every such assurance shall be null and void." *Held*, that under this statute the assured on the above policy could recover neither for the loss nor the premium paid. *Allkins et al.* v. *Jupe*, 2 C. P. D. 375.

2. B. & Co., wharfingers, effected insurance with the plaintiff and the defendant company by "floating" policies, on grain and seed belonging to R. & Co. and stored with B. & Co. R. & Co. also effected insurance on the same property with the plaintiff company. All the policies contained this condition: "If at the time of any loss or damage by fire, . . . there be any other subsisting insurance or insurances, whether effected by the insured or by any other person, . . . this company shall not be liable to pay or contribute more than its ratable proportion of such loss or damage." There were also the usual conditions of average in all the policies. B. & Co., by the custom of London, were responsible for the goods to the owners as though common carriers. By a fire on their wharf, grain belonging to R. & Co., among other grain, was destroyed. B. & Co. were paid in full on their policies, and this suit was brought to fix the liability of the companies among themselves. *Held*, that the underwriters on the policies procured by B. & Co. were not liable to contribute.—*North British Mercantile Ins. Co.* v. *London, Liverpool, & Globe Ins. Co.*, 5 Ch. D. 569.

3. The defendant was underwriter for £1,200 on plaintiff's ship, valued in the policy at £2,600. The cost of repairing certain damage by sea was, after deducting one-third new for old and some particular average charges, £3,178 11*s.* 7*d.*, and the salvage and general average charges paid by plaintiff were £519. The agreed value of the ship when insured was £3,000, when damaged, £998, after repairs, £7,000; which last sum was, even after deducting the cost of certain new work not charged against the underwriter, much more than the original value of the ship. *Held*, that the liability of the underwriter was to be measured by the cost of repairs, even though thereby he might be liable for more than a total loss with benefit of salvage.—*Lohre* v. *Aitchison*, 2 Q. B. D. 501.

INTENTION.—See MORTGAGE.

JURISDICTION.

1. The Admiralty Jurisdiction Act (24 Vict. c. 10, § 7) enacts that "the High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship." This action was brought by the widow of a mariner, killed in the collision between the steamer *Strathclyde* and the German ship *Franconia* in the straits of Dover, and for which the ship was to blame. *Held*, on appeal, that the Admiralty Court had jurisdiction in a case of damage for loss of life, under the Act.—*The Franconia*, 2 P. D. 163.

2. The Republic of Peru issued bonds for the payment of which were pledged the customs dues of the republic, the national credit thereof, with the hypothecation of all its real property, certain railways, and especially the surplus proceeds of all the guano imported into Great Britain and the United States each half year, until the interests and payments on the bonds for that half-year were satisfied. There was default in the payment of the interest, and the plaintiff, holder of the bonds, brought suit against the defendants, agents of the Peruvian government, to compel the latter to apply the proceeds of guano held by them to the payment of the interests and the amortization of the bonds. The defendants alleged a lien of their own on the guano in their hands. Plaintiff offered to make the government of Peru a party, but the latter laid no claim in any way to the property in the hands of the defendants. Defendant demurred, on the ground that the Court had no jurisdiction, inasmuch as the defendants were mere agents of Peru, and the latter was a necessary party. Demurrer *held* good.—*Twycross* v. *Dreyfus*, 5 Ch. D. 605.

LANDLORD AND TENANT.

1. Plaintiffs let a house to the defendant for seven years from Lady Day, 1868. Defendant entered and occupied till the autumn of 1868, when he left for America, leaving the key with an agent with orders to dispose of the premises, if possible, or to make the best terms he could with the plaintiffs for a surrender. The agent gave up the keys to the plaintiffs in December, 1868. At the beginning of 1869, notices that the

house was to let appeared in the windows, by plaintiffs' authority, and they attempted to let the house; and, during 1870, some of the plaintiffs' workmen in their business occupied the house part of the time. In March, 1872, the house was let, and plaintiffs brought action for the rent up to that time. *Held*, that there was no evidence of a surrender of the defendant's lease by operation of law.—*Oastler* v. *Henderson*, 2 Q. B. D. 575.

2. Document signed by plaintiff and defendant, as follows: "Jan. 26. Hand agrees to let, and Hall agrees to take, the large room, &c., from 14th February next until the following Midsummer twelvemonths, and with right at end of that term for the tenant, by a month's previous notice, to remain on for three years and a half more." *Held*, reversing the decision of the Exchequer Division, that the contract must be divided, and that it contained an actual demise, with a stipulation superadded that the tenancy should on notice be renewed for three years and a half at the tenant's option.—*Hand* v. *Hall*, 2 Ex. D. 355; s. c. 2 Ex. D. 318.

3. The defendant let F. a house under a lease by which F. was to do all the repairs, with certain exceptions. The house was, at the time of the lease, in good repair, and the lease contained no stipulation that defendant should do any repairs. During the tenancy, owing to a portion of the house included in the exceptions being out of repair, a chimney-pot fell on the head of plaintiff, who was a servant of F., and injured him. *Held*, that he could not recover of the defendant.—*Nelson* v. *The Liverpool Brewery Co.*, 2 C. P. D. 311.

See LEASE 2.

LEASE.

1. B. conveyed an eating-house in lease, and covenanted that he would not let any house in that street "for the purpose of an eating-house;" but it was provided that the covenant should not bind B.'s heirs or assigns. He then let another house in the street, and the lessee covenanted with him that he would not carry on any business there without a license from B. Both leases were assigned, and the assignee of the first brought suit against the assignee of the second and B., to restrain them respectively from carrying on or allowing to be carried on the business of an eating-house. *Held*, that B.'s covenant was not broken, and the assignee of the second lease could not be restrained.—*Kemp* v. *Bird*, 5 Ch. D. 974; s. c. 5 Ch. D. 549.

