DIARY FOR OCTOBER.

1. SUN..16*th Sunday after Trinity.* Univ. Coll. and Trin. Coll. Mich. Term begins.
2. Mon..County Court Term begins. County Court sittings for trials without jury.
3. Tues..Univ. of Toronto session of Senate begins.
7. Sat....County Court Term ends. Last day for notice for Primary Examinations.
8. SUN..17*th Sunday after Trinity.* Judges of Supreme Court and Chief Justice Harrison and Mr. Justice Moss, gazetted, 1875.
13. Fri....Battle of Queenston, 1812.
15. SUN..18*th Sunday after Trinity.* Law of England introduced into Upper Canada, 1792.
22. SUN..19*th Sunday after Trinity.*
29. SUN..20*th Sunday after Trinity.*

CONTENTS.

THE

Canada Law Journal.

Toronto, October, 1876.

THE interest of the profession in the recent election of Benchers was not very widely extended, for although the ranks of the profession have been increased by several hundreds during the past five years, the number of voters at the last election of Benchers was much less than in 1871. At the first election 461 votes were cast, whilst in 1876 there were only 387. This shows either a growing dislike to the new system, or an indifference which is not encouraging. This falling off was in the face, too, of some correspondence in the public press, which, though not edifying, at least called attention to the fact of the election being at hand. Some may have been disgusted with what seems to be the inevitable result of the elective system wherever applied, and so did not vote at all. At the same time it is pleasant to be able to record that a very creditable election has again been made by the Bar.

Of the 387 ballot papers put in, nineteen were rejected because the names of the voters were not on the register, and two were received too late. The members of one legal firm voted for one dead man, for one who was disqualified, and for two who are ex-officio Benchers, which is an instance of the proverbial ignorance of lawyers of law and fact when they are personally concerned. Hon. M. C. Cameron had the honour of heading the list with 351 votes, followed closely by Messrs. McCarthy, Meredith, S. Richards, D. B. Read, J. D. Armour, Bell, Osler, Becher, etc. Of those who had been appointed by the Benchers to fill vacancies in the past five years all, except two, were re-elected by the Bar.

JUDICIAL DISCRETION.

We do not propose to discuss in this paper that species of discretion, so finely anathematized by Lord Chancellor Camden when he said, "The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper, and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly, and passion to which human nature is liable." Since his day, judicial discretion has been limited and regulated by written and statute law. In almost every department of law, except, perhaps, in mere matters of practice, there is but slight scope for judicial idiosyncracies. From the individual judge there is always the remedy by way of appeal to a bench of judges. But as we have indicated, there are certain points of practice resting in the discretion of the judge, from whose decision thereon there is ordinarily no appeal. It is regarding these that we intend briefly to consider how the law stands.

In *McDonell* v. *McKay*, 2 Chan. Cham. R. 243, on an application to amend the bill, the judge before whom the motions came, allowed the applicant to file a further affidavit, and upon this new material granted the motion. It was held by the Court on re-hearing, that the order made being discretionary with the judge, it was not for them to interfere. So in *Chard* v. *Meyers*, 3 Chan. Cham. R. 120, the judge allowed an appeal to be brought from the master's report, after the usual time therefor had elapsed, and the full Court acting on the same principle, affirmed the order with costs on the re-hearing. It was previously laid down in *Anon.* 12 Gr. 51, that an appeal from Chambers will not be entertained in a matter which rests in the judge's discretion; in that case, the order complained of was one allowing the defendant in to answer, after the bill had been noted *pro confesso*. The same principle was enunciated by the Irish Court of Appeal in Chancery, in the case of *Re Lawder's Estate*, 19 W. R. 371, and by the English Court of Chancery appeal in *The Republic of Peru* v. *Renzo*, 22 W. R. 358, when the judge had made an order extending the time to produce. And again by the latter Court in *Ohlsen* v. *Terrero*, 23 W. R. 195.

In *Sheffield* v. *Sheffield*, 23 W. R. 378, s. c. L. R. 10 Ch., James, L. J., intimates that there are cases when the Court of Appeal would interfere to prevent a failure of justice, even when the order was in the discretion of the judge below. In that case, Malins, V. C., had refused to dismiss a bill for want of prosecution, when the plaintiff had undertaken, but had failed, to speed the cause. The Lord Justice observed that the judges below might well be trusted to consider the conduct of their own causes. He then pointed out that no question of right is involved, but only one of indulgence, and ends by saying: "I am not inclined to encourage appeals from a decision of the Court upon that which is really a matter of judicial discretion, and upon a matter of what I may call judicial indulgence to the parties."

Since the English Judicature Act, the same practice is observed. In *Golding* v. *The Wharton Railway*, 20 Sol. J. 391, the matter rose for the first time on an application to strike out some paragraphs of the defence as embarrassing. The Master refused to do so; there was a repetition of this refusal by Mr. Justice Denman in Chambers, and on appeal to the Queen's Bench division, this decision was affirmed. The plaintiff then came to the Court of Appeal and his appeal was dismissed with costs. Mellish, L. J., took the opportunity of stating the principle on which the Court intended to deal with such applications. He said that the judge

in Chambers had to exercise a discretion in the making of orders of this nature, and except in very special cases the exercise of his discretion ought not to be interfered with. The old Court of Appeal in Chancery was not in the habit of interfering with the discretion of the judges of first instance in matters of practice, except where it was clear that injustice would result from the order under appeal, and now that appeals could be brought from all interlocutory orders made in the Common Law divisions, the same rule ought to be followed. Reference may also be made to *Lascelles* v. *Batt*, 24 W. R. 659, where the appellant court refused to interfere with the mode of trial directed by the judge under the Judicature Act.

In *Runnades* v. *Mesquita*, 24 W. R. 553, the Court of Queen's Bench lay down an important exception from the general rule. That was an appeal from an order made by Denman, J., in Chambers under order 19, r. 6 of the Judicature Act, ordering the defendant to pay a sum of money into Court as a condition of being allowed to defend the action. Cockburn, C. J., thought the order went too far in imposing such a condition, and said: "We are of course very unwilling to interfere in a matter of discretion where the limit of that discretion may be a matter of opinion. But this is a question coming to us at the beginning of a new system by which further infringements are made than heretofore on the Common Law rights of defendants. Here is a procedure which supersedes all ordinary forms; and in such a case we ought not to hesitate, where we think a discretion has been wrongly exercised, to lay down some kind of rule to point out what we consider to be intended to be the limits within which that discretion is to be exercised." Pollock, B., agreed that interference was proper where the exercise of discretion involved the formation of a practice under new rules of procedure which may largely affect the rights and liabilities of suitors.

The latest cases decided in the Courts of this Province touching the matter in hand are *Dunn* v. *McLean*, 6 P. R. 156, and *Bennett* v. *Tregent*, 25 C. P. 443. The head-note of this latter case is not quite correct in laying down that the Court will not interfere with the exercise of the discretion of the Clerk of the Crown in Chambers. The decision hardly goes as far as this; and the attention of the Court does not appear to have been called to the cases decided in Chancery, where the judges, while affirming the proposition that the discretion of a judge should not be interfered with, have not given effect to the rule in so far as an inferior judicial officer was concerned. We refer to such cases as *Chard* v. *Meyers* and *Dunn* v. *McLean*, already cited, and *Scott* v. *Burnham*, 3 Chan. Cham. R. 399. In *Bennett* v. *Tregent* the Court go into the merits of the application, and come to the conclusion that the Clerk had not exercised his discretion improperly.

DOMINION LAW SOCIETY.

At a meeting of the Nova Scotia Barristers' Society, held last spring, it was decided to initiate a measure looking forward to the establishment of a Dominion Law Society, and a committee, consisting of Messrs. Eaton, James, Q.C., Tremaine, Miller, Q.C., and Shannon, Q.C., was appointed to correspond with the different Barristers' Societies within the Dominion, and with prominent members of the profession in the other Provinces, in order to obtain information with the view of carrying out the desired object.

Mr. James, Q.C., on a recent visit to Toronto, brought the matter before the Benchers of the Law Society of Ontario.

He also courteously called on us on the subject, and left a circular, of which we append a copy.

The principal advantages which, it is urged, would result from the accomplishment of the scheme, are set forth shortly in the circular. We understand that the proposal made in person by Mr. James was well received by our Benchers, though no definite action has been taken in the matter. The profession in Ontario, we may safely say, would gladly extend any assistance in their power to their brethren in the Maritime Provinces, and an extension of the circle in which one moves does everyone good. Without at present examining the proposed scheme at length, we heartily wish it success; and although we must confess to seeing some difficulties in the way of the proposal, we should all the more like to see it fully discussed, and will be happy to make room for any correspondence on the subject: The following is the circular:

"It is proposed by the Nova Scotia Barristers Society, through the Committee appointed by them for that purpose, to invite the attention of similar Societies in all the other Provinces to the feasibility and desirability of establishing a Dominion Law Society, to meet annually, or bi-ennially, at such time and place as may be appointed.