2. A lessee covenanted to make repairs, upon six months' notice. Notice was duly given Oct. 22, 1874, and the lessee replied asking if the lessor would purchase the short leasehold interest remaining. The lessor replied, asking the price; and the lessee answered, giving it. Dec. 31, 1874, the lessor replied that, having regard to the condition of the leased premises, the price was too high, and asked a reconsideration of the question of price; and stated that he should be glad to receive a modified proposal. In January, 1875, the lessor wrote the lessee, asking for the rent, and made some inquiry arising out of their relations. The lessee replied, giving the information. April 13, 1875, the lessor wrote the lessee, saying the time for repairs would expire April 21, 1875. The repairs were completed about June 15, 1875. April 28, the lessor began an action of ejectment for failure to repair according to the covenant. *Held*, that the lessee was entitled to equitable relief from forfeiture, on the ground that the negotiations following the original notice to repair had the effect of suspending the operation of that notice till Dec. 31, from which time the lessee had, accordingly, six months to repair.—*Hughes* v. *The Metropolitan Railway Co.*, 2 App. Cas. 439; s. c. 1 C. P. D. 120.

See LANDLORD AND TENANT, 1, 2.

LEGACY.

1. Testator left a fund in trust to keep in repair a certain tomb, and, when the surplus income reached £25, to pay the balance above £20, from time to time, for the relief of three poor persons in each of the parishes of C. and S. *Held*, that, as the provision about the tomb was void, the whole income should be applied to the second object.—*In re Williams*, 5 Chan. D. 735.

2. A testator, after certain specific bequests, proceeded: "I direct that my . . . debts, including a debt of £300 owing from me to my daughter Jane, be paid." He owed his daughter Jane only £150. *Held*, that an intention to make Jane a bequest could not be understood, and that she was not entitled to the other £150.—*—Wilson* v. *Morley*, 5 Ch. D. 776.

3. 23 & 24 Vict. c. 145 § 26, provides that, where property is held by trustees in trust for an infant, either absolutely, or contingently on his attaining the age of twenty-one years, it shall be lawful for the trustees to apply towards his maintenance or education "the whole or any part of the income to which such infant may be entitled in respect of such property." Testator left property in trust to pay his daughters, while under age and unmarried, £50, each, yearly, and to his sons (except the eldest), while under twenty-one, a like sum; and to accumulate the surplus to become part of his residuary estate. He gave £4,000 to each of his sons (except the eldest), when they should become twenty-one, and a like sum to each of his daughters, when they should become twenty-one or marry, He made his eldest son residuary legatee. *Held*, reversing the decision of HALL, V. C., that the legacies to the daughters bore no interest till they were due, and that, therefore, neither at common law or under the statute could the trustee be ordered to apply any of the income from said legacies to the support of the daughters under age, even though

the £50 given for that purpose was insufficient.—*In re George (an Infant)*, 5 Ch. D. 837.

See Bequest 1.

Life Estate.—See Will, 2.

Life Insurance.—See Evidence 1.

Limitations. Statute of.—See Statute of Limitations.

Marine Insurance.—See Insurance.

Married Woman's Property Act.—See Husband and Wife, 2.

Master and Servant.

1. The defendant's servant, with his master's horse and waggon, was employed to take out beer for defendant to customers, and on his way home he called for empty casks, for which on delivery to his master he received 1d. apiece. On March 5, 1875, he took the horse and waggon, without his master's knowledge, and carried a child's coffin to a relative's house. On his way home he picked up a couple of empty casks, and subsequently negligedtly came in contact with the plaintiff's cab, and damaged it. On his arrival home, he received his usual fee for the empty casks. *Held*, that he was not in the discharge of his ordinary duties when the injury happened, and the master was not liable.—*Rayner* v. *Mitchell*, 2 C. P. D. 357.

2. The plaintiff was employed by a contractor, engaged by the defendants to do certain work on their road, in a dark tunnel on a curve, where trains were passing at full speed without any signal every ten minutes, and the workmen could not know of the approach of the train until it was within thirty yards of them. There was just room enough between the rail and the wall for the men to get out of the way. No look-out was stationed, though it appeared that, on a previous occasion, when repairs were going on, there had been one. Plaintiff had worked in this place a fortnight, and, while reaching out across the track for a tool, he was struck and hurt by a train of defendants. The jury found negligence in defendants, and awarded £300 damages. *Held*, on appeal (Mellish and Bagallay, L.JJ. dissenting), reversing the decision of the Court of Exchequer, that the plaintiff must be held to have been aware of the extraordinary risk he was running, and the defendants were not liable for injury resulting from his voluntary exposure.—*Woodley* v. *The Metropolitan District Railway Co.*, 2 Ex. D. 384.

See Construction, 1; Negligence, 1.

Misdirection.—See Evidence, 1.

Mortgage.

A., a first mortgagee, and plaintiff in this suit, foreclosed, making the mortgagor and N., the second mortgagee, parties. Subsequently, the mortgagor went into bankruptcy, and A. purchased the equity from the trustee. The trustee assigned the mortgaged property to A. "in consideration of £1,380, retained by the said" A. "in full satisfaction of the said sum" due, and of £20 paid the trustee by A.," subject to the aforesaid claim of the said" N. The value of the property was not more than £1,380; and N, claimed that the effect of the above transaction was to extinguish A.'s claim, and to let in his own second mortgage as a first encumbrance on the property in A's hands. *Held*, that there was a plain intention to keep the first incumbrance alive, and that N. could not be let in. *Toulmin* v. *Steere* (3 Mer. 210), distinguished. Held also, by Hall, V.C., that a correspondence between the solicitors of A. and the trustee, concerning the purchase, was admissible as evidence as to the intention to keep alive A.'s mortgage.—*Adams* v. *Angell*, 5 Ch. D. 634.

Negligence.