The chief objects of the Society should be, to discuss orally and by written papers such questions of jurisprudence as may from time to time call for an expression of opinion from the Bar; to assimilate the procedure and practice of the Courts, the *curricula* of legal study, the standards and mode of examination of students, and the tariffs of costs and methods of taxation; to secure the right of counsel in each province to plead in every other province as occasion may require; to promote the circulation of the best law books and law literature; to arrange a system of reporting decided cases, especially on laws common to all the provinces; and generally to promote the advancement and culture, and raise the status of the legal profession throughout the Dominion.

The establishment of the Supreme and Exchequer Courts calls for a more extended knowledge of general and constitutional law on the part of gentlemen who shall practice at the Bar, or be elevated to the Bench of these Courts; and the Committee believe that this most desirable object might be more largely promoted through the proposed Society than by any other means.

Among the numerous advantages of the Society, would be the improvement of the profession by giving to each of our leading lawyers, to whom there must necessarily attach so large an influence in public affairs, a Dominion instead of a merely local professional standing; and also a more extended personal acquaintance and social intercourse between the members of the Bar and of the several Provinces.

It would also, it is hoped, aid in the promotion of the study of the English law among the educated French population in Quebec, and the study of the French law and literature among the educated population in the other Provinces.

We beg that you will submit this proposal to the office-bearers of your Society at your earliest convenience, and obtain and forward to me an expression of their opinion on the subject, with such suggestions as may occur to them as to the objects and constitution of the proposed Society.

If these suggestions meet with a favorable reception, we will be happy, at an early date, to take further steps towards the promotion and organization of the Society.

By order of the Committee.

Brenton H. Eaton,
Secretary of Committee."

SUGGESTED AMENDMENTS OF THE LAW.

We have been requested to publish the following suggestions for amendments of the law. The time is appropriate for such of them as it would be desirable or necessary to introduce (and some of them are both), as the statutes are being consolidated and the House of Assembly will shortly meet. They are as follows:

1. Executions against lands, when placed in the Sheriff's hands, should bind mortgages as well as all other interests in lands, so that the judgment debtor should not be able to assign his mortgage or receive payment of it without satisfying the judgment.

2. An execution against lands placed in the hands of the Sheriff should take

priority over any prior unregistered conveyance or mortgage of the same lands. At present this is not the case, as the writ binds only the interest which the debtor has in the lands at the time it is placed in the Sheriff's hands.

3. An execution against goods should only bind the same, as against purchasers or mortgagees for value, without notice, from actual seizure, and not from the time of the receipt by the Sheriff. This is the law in England now, and would conform to the spirit of the law of personal property in other respects.

4. An order for the examination of a party, opposite in interest, in a common law suit, ought to be attainable on præcipe, as in Chancery. This would not increase the number of examinations held at present, and would save much expense and loss of time occasioned by sending to Toronto for the order, which is one almost "of course."

5. Some provision should be made for the examination of the officers of a corporation after a judgment against it. The Common Law Procedure Act, section 287, and the Arrest and Imprisonment for Debt Act, section 41, do not apply to corporations, so that as in the case of a Railway Company no provision exists for ascertaining who are the shareholders of the Company, or which of them have not paid their stock in full, and such a Company can defy the judgment creditor, and the Sheriff too, to reach it by an execution.

6. When a plaintiff obtains judgment by default in a Superior Court upon a writ specially endorsed, for a sum over $200 but less than $400, the Deputy-Clerk should have power to tax Superior Court costs upon a proper affidavit being produced and filed with him, showing that the amount claimed was not liquidated or ascertained by the signature of the defendant or by the acts of the parties. At present the plaintiff has to delay the signing of a judgment from two to four days to await the return of such an order from Toronto, being exposed to the risk of an appearance being entered for the defendant in the meantime.

7. Service of issue books should be dispensed with in the County Courts as well as in the Superior Courts; and the late rules of the latter Courts respecting remanets, and notices of trial of cases left over should be extended to the County Courts.

8. It should be expressly enacted that a release of a married woman's inchoate right to dower should not be regarded as a good consideration for a conveyance to her of real or personal property bought with the money of a debtor, as against the creditors of the latter. At present, a man may sell farm "A" for $5,000 cash, and purchase farm "B" in the name of his wife and as a settlement upon her, and so defeat his creditors, provided he and his wife swear that the latter only released her dower in "A" on consideration of farm "B" being conveyed to her.

9. It would be better to adopt the law of dower as it is in England, and enact that a conveyance of real estate in the husband's life-time should *ipso facto* defeat the dower. There are very few cases in which dower is not released by the wife as a mere matter of form or under the authority of the husband, and without compensation, while, for the sake of the chance of dower possessed at present by separated and unreconciled wives, it is not worth while to continue a state of the law so anomalous and productive of so much trouble and litigation. These unfortunates can protect themselves better by alimony proceedings if they are unjustly treated.

10. Another anomaly should be removed from our law. A *fi. fa.* lands is held to bind a contingent interest in any land, but not a married woman's right to dower after the right has become an actual one by the death of her husband. See *Allen* v. *Edinburgh Life Association Co.* 19 Gr. 248.

LAW SCHOOL EXAMINATION.

The following are the names of the gentlemen who were successful in passing the examinations held at the close of the last session of the Law School:

Senior Class—T. Ridout, T. E. Lawson, W. W. Ross, D. H. Fletcher, W. Bearsto, J. B. Clark, J. Fullerton, J. S. Whiteside, E. Meyers, J. A. Morlon, E. B. Stone, H. D. Gamble, D. B. Simpson, W. B. Doherty.

Messrs. Ridout, Fletcher, Bearsto and Clark obtained a remission of eighteen months from their time; Messrs. Lawson, Ross, Whiteside and Gamble, twelve months; and the others, six months.

Junior Class—W. H. Biggar, R. W. Keefer, O. R. Macklem, J. V. Teetzel, J. C. Ross, J. Campbell, M. Sheppard, Jr., W. E. Higgins, E. Schoff, J. M. Munro, J. W. Holmes, R. Hodge, W. B. Northrup, J. J. Blake.

SELECTIONS.

WINSLOW'S CASE.

The controversy that arose so suddenly, and has been carried on for some months so industriously, between the United States and England, touching the extradition of two forgers, discusses an interesting question of international law, concerning which the only wonder is that it was not settled long ago, and that it takes so much writing to set it at rest now. The question is a simple one: the answer, to an ordinary mind, seems equally so; and the writers on the general subject, have expressed but one opinion upon it, so far as they have expressed any. It is, whether a person, surrendered by one government to another upon charge and proof of the commission of a certain crime, can lawfully, and against the objection of the surrendering government, be tried for a different crime committed before his surrender. That he cannot seems at once the dictate of common sense and of ordinary justice; and so are the authorities. The exigencies of the press require us to write this article,* when, of all the correspondence, only Mr. Fish's despatch of March 31, 1876, to Mr. Hoffman, has been published; and all that we know authentically of the position of the two governments is derived from that able and elaborate paper. Our readers will probably have the advantage of correcting our remarks by the light of fuller knowledge. In these circumstances we shall attempt only to deal with the obvious points of law; and our text is, that the substance of the English demand appears to be right, but the time and circumstances of its enforcement unreasonable and vexations; while our government, on the other hand, has taken ground, which, in its generality, international law will not uphold, though we are right in repelling the particular pretension that has been advanced by England. We sincerely hope that good will come out of this discussion, and that the practice of the two nations will now be fixed on a just and honourable basis; and we have every confidence that our representatives will do their full share in reaching this desirable end, which, whenever it comes, will be, in substance, that a surrendered prisoner shall be tried only for a crime included in the treaty under which he is given up, until he has had an opportunity to leave the acquired jurisdiction. The cases which have furnished the occasion of this misunderstanding are those of *Lawrence* and *Winslow*, of which we shall explain the history towards the close of this article; and the English demand is, that in the latter case we shall stipulate to try the fugitive only for the "extradition crime" for which his surrender is demanded.

We hold it to be clear, on ground of reason and authority, that a person surrendered by one sovereign to another, under a treaty of extradition, is to be tried for that crime, and that only, for which his surrender was asked and obtained. It is remarkable that not a word upon this subject is to be found in the works of any of the principal writers in the English language who have treated of international law, public or private. Wheaton and his commentators, Kent, Story, Phillimore, Wharton, Westlake, will be searched in vain for any utterance upon the point. Even Clarke, whose valuable book on Extradition is to our lawyers the principal source of information upon the subject, gives no opinion of his own, though he explains the practice of some countries and the decisions of some courts. The writers of Continental Europe are of one accord in support of the view which we maintain. Thus Fœlix:* "It is also the rule,† that the person whose extradi-

* June 1, 1876.