1. The defendant, Cox, was the owner of premises on which he contracted with the other defendants to build a house. The outside of the house was finished, and the scaffolding which had been erected to protect the public on the sidewalk had been taken down. The servant of a sub-contractor employed to plaster the interior, moved a tool too near the edge of a plank before an open window, and the tool fell out and hurt the plaintiff passing under. The jury found that the scaffolding was properly removed, but found the defendant contractors negligent in not putting up some other protection and found for the plaintiff. *Held*, that the defendants were not liable, the accident not being one which they could have foreseen. *Semble* that, if anybody, the sub-contractor was liable.—*Pearsons* v. *Cox et al.*, 2 C. P. D. 369.

2. The plaintiff, a waterman looking for work, saw a barge belonging to defendant being unlawfully navigated on the Thames, by one man alone, and remonstrated with the man in charge of it, hoping thereby to be employed to assist. The latter referred him to defendant's foreman, and plaintiff went to defendant's wharf about the matter. While there, a bale of goods fell upon him through the negligence of defendant's servants, and injured him. *Held*, that the plaintiff could maintain an action for injuries.—*White* v. *France*, 2 C. P. D. 308.

See Landlord and Tenant, 3; Master and Servant, 1, 2.

Notice,—See Forfeiture, 1; Lease, 2.

Obscene Publication.—See Pleading and Practice.

Partial Loss.—See Insurance, 3.

Parties.—See Copyhold.

Patent.

The licensee under a patent cannot call in question the validity of the patent during his license, but he may show that the matters in respect of which royalties are claimed of him by the patentee are not covered by the patent, after the analogy of a tenant, who, though he may not impeach his land-

lord's title, may nevertheless show that a particular piece of land, which he claims, is not comprehended in the lease, but is his under another title.—*Clark* v. *Adie*, 2 App. Cas. 423.

See TRADEMARK.

PERSONAL COVENANT.—See LEASE, 1.

PLEADING AND PRACTICE.

In an indictment for publishing an obscene book, the title only was set forth. The jury found the book obscene, and the defendants moved to quash the indictment, or to arrest judgment, on the ground that the exact words relied on, that is, the whole book should have been set forth. Motion refused, with an intimation that the point, being a doubtful one, might, however, well be taken in error.—*The Queen* v. *Bradlaugh and Besant*, 2 Q. B. D. 569.

See HUSBAND AND WIFE, 1; INJUNCTION, 2.

POSSESSION.—See STATUTE OF FRAUDS, 1.

POWER.

Testatrix made a bequest to her daughter for life and at her death, "upon trust to pay and apply all the trust moneys, and to assign and transfer the security and stock, in and upon which the same shall be then invested, to and amongst my other children, or their issue, in such parts, shares and proportions, manner and form, as my said daughter . . . shall by deed or will direct, limit, and appoint." *Held* that, under this clause the power was exclusive and not merely distributive, and the daughter could appoint to a part only of the other children, if she saw fit.—*In re Veale's Trusts*, 5 Ch. D. 622.

PRACTICE.—See PLEADING AND PRACTICE.

PRESUMPTION OF DEATH.—See EVIDENCE, 1.

PROXY.

Bankruptcy Rules,, 1870, r. 85, provides that the instrument appointing a proxy shall be under the hand of the creditor, and in the form given in the schedule to the rules. That form is as follows: "I appoint C. D., of, &c., my proxy in the above matter." A creditor gave his solicitor a blank proxy duly signed, and the solicitor filled in his own name, and undertook to act under the proxy. *Held*, reversing the opinion of BACON, C. J., that the proxy was good.—*Ex parte Lancaster. In re Lancaster*, 5 Ch. D. 911.

RAILWAY.—See BAILMENT; MASTER AND SERVANT, 2.

REALTY AND PERSONALTY.—See TRUST, 1.

RENT.—See STATUTE OF LIMITATIONS.

RIPARIAN PROPRIETOR.—See INJUNCTION, 1.

SALE.

July 6, 1876, the defendants, auctioneers, sold to the plaintiff, by auction, the reversion in certain stock expectant on the decease of a married lady (then in her forty-fourth year, and childless), without issue who should attain the age of twenty one. The conditions of sale were that the purchaser should pay a deposit of 20 per cent., and sign agreements to pay the balance on or before Aug. 17, when the sale would be completed; "but should the completion of the purchase be delayed from any cause whatever beyond that period, the purchasers are (but without prejudice, nevertheless, to the vendor's rights under the seventh or any other condition of sale) to pay interest on the balance . . . until the completion of the purchase." The seventh condition provided that, if the purchaser should fail to comply with any condition of the sale, he should forfeit his deposit; the vendor might resell the property, and the defaulting purchaser be liable to make good any loss. The defendants could not complete the sale by Aug. 17, but became able the last of November, and offered to complete it. Meanwhile, Aug. 19 plaintiff sued for the recovery of his deposit. *Held*, that time was not of the essence of the contract, and plaintiff could not recover.—*Patrick* v. *Milner et al.*, 1 C. P. D. 342.

SECURITY.—See SET-OFF.

SET-OFF.

A party having collateral security for his debt against a bankrupt, may still set off against a claim due the bankrupt estate from him.—*McKinnon* v. *Armstrong Brothers*, 2 App. Cas. 531.

SETTLEMENT.

Real estate was devised to a woman, with an expression of wish that, in case she should marry, she should, before marrying, settle the estate for her own use for life, and to such uses as she should by will and notwithstanding coverture appoint. She married and had a child, and subsequently joined with her husband in a deed, purporting to be in execution of said wish, whereby said estate was settled upon certain trusts for her, her husband, and their children. Subsequently, the husband and wife mortgaged the estate, without informing the mortgagee of the settlement. *Held*, that the settlement was for good consideration, and not void against the mortgagee, under 27 Eliz. c. 4.—*Teasdale* v. *Braithwait*, 5 Ch. D. 85.

SHIPPING AND ADMIRALTY.—See BILL OF LADING; INSURANCE. 1, 3; JURISDICTION, 1.

SOLICITOR.

Under the special circumstances of this case, a solicitor, with a retainer to act generally for his clients, was allowed to charge for his professional services and expenses on journeys to America and to Paris, not undertaken primarily for these clients, or under their special instructions, but on which he got information which they afterwards made use of in their matters conducted by him.—*In re Snell*, 5 Ch. D. 815.