* Droit Intern. Privé, § 570.

† "De règle."

tion has been granted cannot be prosecuted and tried, except for the crime for which his extradition has been obtained." To the like purport are Heffter* and Martens.† Each of these authors cites others,‡ whose works are not accessible to us; but their own authority is ample, and no one can doubt that our writers would have accepted it, if their attention had been called to the subject. The rule was so laid down in a celebrated circular issued by the French minister of justice in 1841, to which we shall refer again in a moment. Only two writers in English have said any thing directly upon the matter, so far as we know. Mr. Gibbs, author of a pamphlet published in London in 1868,§ containing many important suggestions which were adopted by Parliament in 1870, after saying that political offences are not a subject for extradition, adds,‖ "In close connection with the foregoing principle, and designed undoubtedly to support it, follows another, to which our attention has not been much directed,¶ but which is treated by foreign writers as well established,—that a person surrendered is liable only for the offence on account of which his extradition was obtained." He cites Heffter, and the French circular of 1841, which he calls a manifesto of the French views on the whole subject of extradition, and which he says has had a considerable share in forming the opinion of the Continent. Clarke mentions the circular in somewhat similar terms,** and quotes a passage from it to the same effect, but,†† as we have said, without adding his own opinion. Mr. David Dudley Field says,‡‡ "No person surrendered shall be prosecuted or punished . . . for any offence which was not mentioned in the demand." We understand that Mr. Field in his "Draft Outlines" does not intend merely to state the existing law, but also what he thinks it ought to be; but for this section he quotes authority, showing that he considers it already established.

Let us examine for a moment the reason of the rule. Extradition, from being a matter of courtesy between princes, used almost wholly for the confusion of rebels and traitors, has become an important police regulation, never now applied to political offences, but, on the other hand, extended to a great variety of ordinary crimes. The one change is due to the mutations of dynasties since 1789, which have brought home to many ruling powers a sense of the convenience of an asylum; and the other, to the vastly increased intercourse between countries even the most widely separated. It may be said, in general, that the exceptions to extradition, besides mere minor offences not worth the trouble and expense of employing international machinery for their punishment, are of those crimes upon which the laws or sentiments of the contracting nations are not in accord; such as political and ecclesiastical offences, game-laws and revenue-laws. There is one other class, that of crimes committed by soldiers and sailors in service, such as desertion, which are rarely included in treaties, for the reason, perhaps, that although all nations agree in punishing them with great severity, yet all feel that this punishment ought to be applied promptly, and, as it were, at the drum-head, or not at all.

Now, the reason, as Mr. Gibbs intimates, why a person is not to be tried for an offence for which he was not surrendered, is that in no other way can the right of asylum for these excepted crimes be maintained. If a man given up for embezzlement can be hung for treason, or be transported for shooting a rabbit, what becomes of the asylum? It has been said that the question is only one of good faith in asking the surrender. No doubt, if a case shows the absence of honesty from the beginning, the whole world would cry shame upon the government which has been guilty of such fraud. But this is a very inadequate view of the subject. Good faith is not asylum. It is no consolation to a man who is about to be hung for treason, that the government honestly suspected him of having embezzled five dollars; nor is it an answer to the foreign government whose asylum has proved nugatory. The question is one

* French ed. § 63.
† Précis, (ed. 1864) § 101.
‡ Martens cites no less than six.
§ Extradition Treaties by Frederick Waymouth Gibbs, CB. Lond. 1868.
‖ P. 30, § iv.
¶ That is, attention in England.
** Clarke, p. 158 (2d ed.)
†† Pp. 161, 162.
‡‡ Draft Outlines of an International Code, p. 123, § 237.

of right, not of good intentions in a collateral matter. Besides, good faith in this connection means the good faith of detective Bucket or Vidocq, a substance as evanescent as the domicile of a fugitive criminal.

Such being the reason and the opinions of writers of the highest consideration, let us see what is brought to meet them. It appears that in France, where this important principle was first enunciated, the courts acted upon it for a quarter of a century. In 1867, another circular from the minister of justice, who now represented an emperor, and no longer a citizen king, admonished the judges that this was a political matter, and that all the courts could do was to postpone the trial until the government had been applied to. A criminal could acquire, he said, no right against the justice of his country: the tribunal could only try the facts; it could not take cognizance of the conditions upon which extradition had been granted, except upon a notification from the minister of justice.* Mr. Clarke thinks the courts have acquiesced in this view;† but the careful reader of his sixth chapter will find, we think, some reason to doubt his conclusion. It seems to us probable that the highest court of France has not yet yielded its independence to the dictation of executive authority; the last case mentioned by Mr. Clarke having been carefully decided upon its own circumstances, which were held to take it out of the rule. At any rate, the French have not abrogated the rule, but merely changed the department charged with its execution. This may amount to a practical denial of justice in cases which excite no diplomatic interest, as we shall show; but the principle is still fully admitted in France.‡

In the few cases that have been decided within the British jurisdiction and that of the United States, the courts, with some difference of opinion, have, on the whole, followed the later French doctrine, putting it precisely on the French ground, and two of them citing the phrase, that a criminal cannot acquire any right against the justice of his country. Only two of these cases are reported at any length. The first is *U. S.* v. *Caldwell*,* decided in 1871 by the same able and learned judge who has lately been called to deal with Lawrence's case. The decision is, that the courts cannot inquire into the alleged breach of international law, but must leave it to the executive department. The other is *Adriance* v. *Lagrave*,† in which the Court of Appeals, reversing an able opinion of the Supreme Court, citing *U. S.* v. *Caldwell*, and quoting much of the French circular, hold that a defendant brought here under the treaty with France is not, by the courts, to be protected from the service of civil process.

It is a matter of surprise that these cases should be cited as deciding a point of international law, when they most explicitly and unmistakeably refuse to consider it. That they do not and cannot, according to the opinions of the courts themselves, touch any such point, is well shown by an early case decided before the Ashburton Treaty was made. In *State* v. *Brewster*,‡ the defendant alleged that he had been illegaly brought by the prosecutors from Canada, where he resided; his supposed crime, apparently, having been committed in Vermont, near the border-line; in short, that he was kidnapped. The court held this to be quite immaterial; saying, that, when a prisoner was within their jurisdiction charged with crime, it was not for them to inquire by what means he was brought within the reach of justice. Now, if that case decides that kidnapping is permitted by the law of nations, then *U. S.* v. *Caldwell*, and others like it, decide that a prisoner may, by international law, be lawfully tried for a crime not mentioned in the proceedings for his surrender; but otherwise they do not. The cases which we have mentioned are all those of which any extended report is given upon this point; but there are notices in Clarke of two cases in Canada which we have examined, and of one in England which is not reported. They shed no light upon the question of international law. It does not appear, however, that the practice of the courts, as far as it has gone, has been

* Clarke, pp. 171, 172. This passage is also cited in the opinion of the Court of Appeals in *Adriance* v. *Lagrave*, 59 N. Y. 110.

† P. 174.

‡ See Clarke, p. 176.

* 8 Blatch. 131.

† *Adriance* v. *Lagrave*, 59 N. Y. 110, reversing *Bacharach* v. *Lagrave*, 1 Hun, 689.

‡ 7 Vermont R. 118 (1835).

to refuse to examine into the nature of the crimes for which a person has been surrendered. This is the decision of a point of criminal law, and is of no intrinsic importance in this discussion, until the practice has become open, general, and notorious, and has been applied to persons in whose fate the surrendering government has deigned to take an interest. After a long acquiescence in such a practice, so applied, it might come to be a part of international law; but it would have obtained that character wholly from the acquiescence. None such has yet been given, or can be pretended.

Take the somewhat analogous case of the capture of a hostile vessel in neutral waters. The mode and place of capture are no defence in the prize court; but the government whose vessel has been taken may insist that the neutral shall interpose. So the accused person, though he may have no standing in court but to the indictment found against him, should have the right to insist that the government which surrendered him shall enforce the immunities of its asylum. This is the general idea in the minds of the courts who have made the decisions. We go farther, and say that the prisoner himself should have this right as matter of strict law. As was said upon another occasion, if this is not the law, it ought to be. This, to be sure, has not much to do with international law directly; but it is an interesting and important matter in its indirect bearing.

It is idle to expect that governments will have the information or the disposition to interpose in ordinary cases; and we venture with diffidence to suggest, that, in constitutional countries at least, the courts should not give up their right to decide such a question. In France, it is tolerably plain, the new order is a device to save trouble, and, in effect, to evade the obligations of the admitted law. The ambassador of the surrendering governments may never hear of the case, or may not care about it; and what the prosecuting government is pleased to call justice will prevail, whatever becomes of the right of asylum. Mr. Clarke has shown, in another connection, how careless all governments are of the rights of their obscure and suspected subjects; and one of the cases commonly cited to prove the practice in question, that of *Lamirande*, was a clear case of kidnapping, for which no redress was ever obtained. He was stolen from Canada, after a judge of the highest court had intimated that he should release him; and was tried and convicted in France, in contravention of all rules of honour.

Again: the distribution of powers is such in constitutional countries, that the executive department, however well disposed, cannot impose its will upon the courts. It happens fortunately, in Lawrence's case, that the President can act through the prosecuting officers, Lawrence being charged with crimes against the General Government; but in the great majority of instances this would be impossible. Our people have not yet forgotten McLeod's case, which threatened at one time to bring on a war with England on a similar question. Nor is it to be overlooked, that we are so accustomed, in the United States and in England, to defer to the opinion of the courts, that we are in danger of mistaking a refusal by them to decide such a question for a decision of it, of which this discussion furnishes a notable example.

If, however, the practice of the courts has become inveterate, which we are not willing to admit, it is essential that the older treaties should be speedily changed, so as to contain full covenants on this subject; which many of our late treaties, such as that with Italy, do contain. So established, our courts must take notice of them. If murder and forgery and other crimes, for which we are ready to ask and to grant surrender, are to be committed by wholesale, as some late occurrences seem to indicate as probable, there is no objection to providing that any crime within the scope of the treaty may be tried, though not specially noticed in the demand; but this is as much as any government ought to ask or to yield. If treaties are not made, statutes should be passed to give the courts the necessary powers.

England became uneasy on this matter in 1870, and passed a statute forbidding the government to surrender a criminal until assured by the demanding government that he would be tried only for the crime proved against him at the time of his demand; and requiring their own

courts to observe similar restriction. This law was, in its essence, declaratory only of that which already obtained; but, so far as it required an arrangement with foreign governments beyond what existing treaties called for, it could, of course, have no effect; and there is a somewhat obscurely expressed clause in the statute which appears intended to except them from its operation. At all events, the government of Great Britain made no attempt to apply it to the Ashburton Treaty until the extradition of Winslow was asked for; and thereupon arose the controversy which we hope will be settled to the satisfaction of both parties, before these pages are read.

The case of Winslow is inextricably bound up with that of Lawrence, which is the *fons et origo* of the bitter waters of this dispute. Lawrence is a person who calls himself an Englishman,—we know not with what truth,—and who had lived a long time in New York. He was accused of having defrauded the revenue to an immense extent, and fled to England. Our government produced in England evidence that he had forged twelve or thirteen bonds and other papers; forgery being one of the few crimes within our somewhat old-fashioned treaty. By some mistake of our agents in London, the warrant for Lawrence's extradition mentioned the forgery of only one bond and affidavit. Soon after the prisoner reached this country he was indicted for his frauds, and petitioned the President that he might be tried for the forgery specified in the warrant, and for nothing more. Mr. Bliss, the Attorney for the United States for the Southern District of New York, where the indictments were found, furnished a brief of the cases we have above mentioned, and contended that they warranted the government in trying him for other crimes; though, as we have seen, they have no relation to executive action. The Attorney-General, having been of counsel in the case, took no part in deciding this point; but it seems, by Mr. Fish's despatch, that the Solicitor-General agreed with Mr. Bliss. The President, with admirable good sense, sent orders to have Lawrence tried for the crime mentioned in the warrant, and for no other. Thereupon he was arraigned for that offence, as the district-attorney understood it; but, taking advantage of some real or supposed ambiguity in the indictment, he pleaded that it set forth a different offence; and the government, instead of taking issue upon the fact, demurred. Judge Benedict reiterated the rule laid down by him in 1871, and, as we understand, for the same reason,—that it was inconvenient and improper for the *courts* to pass upon the question. Within a short time now past, Lawrence has pleaded guilty to this indictment; admitting, we believe, that it is for the forgery mentioned in the original warrant. To the outside world, it looks as if this plea were part of an arrangement that is to settle all pending cases, including the surrender of Winslow. If so, all's well that ends well.

In the mean time, months had passed since Lawrence was sent to the United States, and he was still awaiting trial; and the rumour filled the newspapers that he was to be tried for all his frauds upon our revenue, whether forgeries or not. And there was abundant foundation for such a report; though, happily, it was untrue. The British government, instead of making Lawrence's case the subject of direct complaint, took the opportunity of our demand for Winslow, whose offences could not possibly be misunderstood or substantially varied in any event, to require of us a conformity with their law of 1870, with which we had no concern, by requiring an assurance that Winslow should only be tried for the forgery or forgeries specified in our demand. They merely referred to Lawrence's case to account for their present action. Our government had a ready answer to the Lawrence allusion; but they did not choose to avail themselves of it, and took the broad ground, which we have ventured to call that of criminal rather than of international law, that, when we hold a man, it is of no concern to any one how we obtained him. As part of a diplomatic discussion, we have no criticism to make upon this reply; but we repeat, that, whatever may be the rights of the party, the surrendering nation has a right to require that its treaty shall not be used for such a purpose in good or bad faith. When this right is finally abandoned, the end of all extradition treaties can be confidently predicted. The United States,

above all other nations, perhaps, certainly above all but England, is interested to maintain the right of asylum inviolate; and we are sure that it will not fail of its high duty in this regard.—*American Law Review.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

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

Goldie v. Date's Patent Steel Company.

Notice of trial pending appeal to higher Court.

A notice of trial given pending an appeal to a higher Court will be set aside for irregularity.

[Sept. 18, 1876.—Mr. Dalton.]

In this case the defendant had obtained a rule in Hilary Term, 1876, setting aside the verdict for the plaintiff, and granting a new trial without costs. The plaintiff gave notice of appeal from this decision, and proceeded to file the usual bond, which was allowed. No further proceedings were taken in prosecution of the appeal, and some months after the allowance of the bond the plaintiff served notice of trial for the Autumn Assizes. A summons having been taken out, to set aside the notice of trial,

J. B. Read showed cause.

H. J. Scott supported the summons.

Mr. Dalton.—The notice of trial is invalid, having been served during the pendency of an appeal to a higher Court, and must be set aside with costs.

Order accordingly.

Re Attorneys.

Refusal to make affidavit—Requisites of affidavit under C. L. P. Act, sec. 188.

[Sept. 19, 1876.—Mr. Dalton.]

Summons to examine a person refusing to make affidavit when required to do so by a party to this matter.

Osler showed cause and contended that under sec. 188 of the C. L. P. Act, the affidavit on which the application was made should show the nature of the facts with reference to which the person was asked to make an affidavit.

Donovan contra.

Mr. Dalton over-ruled the objection on the ground that all that is necessary is the statement that the person sought to be examined can give valuable information as to the matters in question, and has refused to make an affidavit when required to do so.

Order accordingly.

Davis v. Code.

Examination under Administration of Justice Act.—Defence for time.

[Sept. 22, 1876.—Mr. Dalton.]

Summons for leave to strike out the defendant's pleas and sign judgment.

The action was on a promissory note, and the defendant, on being examined under the Administration of Justice Act, acknowledged that his defence was merely for time, and that he had "no real defence" to the action. The defendant had a plea to the effect that the note was not properly stamped, and apart from the general admission above referred to, there was nothing in the examination to show the falsity of this plea.

Mr. Culver *(Richards & Smith)* showed cause.

Osler contra.

Mr. Dalton.—If the defendant had merely said that his defence was for time, the plea might have stood, as such a statement said nothing as to the truth or falsity of the defence, but as the strong negative expression that he had "no real defence" had been used by the defendant all his pleas must be considered as proved to be false on his own admission, and must therefore be struck out.

Order accordingly.

Harris v. Peck.

Ejectment—Service of issue book—Rule of Hilary Term 1876—*Jury notice in ejectment.*

Held, that the rule of Hilary Term, 1876, abolishing the use of issue books, applies to actions of ejectment, and that it was within the power of the Court to make such rule.

Semble, that the notice for jury which by 35 Vict. cap. 19, sec. 1, must be annexed to the issue book in ejectment, may now be served at any time when the issue book could have been served under the old practice.

[Oct. 6, 1876—Mr. Dalton.]

Ejectment.—A summons was obtained to set aside the notice of trial in this case, on the ground that no issue book had been served by the plaintiff.

Osler shewed cause.

Mr. Cowper (Mowat, Maclennan, and Downey), contra, cited *Lesson* v. *Higgins*, 4 Prac. R. 340 as shewing that the Ejectment Act being now separate from the C. L. P. Act is not subject to sec. 333, subsec 3, of the latter Act, under which the judges are empowered to make rules.

Mr. Dalton.—This is a motion to set aside the notice of trial, this being an action of ejectment, on the ground that no issue book has been delivered, and is founded upon the opinion that the Rule of Court of last Hilary Term, by which the practice of delivering issue books is discontinued, does not apply to an action of ejectment. I think that it does apply and that this summons must be discharged.