SPECIFIC CHARGE.—See EQUITABLE CHARGE.

SPECIFIC PERFORMANCE.—See STATUTE OF FRAUDS, 1.

STATUTE.

The principle appearing to have been laid down in *Couch* v. *Steel*, (3 E. & B. 402), that,

wherever a statutory duty is created, any person who can show that he has sustained injuries from the non-performance of that duty can bring an action for damage, against the person on whom the duty is imposed, questioned by all the judges in *Atkinson* v. *Newcastle Waterworks Co.*, 2 Ex. D. 441.

See Construction, 1, 2; Evidence, 2; Forfeiture, 2; Insurance, 1; Jurisdiction, 1; Legacy, 3; Proxy.

Statute of Frauds.

1. K. informed his daughter and her intended husband that he had bought a house which should, in the event of the marriage, be his wedding present to his daughter. After the marriage, the daughter and her husband entered into possession of the house, a lease of which K. had bought, subject to payment of certain instalments. K. paid all instalments which fell due in his lifetime, and died leaving a sum of £110 still to be paid, which fell due after his death. *Held*, that possession following K.'s verbal promise took the promise out of the Statute of Frauds; and that K.'s agreement was to give a house free from encumbrances, and that, therefore, £110 must be paid out of K.'s estate.—*Ungley* v. *Ungley*, 5 Ch. D. 887; s. c. 4 Ch. D. 73; 11 Am. Law Rev. 503.

2. In a contract for the purchase and sale of land, the vendor was mentioned only as a "trustee, selling under a trust for sale." *Held*, sufficient under the Statute of Frauds.—*Catling* v. *King*, 5 Ch. D. 660.

3. Eight persons made an agreement to convey certain land to two of their number. by an absolute deed, and that they should sell the same lots, and hold the proceeds in trust for the eight. The defendant, in April, 1875, made a verbal offer to W., agent of the owners for the sale of the lots, for some of them. W. told him that he must purchase subject to certain conditions, printed on a plan of the lands, and which W. made known to him. The last condition was to the effect that each purchaser should sign a contract embodying the conditions, and the payment of a deposit and the completion of the purchase within two months from the date of the contract. W. promised to lay the offer befor the "proprietors," had accrpted his offer, and inquiring about his wishes as to the title. The next day defendant replied that, unless he was at liberty to build or not, the offer had better be reconsidered. The next day W. answered, saying the acceptance was an unconditional one, and defendant could do as he pleased about building. Soon after, the defendant wrote, declining to go on. In a suit for performance, *held*, that the use of the word "proprietors" sufficiently designated the vendors to satisfy the Statute of Frauds, but that the signing of the contract, as required in the printed conditions, constituted a condition precedent to the completion of the contract, and therefore the defendant was not bound.—*Rossiter* v. *Miller*, 5 Ch. D. 648.

Statute of Limitations.

In 1812, land subject to a fee-farm rent was conveyed to the predecessor in title of the plaintiff: but down to 1872, the grantor's successors continued to pay the fee-farm rent. In 1872, the grantor's successor refused to pay the rent, and the defendant, who was entitled to the rent, and who was before ignorant that the property had changed hands, demanded the rent of the plaintiff, and, on her refusal to pay, he distrained, and she then brought suit in replevin, and set up the Statute of Limitations, 3 & 4 of Will. IV., c. 27, §§ 2 & 3, since the payments had not been made by the terre-tenant for more than twenty years. *Held*, that the case did not come within the Statute.—*Adnam* v. *The Earl of Sandwich*, 2 Q. B. D. 485.

Sub-Contractor.—See Master and Servant, 2; Negligence, 1.

Surrender.—See Landlord and Tenant, 1.

Ticket.—See Bailment.

Time.—See Sale.

Trademark.

In 1862, S. C. got a patent for a filter, in the name of himself and his son G. C., that plaintiff, then a minor. S. C. died the same year, and G. C. carried on the business and sold filters with the label, "S. C.'s Improved Patent Gold Medal Self-cleansing Rapid Water-Filters." In 1865, the patent ran out, and in 1867 the plaintiff, then of age, altered his label, by inserting in it in place of "S. C.'s," "G. C.'s," and placing over it a medallion with the words "By Her Majesty's Royal Letters Patent." In 1876, the defendants' relatives and former employees of the plaintiff, began in the same town making filters very much like plaintiff's, but with a label thus; "S. C.'s Patent Prize Medal Self-cleansing Rapid Water Filters, Improved and Manufactured by W. & Co.," *Held*, dissolving an injunction granted by Bacon, V. C., that the label was not a trademark, but a description only, that the defendants' label was not a fraudulent imitation of plaintiff's designed to cheat the public, and that the plaintiff could have no standing in court by reason of the fraudulent representation on his label that the patent was still subsisting.—*Cheavin* v. *Walker*, 5 Ch. D. 850.

Trust.

1. Testator appointed real estate to N. subject to a term of years, vested in trustees, who were directed to raise a sum of money therefrom and to pay the income of it to certain life-tenants. This was done, and on the death of the life-tenants, who all survived N., *held*, that the personal representative of N. was entitled to the principal of the fund.—*In re Newberry's Trust*, 5 Ch. D. 746.

2. The principle enunciated and applied that all benefits derived by trustees from the trust-property accrue to the *cestuis que trust*, even though the benefit was secured

by the trustees appearing as actual owners; and that, in case of breach of trust by trustees for their own benefit, no lapse of time can validate the transaction.—*Aberdeen Town Council* v. *Aberdeen University*, 2 App. Cas. 544.

See SETTLEMENT.

VENDOR AND PURCHASER.