When the rule of Trinity Term, 1856, (No. 83) which established the practice of delivering issue books, was adopted in this country, the Ejectment Act was incorporated in the Common Law Procedure Act, so that that rule applied to ejectment. There is nothing therefore in the recitals of the rule of Hilary Term last to indicate that it was not meant to apply to ejectment, and the words of that rule comprehend ejectment.

But the power of the Court to make such a rule as that of Hilary Term last is questioned, and it is pointed out that in the Consolidation of the Statutes, the Ejectment Act is dissevered from the C. L. P. Act, and placed in a chapter by itself, and that the powers to make rules given by the C. L. P. Act, are for the effectual execution "of this Act."

Suppose it is to be so—the power to make rules for the practice of the Court when not contrary to any provision of express law, is in the Court and is incidental to its general authority—see sec. 337 of the C. L. P. Act where this power is expressly reserved. More particularly is this so with reference to the action of ejectment which is said to be a creature of the Court, and again this power is expressly reserved by the 77th section of the Ejectment Act.

But then it is urged that the 35 Vict. cap. 19, sec. 1, enacts that the plaintiff may claim a jury, and "shall annex to his issue book, and on the day of service of the same file in the office from which the writ of summons issued" a notice for jury. Certainly the Rule of Court does not repeal the Act, and was not intended to do so, and cannot by implication or otherwise take away the plaintiff's right to a jury. Then if the practice of delivering issue books is disused by competent authority, what must follow? I may suggest that either the service of the notice may possibly be dispensed with, the plaintiff having filed it, or as the requirement of the statute that it should be served with the issue book is merely intended to mark the stage of the cause in which the plaintiff should serve the notice, more probably that it would be held that the service of the notice may be made at any time when the plaintiff could, under the old practice, have served the issue book.

I must discharge the summons with costs.

Order accordingly.

IN THE COUNTY COURT OF THE COUNTY OF YORK.

McBride v. Howard.

Clerk of the Division Court—Action against.

Held, that it is not necessary in action against a Clerk of a Division Court which charges, that he, "as such Clerk, maliciously, &c., issued a warrant of commitment," to allege that it was so issued without the order of the judge.

This was an action brought against a clerk of a Division Court, the material averment in the declaration being, "that the defendant as such clerk as aforesaid, maliciously, and without reasonable or probable cause, issued a warrant of commitment," (which was set out), and the plaintiff was arrested thereon.

The defendant demurred because the declaration did not aver that the defendant issued the warrant "without the order of the Judge of the said Division Court."

Dartnell, J. J. I think the declaration shews a good cause of action without these latter words.

The [illegible] of the Clerks of the Courts are ministerial. He is a public officer, and the provisions of the Con. Stat. U. C., apply to him. The Act requires the declaration to state that the act complained of was committed "maliciously and without reasonable or probable cause." The issuing of a warrant without Judge's order, would probably be *prima facie* evidence of malice. There was nothing to prevent the defendant from pleading the Judge's order as a justification; or to plead not guilty by statute. In *Dewe* v. *Riley* 20 L. J. Rep. N.S. C.P. 264, 15 Jur. 1159 and 11 C. B., 434, it was held, that the clerk is a mere ministerial officer, and was not liable in trespass for imprisonment under a warrant reciting a bad order, and that he could plead not guilty by statute, and give the special matter in evidence.

In that case Jervis, C. J., was of the opinion, that the Judge's order was obligatory upon

the clerk, even when the order was bad, and to hold otherwise would be to throw upon the clerk the duty of reviewing the decision of the Judge, his superior officer. See also *Andrews* v. *Harris*, 1 Q. B. 3; *Houlden* v. *Smith* 14 Q. B. 841.

My judgment is for the plaintiff on demurrer.

The defendant will have leave to plead to this count of the declaration.

Judgment for plaintiff on demurrer.

NOTES OF CASES.

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

CHANCERY.

STANDLY v. PERRY.

[July 8.]

Harbour Commissioners—Nuisance.

In this case, PROUDFOOT, V.C., held that the Cobourg Harbour Company, or the town of Cobourg, who succeeded to the rights of the Harbour Company, were not authorized by the Charter in stopping up any of the streets or highways; neither were they at liberty to erect a fence or place a building on the accretions made to a highway, in such a manner as to prevent the plaintiff, whose land fronted on such highway, from having free access thereto.

Armour, Q.C., for plaintiff.

S. Smith, Q.C., and *Boyd*, Q.C., for defendants.

SWITZER v. MCMILLAN.

[September 15.]

Lease by Guardian of Infant.

The Court, on appeal from the Master at Guelph, held that the guardian of infants cannot create a valid lease of the estate of the infants, without first obtaining the sanction of the Court thereto.

W. Cassels for appeal.

Small contra.

DOMINION SAVING AND INVESTMENT SOCIETY v. KITTRIDGE.

[September 22.]

Paying off mortgages—Burden of costs.

The plaintiffs held two mortgages on two distinct parcels of land, created by one Loughead. The defendant being about to purchase one of these parcels, wrote to the secretary of the Society, "Please let me know the amount of your mortgage from J. G. Loughead, on lot 29, . . . how it is made up, etc., as I would like to take it up." In answer to this, the secretary of the Society wrote that $741 would pay off J. L.'s loan on the lot named. Subsequently the defendant, in answer to a letter written by the Society to J. L., transmitted $193 as being the amount claimed to be their due, and payable to the Society on this lot, and saying, that he sent it as payment on the lot, but claiming that he should not pay all the costs. The secretary of the company wrote an answer saying, that J. L. had desired that all costs should be charged against this lot. It was held, under these circumstances, that the Society could not afterwards insist upon the defendant, who had purchased the equity of redemption in this lot, paying what was due upon both lots before he could claim a discharge of the mortgage on the lot purchased.

Boyd, Q.C., for plaintiff.

Magee for defendant.

SMILES v. BELFORD.

[September 25.]

Copyright—Injunction.

The Court on motion for decree determined that it was not necessary for the author of a work published and duly copyrighted in England, to republish or reprint and register his book in this country to enable him to restrain a person in this country from printing such work.

Miller and *Biggar* for plaintiff.

Beaty, Q.C., and *Hamilton* for defendant.

LITTLE v. WALLACEBURGH.

[September 25.]

Municipal officers—Injunction.

In this suit PROUDFOOT, V.C., refused to restrain the defendants, the Town Council of Wallaceburgh, from changing the site of a proposed market and town hall; the Vice Chancellor observing: "I think if the Corporation buys property for the site of a town hall, and no change of circumstances is made on the faith of it, the same body may, before building at all events, change the site."

Bethune, Q.C., and *Moss* for plaintiffs.

Boyd, Q.C., for defendants.

Victoria Mutual Fire Ins. Co. v. Bethune.

[September 25.]

Administration of Justice Act—Injunction.

The plaintiffs had effected an insurance in favour of one Clark, whose goods were destroyed by fire, and referees awarded him a sum of money which the plaintiffs were ready to pay over, but having been served with garnishee proceedings, at the instance of the defendant Bethune, they had refrained from paying over the amount, and orders were made by the Judge of the County of Wentworth, in favour of Bethune and seven other creditors to an amount of $582.97, being the full amount of the money remaining in the hands of the plaintiffs, as payable to Clark, and Bethune had issued an execution against the plaintiffs, and the sheriff had seized under the writ. It also appeared that the Judge of the County of Essex had granted a similar order for $208 debt, and costs $38,11, so that the sums ordered to be paid by plaintiffs exceeded the amount in their hands by about $240; thereupon plaintiffs applied to the Judge of Wentworth for an order to rescind his orders so far as plaintiffs were prejudiced thereby, which application the Judge refused to grant on the ground that he had not any authority to rescind his order. Under these circumstances, the plaintiffs filed a bill in this Court for an order to continue an interim injunction restraining proceedings on such orders, but

Proudfoot, V.C., refused the motion, observing: "The Administration of Justice Act applies to County Courts, and in the proceedings in Essex all the claimants might have been summoned under the act of 1873, (sec. 8) and a judgment or decree made adjusting all the rights of the parties. If dissatisfied with the decision it might have been appealed from."

Walker for plaintiffs.

Crickmore and *Moss*, contra.

Howel's State Trials, 207. A curious illustration of the extreme barbarity of the spirit of British criminal law, in cases not capital, is shown in a law which was repealed scarcely fifty years ago, enacted, we believe, in the time of Edward VI., and which provides that every person "convicted of drawing or smiting with a weapon in a churchyard is to have one of his ears cut off; and if the person so offending have none ears whereby he should receive such punishment, then" the letter F was to be branded in the cheek with a hot iron, so that he might be known for a fray-maker and fighter. Nothing can more forcibly illustrate the practical savagery of the times than that the law-maker was obliged to contemplate the probability of finding culprits whose ears have already been cut off.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR FEBRUARY, MARCH, AND APRIL, 1876.