Trustees for the sale of a freehold stipulated that "the property is sold and will be conveyed subject to all free rents, quit-rents, and incidents of tenure, and to all rights of way, . . . and all rights and claims, of what kind and nature soever (if any) of the tenants, without any obligation on the part of the vendors to define any such rights or claims." *Held*, that they were entitled to have these words inserted in the *habendum* of the deed, although they had not shown that any liability of the sort existed.—*Gale* v. *Squier*, 5 Ch. 625.

See STATUTE OF FRAUDS, 2, 3.

VOLUNTARY CONVEYANCE.—See CONSIDERATION.

WILL.

1. A testator, after directing his trustees to convert his estate into money and pay his debts and legacies, proceeded: "And I declare that the said trustees may vary the said . . . funds . . . at their discretion, and shall pay the moneys and the investment for the time being representing the same, to my said wife during her life upon trust for all my children or any child who being sons or a son shall attain the age of twenty-one years; or, being daughters or a daughter, shall attain that age or marry, and if more than one, in equal shares. Provided also, that the said trustees may after the death of my said wife, or previously thereto, if she shall so direct in writing, raise any part not exceeding one-half part of the then expectant presumptive or vested share" of any child for his or her advancement. The trustees were empowered to use the income "after the death of" the wife for the maintenance of the children. If no child survived him, and, being a son, attained the age of twenty-one years or married, then the trust fund should go to testator's brothers and sisters. *Held*, that the widow took a life interest in the fund.—*Greenwood* v. *Greenwood*, 5 Ch. D 954.

2. Testator gave to his executors named all his property in trust to pay his debts, legacies, and bequests, with power to convert the whole or any part. He gave some legacies, and to his wife £1,500 and all his household goods. Then followed certain other bequests to be paid out of the personal, and certain others to be paid in certain circumstances out of the real, estate. He then directed that, in case he died without children (as he did) after the death of his wife the residue of the property should be divided into twelve parts and given to the "children and their descendants" of his aunts, the descendants to take the portion of their parents, and should there be no children or lawful descendants of any of his aunts remaining at the time these bequests became payable, then the portions so bestowed should be disposed of as part of the residuary fund. Then followed a direction that the trustees or executors need not convert or pay the legacies for two years after his death unless they thought best, and that the "division of the residuary property" need not be made till two years after the death of his wife. Then followed provisions for payment of his wife's annuity of £700, payable to her under their marriage settlement. The testator died in 1837, and the wife in 1876. *Held*, that only the children and grandchildren of the aunts took, and the wife had no life-estate by implication.—*Ralph* v. *Carrick*, 5 Ch. D. 984.

See BEQUEST, 1, 2; CONSTRUCTION, 3; LEGACY, 1, 2, 3; POWER; SETTLEMENT.

WINDING UP.—See COMPANY, 1, 2.

WORDS.

"*Buildings.*"—See CONSTRUCTION, 2.

"*Corroborated in some material particular.*"—See EVIDENCE, 2.

"*Damage done by any Ship.*"—See JURISDICTION, 1.

"*Descendants.*"—See WILL, 2.

"*Employed in and about the Works.*"—See CONSTRUCTION, 1.

"*Foreign Government.*"—See CONSTRUCTION, 3.

"*Never been heard of.*"—See EVIDENCE, 1.

"*Not accountable.*"—See BILL OF LADING.

"*Proprietors.*"—See STATUTE OF FRAUDS, 3.

"*Shipped.*"—See CONTRACT.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

There is published in England (by Stevens & Haynes, Bell Yard, Temple Bar), a pamphlet called the *Bar Examination Journal* which answers much the same purpose to the English student that this department of the *Canada Law Journal* does to his Canadian brother. We extract from this pamphlet the Easter Examination papers applicable to our law. The following are the Common Law and Equity questions, with references to the books where the answers may be found:

Real and Personal Property.

Pass Paper.

What are the distinctive features of real property and personal property respectively? Why, in the first instance, were leases for years of land considered as personal estate, and titles of honour as real estate? (See Wms. R. P. Intro.)

If lands be given to A. and B. and the heirs of their two bodies, what estates do A. and B. take (1) when they are persons who can, (2) when they are persons who cannot, possibly intermarry? (See Wms. R. P. Pt. I. c. 6.)

A testator in 1870 charged his freehold estate, Blackacre, in aid of his personal estate, with the payment of his debts and of a legacy to his widow, and so charged he devised Blackacre to his son A. in tail male. He devised his freehold estate, Whiteacre, to his son B. in fee, charged with payment of a legacy to each of his daughters C. and D., and he appointed F. his executor. The charges are unsatisfied: A. and B. are both bachelors and desire to sell both estates. Can a good title be made, and who must convey to the purchasers? (See Wms. Pt. I. c. 10.)

A. and B., men, and C., a married woman, being joint tenants of a freehold estate, agree in writing signed by them all, but not acknowledged by C., to sell the estate. Before a conveyance is executed C. dies, what becomes of her share? (See Smith, R. & P. 234; Deane's Principles of Conveyancing, p. 228; *Caldwell* v. *Fellows*, L. R. 9, Eq. 410.)

Can a married woman exercise without her husband's consent a power over real estate given to her when married? (See Wms. Pt. II. c. 3.)

If a leasehold is bequeathed to A. for life, remainder to B., and the executor assents to the bequest, what becomes of the legal term of years on the death of A? (See Fearne, C. R. 402.)

Sketch in outline a conveyance in fee, with all usual covenants, on a purchase from mortgagor and mortgagee of part of the mortgaged property, the purchase-money being paid to the mortgagee in reduction of the debt? (See Davidson, Vol. II. P. I., Prec. XII.)

Common Law.

Pass Paper.

What is the law as to suing on a gaming or wagering contract? Is such a contract illegal? (See Indermaur, Principles of the Common Law 232, 234; *Hampden* v. *Walsh*, L. R. 1 Q. B. D. 189.)

Give instances when an executor is and is not liable on a contract made by his testator? (See Indermaur, C. L. 123, 253; 2 Wms. Executors, 7th ed., 1721—1728.)

When is a person indictable for endeavouring to conceal the birth of a child? State the effect of the enactments on this subject? (See Harris, Criminal Law, 174.)