From the American Law Review.

Account.—*See* Appropriation of Payments.

Acknowledgment.—*See* Limitations, Statute of.

Administration Suit.

P. died in 1740, and his assets were apportioned among the creditors who were then found. The funds then distributable were insufficient to pay the creditors in full. In 1867 a large sum was paid into court to the credit of P.'s estate, and certain creditors of P.'s estate presented their claims. *Held*, that said creditors were only entitled to such a proportion of said sum as their debts bore to the total indebtedness of P.'s estate, and that the remainder of said sum must be retained to meet any future claims of other creditors.—*Ashley* v. *Ashley*, 1 Ch. D. 243.

Agency.—*See* Broker; Contract, 3; Principal and Agent.

Agreement.—*See* Contract.

Appointment.

E., who had power of appointment by will over £7,000, appointed to various persons £1,995, £4,000, £4,000, and £5, being £10,000 in all. An appointee of £4,000 died in the testator's lifetime. *Held*, that the other appointees, and not the persons entitled in default of appointment, were entitled to the benefit of the lapse. Appointees of life and reversionary interests were ordered to bring their interests into hotchpot.—*Eales* v. *Drake*, 1 Ch. D. 217.

See Settlement, 1.

Appropriation of Payments.

A. & B., partners, gave their acceptance to the plaintiffs for £132 for goods sold. A. & B. dissolved partnership, and informed the plaintiffs of this, and that A. would carry on the business, and pay and receive the partnership debts. After this the plaintiffs sent A. an account headed, "A., debtor to plaintiffs," putting the acceptance of A. & B. for £132 first, and then an acceptance by A. only; and on the credit side various payments amounting to £97, and showing a balance against A. of £92. Afterwards A. made payments, which, with the other payments, amounted to more than £132. The plaintiffs sued on the acceptance for £132, and A. pleaded payment. *Held*, that the payments made must be applied to the debits in order of date, as the plaintiffs had blended the accounts of A. & B., partners, and of A.; and

that the plea was sustained.—*Hooper* v. *Keay*, 1 Q. B. D. 178.

Assignment.—*See* Bankruptcy, 3, 7, 8; Ejectment; Voluntary Settlement.

Bank.

A company was incorporated, and a prospectus issued soliciting persons to become shareholders, and deposit £1 per share, the N. Bank being described as the bank of the company. The result of the prospectus was, that £4,000 were paid into the N. Bank. The bank received a note from W., a member of the company, who signed it as secretary, enclosing a copy of a resolution alleged to have been passed by the company. The resolution was, "that the N. Bank be requested to pay all checks signed by either of the two of the following directors, A., B, and C., and countersigned by the secretary." The signatures of A., B., and C., corporators of the company, were attached to the resolution. The bank accordingly, in good faith, paid out the £4,000 on checks received from time to time, and signed as aforesaid. It subsequently appeared that there had been no meeting of shareholders, and that no directors or secretary had ever been appointed; but that A., B., C., and W. had attended at the company's office, and had acted as directors and secretary of the company. The company went into liquidation. *Held*, that the £4,000 could not be recovered from the company by the official liquidator.—*Mahony* v. *East Holyford Mining Co.*, L. R. 7 H. L. 869.

Bankruptcy.

1. Certain traders being in contemplation of bankruptcy, and wishing to raise money, instructed S. to draw bills on them, which they accepted. S. then sold the bills, amounting to £1,700, to one Jones for £200. Jones knew that the acceptors would be unable to pay in full; but he learned that the acceptors had assets, and that there was a fair chance of his obtaining payment of part. Three days after Jones purchased the bills, the traders became bankrupt. *Held*, that, under the circumstances, Jones must be held to have had knowledge of the fraudulent nature of the bills, and that he could prove for £200 only.—*In re Gomersall*, 1 Ch. D. 137.

2. A debtor executed a bill of sale to a creditor of substantially the whole of his property, not including his book debts. The creditor at the same time agreed verbally to supply more goods on credit to the debtor, to enable him to carry on his business; and subsequently the creditor, in fact, supplied the goods. *Held*, that the bill of sale did not constitute an act of bankruptcy.—*Ex parte Winder*. *In re Winstanley*, 1 Ch. D. 290.

3. One of two partners in trade assigned all his assets to his separate creditor, and gave him a power of attorney to assign all his personal property to which he should become entitled before the debt was paid. There was a proviso avoiding the assignment in case the debtor should pay his debt on demand when the creditor should so require in writing, and should in the mean time, until payment of the debt, pay interest thereon half-yearly, and also a proportionate part thereof to the expiration of said notice, when the same should be given; and, in case default should be made in payment of the debt as aforesaid, the debtor was authorized to take possession of and sell the assigned property. The partnership was insolvent at the time of the assignment. *Held*, that the assignment was an act of bankruptcy. It seems that the debtor was not entitled to make a demand of payment, and, in case of default, take possession the same day.—*Ex parte Travor*. *In re Burghardt*, 1 Ch. D. 297.

4. A husband, and his wife who was under age, executed a deed of the wife's real estate; but the wife did not acknowledge the deed. The husband kept the purchase-money. On attaining majority, the wife refused to confirm the conveyance, unless the husband should give a bill of sale of his furniture to secure payment of £425 to a trustee for her benefit. This arrangement was carried out, and a fork was given to the trustee in the name of the whole of the furniture, and the keys of the dwelling-house containing the furniture. The furniture remained in said house, which was occupied by the husband and wife. The husband became bankrupt, and his trustee claimed the furniture. *Held*, that the wife's trustee was entitled to the furniture.—*Ex parte Cox*. *In re Reed*, 1 Ch. D. 302.

5. Property acquired by a bankrupt after the bankruptcy has been closed, and before the bankrupt's discharge, does not belong to the trustee in bankruptcy.—*In re Pettit's Estate*, 1 Ch. D. 478.

6. Creditors of a debtor who had filed a liquidation petition agreed to accept a composition, payable in three instalments guaranteed by R. R. had previously refused to guarantee payment, unless the debtor gave him security. The debtor gave R. the security; R. guaranteed payment of the instalments; the debtor accepted the composition. The first instalment was paid; but the debtor could not pay the second, and filed a second liquidation petition; and R. paid the third instalment. R.'s arrangement with the debtor was not known to the creditors. The debtor's trustee under the second liquidation claimed the security given to R. *Held*, that R. was entitled to retain his security.—*Ex parte Burrell*. *In re Robinson*, 1 Ch. D. 537.

7. A debtor, under threat of legal proceedings if he did not pay his debt, wrote to his creditor, "In consideration of your delaying legal proceedings, I hereby transfer to you 500 tons of coals which are on my wharf, the proceeds of which coals shall be handed to you till my debt to you is liquidated." This letter was immediately registered as required by the Bills of Sale Act. The next day the debtor filed a liquidation petition. The day after this, the creditor sent a man, who took

possession of the coals, but was ejected by the debtor. *Held*, that the letter constituted an equitable transfer of the coals; that the creditor was entitled to demand possession; and that, after he took possession, the coals ceased to be in the order and disposition of the debtor with consent of the true owner; and that, therefore, the creditor was entitled to the coals against the debtor's trustee in bankruptcy.—*Ex parte Montagu. In re O'Brien*, 1 Ch. D. 554.

8. Creditors to whom £287 were due agreed to give the debtor further time and further credit for goods to be supplied by them, so that the whole amount owing should not exceed £500, upon having the moneys owing or to become owing secured by an assignment of the whole of the debtor's property. The debtor made the assignment, and received advances to an amount exceeding in all the £500. *Held*, that the assignment was not an act of bankruptcy. *Ex parte Sheen. In re Wisstanley*, 1 Ch. D. 560.

9. At a meeting of creditors of a bankrupt, it was agreed that a composition of 3*s.* in the pound should be accepted in satisfaction of the bankrupt's debts; that such composition should be payable by three instalments, in three, six, and twelve months; and that S. be accepted as security. The plaintiffs accordingly received three joint and several notes signed by the bankrupt and S. for the amount of their debt; and they signed a receipt for the notes, expressed as "being a composition of 3*s.* in the pound, and in discharge of our debt." The first note was not paid, and the plaintiffs brought an action for the whole of their original debt without having called upon S. *Held*, that the plaintiffs were entitled to maintain the action. The *composition* was accepted in discharge of the debt, and composition involves the fact of payment.—*Edwards* v. *Hancher*, 1 C. P. D. 111.