Give instances showing what would and what would not amount to embezzlement? (See Harris, Cr. L. 221, 223; Broom, C. L. 953, 954.)

What is the mode of proceeding at the trial where a person is indicted for larceny, and is charged in the indictment with a previous conviction for felony? (See Archb. Cr. Pl. 327, 18th ed.; Harris, Cr. L. 330.)

When may the Court before whom a prisoner is tried and convicted order that he be subject to the supervision of the police? What is the effect of such an order? (See 34 and 35 Vict. c. 112; Harris, Cr. L. 443.)

Equity.

Pass Paper.

Distinguish between (1) an Express Trust, (2) a Constructive Trust, (3) an Implied Trust, (4) a Resulting Trust: and give instances of each? (See *In re Carter's Trusts*, L. R. 14 Eq. 217; Snell, pt. 2, c. 4; Dyer v. Dyer, 1 W. & T. 3rd ed. 184; Smith's Manual, T. 2, c. 5).

A testator gives all his personal estate to trustees upon trust to permit his widow to reside in his house, and use such parts of his property as she may desire personally to enjoy for her life, and as to all the residue upon trust for his widow for life for her separate use, remainder to his only son for life, remainders over. The testator's estate consists of—(1) A leasehold house, the lease of which has twenty years to run at the time of his death: (2) The household furniture in his house; (3) A cellar full of valuable wine; (4) £10,000 consols; (5) A terminable government annuity, of which twenty years are unexpired at his death; (6) A leasehold farm; (7) £500 Bank of England stock; (8) £1,000 five per cent. debentures of the London and North-Western Railway Company. How ought the trustees to deal with these items respectively? (See *Howe* v. *Earl of Dartmouth*, 2 W. & T. 3rd ed. 289; Theobald on Wills, 102; Jarman 1. 577; Snell, 2nd ed. 129.)

Distinguish between legal assets and equitable assets. The importance of this

distinction has lately been considerably diminished. When and how was this effected? (See *In re Poole's estate*, 6 C. D. 739. Wms. Exors, 6th ed. 1557.)

In the absence of special circumstances, when will the plaintiff in an administration suit be entitled to costs as between solicitor and client—

(a) When the plaintiff sues as a creditor;

(b) When the plaintiff sues as a legatee.

(See Henderson v. Dodds, L. R. 2 Eq. 532; Seton on Decrees, 3rd ed., 145.)

What is meant by the maxim, "When equities are equal, the law shall prevail?" Illustrate your answer by an example of its application in the administration of an insolvent estate. (See Snell, 2nd ed. p. 18.)

Distinguish a lien (strictly so called) from a mortgage and a pledge, and distinguish these from one another. (See Wms. P. P., pt. I. c. 2).

A mortgagee in possession has received rents which in each year were considerably in excess of the interest on his debt. In an action for foreclosure, in what manner will the account be directed—

(a) When some interest } was in arrear at
(b) When no interest } the time when he took possession?

(See Seton on Decrees, 3rd ed. 400; Fisher on Mortgages, § 1622 *et seq.*

CORRESPONDENCE.

Stop Orders.—Wilson v. *McCarthy.*

To the Editors Canada Law Journal.

Sirs:—The report of the case of *Wilson* v. *McCarthy* in the last number of Chy. Ch. Reports would seem, to a careful reader, to be rather meagre and unsatisfactory. Overruling, as this case does, a decision which has been followed for many years, I think the grounds upon which the judgment is based are hardly set out with the fulness or accuracy which, in view of the importance of the case, they deserve.

In *Lee* v. *Bell*, an execution creditor, with writs in the sheriff's hands, petitioned for a stop-order. The Secretary dismissed the application, apparently because he was of opinion that a stop-order upon funds in court of a judgment debtor could be granted, if at all, only as ancillary to a charging order to be obtained under the provisions of the Imp. Stat. 1 & 2 Vict. cap. 110, secs. 13 and 14, from a Judge of the Court in which the judgment was entered: the Act not being in force here, no charging order could be granted, hence no stop-order.

In *McCarthy* v. *Wilson*, a case for all purposes identical with *Lee* v. *Bell*, Proudfoot V.-C. granted the order. Now although a stop-order is sometimes allowed to go where the more extended remedy of an order for payment out is refused; yet, as a clear title to the property in court must be shewn by the applicant (*Wood* v. *Vincent*, 4 Beav. 419; *Quarman* v. *Williams*, 5 Beav. 133; *Lambert* v. *Hutchinson*, 13 L. J. N. S. Eq. 336), and as the Court has always been extremely jealous that innocent parties with funds in its charge shall not be unnecessarily subjected to the annoyance and expense a stop-order may occasion; and as, moreover, a stop-order is in nearly every instance followed, as a matter of course, by an order for payment out to the person obtaining it of either the interest or corpus of the fund affected, we may not be going too far if we regard the case as practically establishing that a creditor, with writs of execution in force and unsatisfied, may now, without filing a bill, obtain payment from any sum of money in Court to the credit of his debtor.

There is little doubt that the Secretary was right as to the Statutes 1 & 2 Vict. c. 110 and 3 & 4 Vict. c. 82 not being in force in this country (*Calverly* v. *Smith*, 3 C. L. J. 67; *Re Lash*, 1 Chy. Ch.); and that, consequently, our Courts have no jurisdiction to grant a charging order, the effect of which is simply to place the creditor in the same position as if he had obtained an assignment of the debtor's interest in any stock or

funds it affects in the Court of Chancery, whereupon the Court in its ordinary jurisdiction (Ayckbourn, 480.) can issue the stop-order. The Secretary's attention appears, however, not to have been called to the fact that although the Act as a whole is not in force here, one very important clause was borrowed from it and enacted by our Legislature; and that clause is precisely the one under which the application was, or should have been, made.

As regards the attaching of property in the trusteeship of the Court of Chancery, the Imp. Statute furnishes two distinct modes of procedure. First (sec. 14) it empowers the judgment creditor at law, without taking out execution, to procure a charging order from a Common Law Judge; and it declares the effect of such order, which is as I have stated it. Or, second (sec. 12), he may take out *fi. fas.*, and direct the sheriff to seize the cheques or funds lying in the Accountant General's office belonging to his debtor. As a preliminary to this latter, it was thought becoming to ask the leave of the Court, whose officer the Accountant-General is; a possibility moreover existing that a seizure without prior leave obtained might be construed and punished as a contempt, and the seizure nullified. Two distinct classes of cases thus appear in the reports; those decided under the sec. 14, and those under the section 12. With the former we have nothing to do, for the reason above intimated.

The best known cases under the 12 sec., which was passed here in the 20 Vict. c. 57, and is still in the Statute Books (C. L. P. Act.), are those of *Courtoy* v. *Vincent*, 15 Beav. 487; *Watts* v. *Jefferyes*, 15 Jur. 435 and 3 Macn. & G. 372 (again reported as *ex parte Reece*, in 16 L. T. 501), and *Robinson* v. *Wood*, 5 Beav. 388.

In the first and last of these cases a stop-order only issued. In the other a cheque had been made out in the name of the debtor, and remained with the Accountant ready for delivery: the cheque was handed over to the sheriff.

I have been unable to find a reported case where *moneys* were ordered to be paid over by the Accountant to a creditor or to the sheriff. The difficulty in the way of seizing money lying in Court subject to an order for payment out to the debtor but for which no cheque has yet been drawn arises from the fact that it is not altogether clear that before the actual making out of the cheque the money in court "belongs" to the debtor, so as to be seizable under the Statute, or is anything more to him in fact than as the subject of a mere debt, or *chose in action* (*Wood* v. *Wood*, 4 Q. B. 397; *Watts* v. *Jefferyes*, Jur. *sup.*). It is believed, however, that the Court will not be found eager to make any distinction in this respect between a cheque and the money it represents. The Court in England has made every effort to obey the spirit of the Act. Indeed, in ordering the transfer of a cheque in one of the above cases, the point was raised whether or not the cheque was, until its actual delivery to the person in whose favour it was drawn, his property; and in *Courtoy* v. *Vincent* the M. R. expresses his opinion concisely that it is not; at least not so as to justify the sheriff in seizing it. The express order of the Court and its sanction to the sheriff's action will perhaps cure an irregularity which otherwise might be held to occur. In *ex parte Reece* "the Accountant-General certified to the Court that he knew of no instance of an order on him to pay money over to an execution creditor, although there were orders to pay assignees of insolvent debtors and sequestrators."

W. S. G.

REVIEWS.

THE CANADIAN MONTHLY AND NATIONAL REVIEW. June, 1878. Hunter, Rose & Co. Toronto.

There was a time when people wished well to this periodical. It has, however, for some time past contained a series of articles similar in tone to those written in England and the Continent by the free-thinkers, deists, rationalists, positivists, materialists, &c., of the day, and this whilst the high-sounding title with which it began its career is retained. This is a mistake. We have yet to learn that the followers of Voltaire, Tyndal, Harrison, Huxley, and others represent the national element of this Canada of ours. We thank the managers, however, for one thing, and that is, that the doctrines which the wisdom of even worldly men have pronounced to be most detrimental to a country's greatness, most subversive of law and order, are presented in such a manner that they have to the average mind somewhat the effect intended to be produced by the Spartan parents who gave their children goblets of wine to drink in which reptiles had been placed. There is withal, in most of the articles to which we allude, so much ignorance, and so many misapplications as well as such a "fortuitous concurrence" of contradictory arguments and hopeless absurdities combined with such an assumption of intellectual eminence as to breed contempt even in the minds of those who are not even professing Christians. Such literature, however, cannot but have most injurious and poisonous effect upon the minds of large classes in the community, and this is our excuse for alluding at any length to matters not strictly within our limits, but which are contained in a periodical sent to us for review.

Some months ago, in the same periodical a comparison was drawn between Mohamedanism and Christianity, and, in the opinion of the writer, the former was probably the most desirable superstition of the two. One of the leading articles this month is headed "The New Reformation." The writer states himself to be a member of the "Progressive Society of Ottawa," (whatever that may be), for which Society this paper was written. He begins with the argument that because all professing Christians do not live up to the pattern which they claim has been set them, therefore Christianity did not come as a direct gift from the Supreme Being, and there is in fact no Supreme Being such as Christians superstitiously worship, but there is "Nature" and there is "Truth," and Truth is to be worshipped "by the endeavour to place our lives in harmony with what we recognise as the good and pure in our nature." But it is said also that "nature knows no forgiveness," and it is admitted that "our Cosmos has not reached perfection," though it is "progressing towards perfection, and will, eventually, we all hope, reach that goal." It is clear, therefore, that the present inhabitants of our Cosmos are in a very hopeless condition, for it is admitted that they are as yet far from perfect.

Persons, however, who die in their sins, and like the members of this Society "neither hope nor expect to be forgiven," will have the comforting assurance that their descendants who may live some thousands of years hence will probably arrive at perfection and need no forgiveness. It is possible, however, that the perfection of this world may *not* be "evolved," although we are told, as one of the unanswerable arguments in favour of it, that "the savage instinct of war is dying out. Science is killing it." Yet this rubbish is written when the shrieks of murdered and mutilated women and children are still sounding in our ears from intellectual Europe, and the horrors of the Communism are still unforgotten in its capital.

This writer's profound knowledge of the springs of human thought and action are shown by his holding up as a motive for leading a good life, stronger than gratitude for the love of a dying Saviour, the laudable endeavour to evolve perfection for the benefit of the human race at some remote period of the world's history!