10. M. handed the defendant a bill of lading of certain cases of brandy, and requested him to land and warehouse the brandy in his own name. This the defendant did, and paid the expenses. A few days later, a bill given by M. for the hire of a vessel from the defendant fell due; and the defendant, at the request of M., took M.'s acceptance at seven days for the amount of said bill and said expenses, on receiving authority from M. to sell the brandy if the bill should not then be paid. The bill was not paid; and the defendant sold the brandy, which was, in fact, the whole property of the defendant. M. went into bankruptcy; and his trustee brought trover against the defendant for conversion of the brandy, on the ground that there had been a fraudulent "conveyance, gift, delivery, or transfer" within the Bankruptcy Act, 1869, § 6, subs. 2. *Held*, that the transaction was not within the act, and was valid.—*Philps* v. *Hornstedt*, 1 Ex. D. 62; s. c. L. R. 8 Ex. 26.

See Custom; Mortgage, 1; Voluntary Settlement.

Barratry.—*See* Danger of the Seas.

Bequest.—*See* Charitable Bequest; Condition, 1; Devise; Election, 1; Executors and Administrators; Illegitimate Children; Legacy; Marshalling Assets; Will, 3.

Bill in Equity.

An original bill was filed in England by a foreign republic; and a cross-bill was filed by E., one of the defendants, against the republic and its president, making the president a defendant for the purposes of discovery. E. then made a motion that the original suit might be stayed until the defendants in the second suit had appeared and answered. Motion refused. It seems that the republic was bound to produce some person who can give the proper discovery.—*Republic of Costa Rica* v. *Erlanger*, 1 Ch. D. 171.

Bill of Lading.—*See* Danger of the Seas.

Bills and Notes.

The holder of a dishonored bill of exchange released his claims against the acceptor, but reserved "his entire claims against any obligants other than the acceptor." *Held*, that, as the acceptor of the bill was not discharged from his liability to the endorsers, the endorsers were liable to the holder.—*Mair* v. *Crawford*, L. R. 2 H. L. Sc. 456.

See Bankruptcy, 1, 9; Lien.

Broker.

1. Trover for conversion of thirteen bales of cotton. B. induced the plaintiffs by fraudulent representations to sell him certain cotton. The defendant, a broker, purchased the cotton of B., stating that he would send in the name of his principal in the course of the day. The defendant purchased the cotton in the expectation that a certain customer would want it. The customer accepted the cotton; and the defendant sent B. an order for delivery of the cotton, in which said customer was named as principal. The latter received the cotton, and paid the defendant, who paid B. The judge left it to the jury whether the cotton had been bought by the defendant in the course of his business as broker, and whether he dealt with the goods as agent for his principal. Both questions were answered in the affirmative; and the judge directed a verdict for the defendant. A rule was granted to enter verdict for the plaintiffs, and was made absolute. On appeal to the Exchequer Chamber, the judges were equally divided in opinion. This appeal was then brought. *Held*, that the defendant had been guilty of conversion of the cotton, and was liable in trover.—*Hollins* v. *Fowler*, L. R. 7 H. L. 757; s. c. L. R. 7 Q. B. (Ex. Ch.) 616; 7 Am. Law Rev. 286.

2. The defendant, a merchant in Liverpool, employed the plaintiffs, tallow-brokers in London, to buy fifty tons of tallow for him in

London. By the custom of the London tallow trade, brokers contract in their own name, and are personally liable for all the tallow they need, and they pass to their principals bought notes for the specific quantity ordered. The plaintiffs bought a hundred and fifty tons of tallow, and sent the defendant a bought note for fifty tons according to said custom. The defendant refused to accept the tallow; and the plaintiffs sold it for less than the price agreed between them and the defendant, and then brought assumpsit to recover the difference. *Held*, that the defendant was not bound by said custom, and that the plaintiffs could not maintain their action.—*Mollett* v. *Robinson*, L. R. 7 H. L. 802; s. c. 7 C. P. (Ex. Ch.) 84; L. R. 5 C. P. 646; 6 Am. Law Rev. 684; 5 *id.* 473.

See Contract, 3.

Building.—*See* Covenant.

Carrier.

A passenger on a steamer purchased a ticket for his passage from D. to W. The ticket had on its face only the words, "D. to W." On the back of the ticket were the words, "The company incurs no liability in respect of loss, injury, or delay, to the passenger or to his luggage, whether arising from the act, neglect, or default of the company or their servants or otherwise." The passenger did not look at the back of his ticket. His luggage was lost by the fault of the steamer. *Held*, that the steamer company was liable for the loss. See the interesting remarks of the lords on this subject.—*Henderson* v. *Stevenson*, L. R. 2 H. L. Sc. 470.

Charitable Bequest.

A testator bequeathed a certain fund to trustees in trust for a charitable society, the members of which were by its rule to provide by subscription a fund to be distributed for their mutual benefit in cases of sickness, lameness, or old age. Poverty was not a necessary qualification of a member to entitle him to an allowance. The trustees held the fund for thirty years, when the society was dissolved. *Held*, that said fund went to the testator's residuary legatee, and need not be applied *cy-près* for charitable purposes.—*In re Clark's Trust*, 1 Ch. D. 497.

Champerty.

Clients covenanted to pay their solicitors ten per cent. of property to be recovered, and that the solicitors should have a lien on all such property for such ten per cent., and that, on demand, a mortgage of such property should be executed. If no property was recovered, no percentage or commission was to be paid. *It seems* that this agreement was pure champerty.—See *In re Attorneys' and Solicitors' Act*, 1870, 1 Ch. D. 573.

Church of England.

A persistent denial of the existence and personality of the devil, or the denial of the doctrine of the eternity of punishment, or of all punishment, for sin, in a future state, constitutes the denier "an evil liver," and a depraver of the "Book of Common Prayer and Administration of the Sacraments," within the 27th canon of 1603 of the Church of England.—*Jenkins* v. *Cook*, L. R. 4 Ad. and Ec. 463.

N. B.—This decision has been overruled by the Privy Council. Report not yet received.

Class.—*See* Devise, 4, 8.

Codicil.—*See* Will, 3.

Collision.

A steamboat hove to in the fairway of a channel, and, with no one at her starting-gear, in heavy rainy weather, was run into by a sailing vessel. *Held*, that it was the duty of the tug to have kept herself in readiness to move out of the way of sailing vessels, and that she alone was to blame for the collision.—*The Jennie Barker*, L. R. 4 Ad. and Ec. 456.

See Lex Fori; Ship.

Common Carrier.—*See* Carrier.

Composition.—*See* Bankruptcy.

Condition.

1. A testatrix bequeathed her property in trust to pay the income during the joint lives of her adopted daughter and her husband to the husband, and, after the decease of either, to the survivor for life; provided that if the husband should survive his wife, and marry again, then the trustees were to hold the property upon certain other trusts. The husband survived his wife, and married again. *Held*, that the proviso was valid, and that the gift over took effect.—*Allen* v. *Jackson*, 1 Ch. D. 399; s. c. L. R. 19 Eq. 631; Am. Law Rev.

2. Declaration that the plaintiff, a singer, agreed with the defendant, director of the Royal Italian Opera, to sing as tenor in the theatres, halls, and drawing-rooms, public and private, in Great Britain and Ireland, from March 30 to July 13, 1875, at £150 per month, and to sing in concerts as well as in operas, but not to sing anywhere out of the kingdom from Jan. 1 to Dec. 31, 1875, without the defendant's written permission, except at a distance of fifty miles from the theatre and out of the season of the theatre, and to be in London without fail at least six days before the commencement of his engagement, for the purpose of rehearsals; that the plaintiff was prevented by temporary illness from being in London before March 28, 1875, on which day he did arrive there; and that, save as aforesaid, the plaintiff had performed and was willing to perform his agreement, but that the defendant refused to receive the plaintiff into his service. The defendant in his answer set up said failure to be in London, and alleged that as the reason of his refusal to receive the plaintiff into his

service. Demurrer. *Held*, that the term of the agreement, requiring the plaintiff to be in London on March 30, was not a condition precedent, as it did not go to the root of the contract, so that a failure to perform it would render the performance of the rest of the contract by the plaintiff a thing different in substance from what the defendant stipulated for.—*Bettini* v. *Gye*, 1 Q. B. D. 183.

Consolidation.—*See* Mortgage, 2.

Construction.—*See* Condition, 1; Contract; Devise; Dwelling-Place; Executors and Administrators; Freight; Illegitimate Children; Legacy; Settlement; Wager; Will, 3.

Contract.

1. A building society comprised under its rules investing or "unadvanced" members and borrowing or "advanced" members. The unadvanced members subscribed for shares, and became entitled to interest on on their subscription-money. The advanced members were those who subscribed for shares in order to obtain an advance out of the funds of the society. The society was authorized by its rules to make, to the member who offered the highest premium, loans which were secured by mortgage. S. borrowed money of the society at a certain premium, and executed a mortgage, in which he covenanted to pay the society certain sums periodically "at the times and in manner prescribed by its rules for the time being applicable," until (first) the sum borrowed, with interest at four per cent. on the amount thereof, should be paid, and until (secondly) said premium, with interest at said rate, should be paid; and that, in the meantime, all the rules for the time being of the society should, in respect of said borrowed sum, be observed and complied with by S. Subsequently the society, which had in the meantime lost money, passed new rules, which imposed upon members the obligation to contribute towards repayment of said losses, and that, "so far as the rules of law and equity will permit, these rules shall apply to all the members as well present as future, and to all transactions as well past as future." *Held*, that S. was not obliged to make any contribution imposed upon him under said new rules.—*Smith's Case*, 1 Ch. D. 481.