Christianity is described as a "persecuting spirit." It is moreover commend-

ed as a form of religion which has been useful in its day for police purposes, but its decay may be very accurately dated from the time that the first professed Christians admitted the doctrine of toleration;" since the Reformation of Luther it has become of less use; and now that the Reformation of the Progressive Society of Ottawa has dawned it has become obsolete! Our readers will, however, be glad to learn that "we of the Progressive Society are, I may truly say, determinedly opposed to the idea of doing away with religion." This is gratifying, but it is difficult to understand how there can be Religion without a Divinity to worship, unless indeed this Society falls down before their own ideal of what is Truth and the "Paternal Power of the Universe, which is neither love nor fear, but is Law."

The writer has, or affects to "have the utmost confidence in the perfectibility of the human intellect." What he possibly intended to assert confidence in was the attainment eventually of all knowledge by means of the human intellect; even he can scarcely pretend that the individual brain-power of this century is greater than that of any preceding one, though undoubtedly in these times "many run to and fro, and knowledge is increased."

It may be that the time of "strong delusions" is coming on the earth, otherwise it would be strange that men, who assume to teach others, should be found who publicly announce their disbelief in the evidence of a Divine revelation, which is fortified by facts which are as clearly proved as any other matter of history of the same period, and which are believed by them to be substantially true.

We feel bound to say as much as we have said in reference to recent numbers of this monthly, a periodical, which was started under the happiest auspices, and conducted with an ability superior to that of any other on this side of the water. We are informed, however, that the *Canadian Monthly and National Review*, as such, has ceased to exist; and we are glad to know that its place will be supplied by a monthly magazine which under its proposed management, will not offend the "prejudices" of any of its readers, and will, we trust, remind us of the *Canadian Monthly* in its palmiest days.

The Law of Trade Marks and their Registration, and matters connected therewith, including a chapter on Goodwill. By Lewis Boyd Sebastian, B. C. L., M.A., of Lincoln's Inn, Esq., Barrister-at-Law. Stevens & Sons, 119 Chancery Lane, London, Law Publishers, &c. 1878.

The author also gives his readers an appendix containing Precedents of Injunctions, &c. The Trade Marks Registration Acts, 1875—7, the Rules and instructions thereunder; The Merchandise Marks Act, 1862, and other Statutory enactments; and The United States Statute, 1870, and the Treaty with the United States, 1877; also the New Rules and Instructions issued in February, 1878.

The time has scarcely arrived in this country for a book on this subject to be much sought after. It will soon come, however, in the natural order of things. In the United States there is a volume published in which are collected the American authorities, and we notice that Mr. Sebastian refers to a number of the cases there cited.

The author gives in this volume a complete view of the law of Trade Marks in England. His first chapter is a general introduction. The next discusses what a Trade Mark is. The third chapter treats of the acquisition, transfer and discontinuance of Trade Marks. The subsequent chapter deals with their infringement, criminal prosecutions under the statute law, civil remedies, and cases analogous to those of Trade Marks. The chapter on the good-will of a trade is a valuable contribution to the law on that subject.

Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 41ST VICTORIA.

During this Term, the following gentlemen were called to the Bar, viz.:—

GEORGE FERGUSSON SHEPLEY.
WILLIAM JAMES CLARKE.
WILLIAM EGERTON HODGINS.
JAY KETCHUM.
ROBERT SHAW.
HAMILTON PARKE O'CONNOR.
WILLIAM CAVEN MOSCRIP.
JAMES JOSEPH ROBERTSON.

The following gentlemen were called to the Bar under 39 Vict. chap. 31. : —

DANIEL O'CONNOR.
JOSEPH BAWDEN.

The following gentlemen were admitted into the Society as Students-at-Law and Articled Clerks :—

Graduates.

ALEXANDER DAWSON, B.A.
THOMAS DICKIE CUMBERLAND, B.A.,
WILLIAM BANFIELD CARROLL, B.A.

Matriculants.

FRANCIS BADGELEY WILLIAM MOLSON GILBERT LILLY.
JOSEPH MARTIN.
J. A. C. REYNOLDS.

Junior Class.

HUGH ARCHIBALD MACLEAN.
WILLIAM BURGESS.
LOUIS F. HEYD.
JAMES FOSTER CANNIFF.
JOHN DOUGLAS GANSBY.
GEORGE CORRY.
EDMUND WALLACE NUGENT.
CHARLES PATRICK WILSON.
DAVID MCARDLE.
THOMAS HISLOP.
WILLIAM ALEX. MCLEAN.
ALEXANDER JOSEPH WILLIAMS.
JAMES JOSEPH PANTON.
WILLIAM MELVILLE SHOEBOTHAM.
JAMES GAMBLE WALLACE.
GEORGE MOREHEAD.
WILLIAM GEORGE SHAW.
ROBERT PATTERSON.
HARRY HYNDMAN ROBERTSON.
JAMES ALEX. SHETTLE.
MOSES MCFADDEN.
ARTHUR B. FORD.
GEORGE HIRAM CAPRON BROOKE.

Articled Clerk.

HENRY WHITE.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AFD ARTICLED CLERKS.

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

All other candidates for admission as students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

CLASSICS.

Xenophon, Anabasis, B. I. ; Homer, Iliad, B. I. ; Cicero, for the Manilian Law ; Ovid, Fasti, B. I., vv. 1-300 ; Virgil, Æneid, B. II., vv. 1-317 ; Translations from English into Latin ; Paper on Latin Grammar.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar ; Composition ; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects instead of Greek:

FRENCH.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or GERMAN.

A Paper on Grammar. Museaus, Stumme Liebe. Schiller, Lied von der Glocke.

Candidates for Admission as Articled Clerks (except Graduates of Universities and Students-at-Law), are required to pass a satisfactory Examination in the following subjects:—

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography — North America and Europe.
Elements of Book-keeping.

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

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination hall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

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

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

SCHOLARSHIPS.

1st Year. —Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

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

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

4th Year. —Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleading, Equity Pleading and Practice in this Province.

N.B.—After Easter Term, 1878, Best on Evidence will be substituted for Taylor on Evidence; Smith on Contracts, for Leake on Contracts.