2. The defendant, who carried on business in London, sent an order by letter for certain goods to the plaintiff in Southwark. The plaintiff did not answer the letter, but sent the goods to the defendant in London, where they were accepted. *Held*, that the cause of action arose in London.—*Taylor* v. *Jones*, 1 C. P. D. 87.

3. The defendant, a broker, signed a sold note in these terms: "Messrs. S. & Co., I have this day sold by your order and for your account, to my principals, about five tons of pressed anthracene, xx." *Held*, that the defendant was personally liable on said sold note in an action for goods sold and delivered.—*Southwell* v. *Bowditch*, 1 C. P. D. 100.

See Broker, 2; Carrier; Condition, 2; Damages; Election, 2; Freight; Master and Servant.

Conversion.—*See* Broker, 1; Devise, 6.

Conversion of Realty into Personalty.—*See* Election, 1.

Conviction.—*See* Judge, Disqualification of.

Corpus.—*See* Devise, 5.

Court.—*See* Judge, Disqualification of.

Covenant.

The defendant purchased a piece of land forming portion of a much larger tract of a mortgagor and morgagees in possession, and covenanted with the mortgagees, their heirs and assigns, not to erect any building thereon nearer a certain road on which the land fronted than the line frontage of other adjoining houses on said road, and to observe a straight line of frontage with such houses. B. purchased another piece of land next the defendant's lot, and made similar covenants. Subsequently the mortgagees transferred to M. their securities on the remainder of said tract, and conveyed to him the fees of the tract, subject to the equity of redemption. The defendant built two houses on his land, the general line of which was nearer said road than the line of said existing houses by from five inches to a foot. The defendant's houses were, moreover, built with bay-windows, projecting about three feet farther towards the road, and carried from the foundation to the roof. It seems that the defendant had notice given B. and M. not to build as aforesaid. B. and M. filed a bill praying an injunction restraining the defendant from permitting to continue on his premises any building nearer said road than the line of frontage of said existing houses; but they consented not to press so much of the bill as related to the advance of the main line of the building. *Held*, that the plaintiffs were entitled to a mandatory injunction against continuance of the bay-windows. The bay-window was a "building:" the plaintiffs were not obliged to show damage; they each had an interest sufficient to maintain the suit; and having given notice to the defendant, they were entitled to a mandatory injunction.—*Lord Manners* v. *Johnson*, 1 Ch. D. 673.

See Lease; Specific Performance.

Criminal Proceedings.—*See* Judge, Disqualification of.

Custom.

A custom was alleged to exist among furniture-dealers to furnish persons, under a "hiring agreement," with furniture which shall remain in their possession while the property remains in the dealer until certain

specified payments are made, when it passes to the person entering into the agreement. To establish such a custom so that it would prevent the hirer from being the reputed owner of the property, it must be proved to have existed so long, and to have been so extensively acted upon, that the ordinary creditors of the hirer in his trade may be reasonably presumed to have known it. As to what evidence is sufficient for this purpose, see *Ex parte Powell. In re Matthews*, 1 Ch. D. 501.

See Broker, 2.

Cy-pres.—*See* Charitable Gift.

Damages.

The defendant sold a cow to the plaintiff, who was a farmer, with warranty that it was free from foot-and-mouth disease. The cow had the disease, and communicated it to other cows belonging to the plaintiff. The judge instructed the jury, that if they found that the defendant knew that the plaintiff was a farmer, and would in the ordinary course of his business place the cow with other cows, then they might assess damages for the loss of the other cows. The jury found damages covering the loss of all the cows. *Held*, that the above instruction was correct.—*Smith* v. *Green*, 1 C. P. D. 92.

See Defamation; Interest.

Danger of the Seas.

Bills of lading were signed for due delivery of the cargo at the port of discharge, the dangers of the seas and fire only excepted. During the voyage some of the crew bored holes in the sides of the vessel, through which the water entered, and damaged the cargo. *Held*, that the said barratrous act of the crew did not fall within the exception in the bills of lading.—*The Chasca*, L. R. 4 Ad. and Ec. 446.

Defamation.

The plaintiff brought an action against the defendant for falsely and maliciously imputing adultery to the plaintiff's wife, who assisted the plaintiff in his business, with one A. upon the plaintiff's premises, whereby the plaintiff was injured in his business as a grocer and draper. Evidence was offered that the plaintiff's business had fallen off since the words were spoken; but no evidence was offered that any particular persons had ceased to deal with the plaintiff. *Held*, that the action was maintainable, and that damage was sufficiently shown.—*Riding* v. *Smith*, 1 Ex. D. 91.

Demurrage.—*See* Charterparty, 1.

Descriptio Personæ.—*See* Gentleman.

Devil, Personality of the.—*See* Church of England.

Devise.

1. A testator, who was mortgagee of certain real estate, and entitled to one moiety of the equity of redemption, devised "all his property real and personal" upon trust, first, to pay all his debts, funeral and testamentary expenses; secondly, upon certain trusts for his wife and children, with power in the trustees to sell or mortgage any part of his estate real or personal. There was no express devise of trust or mortgaged estates. *Held*, that the legal estate in the mortgaged premises did not pass under the will.—*In re Packman & Moss*, 1 Ch. D. 214.

2. Devise to A. for life, and from and after his decease unto his eldest son if he shall have arrived at the age of twenty-one years, or so soon as he shall arrive at that age; and, in default of his having a son, over. A. died, leaving a son, who was a minor. *Held*, that A.'s son took a vested estate in fee, liable to be divested in the event of his death under the age of twenty-one; and that there was an executory devise to A. in tail if A. should die under twenty-one.—*Andrew* v. *Andrew*, 1 Ch. D. 410.

3. Devise to A. for life, and in the event of his leaving a lawful son born or to be born in due time after his decease, who should live to attain the age of twenty-one years, then to such son and his heirs if he shall live to attain the age of twenty-one years; but in case A. should die without leaving a son who should attain twenty-one, then over. A. died leaving an infant son. *Held*, that A.'s son took a vested estate in fee, subject to be divested in event of his dying under twenty-one.—*Muskett* v. *Eaton*, 1 Ch. D. 435.

4. A testator gave real and personal estate in trust to convert and invest and pay the interest to his wife so long as she should continue unmarried; and, after her death or marriage, in trust to pay the interest to his son for life, and afterwards to his lawful issue. At the death of the son, there were living three of his children and one grandchild. One of the children, a daughter, married ten days after her father's death, and had a child six months after her marriage. *Held*, that the fund must be divided among the three children and grandchild as joint-tenants. The child subsequently born, although *en ventre sa mère*, and alive at the death of the tenant for life, and legitimate when born, was not legitimate at the time of distribution, and not entitled to share in the fund.—*In re Corlass*, 1 Ch. D. 460.

5. Devise of real and personal estate to a trustee, with directions that he should pay the testator's debts "out of my rents and profits," and divide the remainder of the rents and profits equally between the testator's uncles during their lives, and, after their decease, in trust for their children; if no children, the income to C for life, remainder to his children; if C. died childless, then "I give the whole of my real and personal estate to H., his heirs and assigns for ever." The personal estate was insufficient to pay the

debts. *Held*, that the testator's debts were charged upon the corpus of the estate; the uncles desired to sell the real estate; while C. desired to mortgage it, to raise money to pay said debts. The court declared that the wishes of those who came first in order of taking ought first to receive the attention of the court, and ordered the real estate to be sold, giving C. liberty to bid.—*Metcalfe* v. *Hutchinson*, 1 Ch. D. 591.

6. A testator devised his real and bequeathed his personal estate to trustees in trust to sell and to dispose of the moneys arising therefrom, after payment of debts and certain legacies, according to the trusts "hereinafter declared concerning the same;" and he gave his trustees power to postpone sale of his estate, and to let unsold real estate; but he declared, that, from the time of his decease, his unsold real and personal estate should be subject to the trusts afterward declared concerning said moneys, and that the rents should be deemed annual income, and that the real estate should be transmissible as personal estate, and be considered as converted in equity. The testator then directed his trustees to stand possessed of said moneys upon trust to raise an annuity, subject to which he directed them to stand possessed of his "residuary personal estate" in trust as to one moiety for his son, and as to the other for his daughter. *Held*, that the proceeds of the sale of the real estate were included in the directions in the will as to the ultimate trusts of the residuary personal estate.—*Court* v. *Buckland*, 1 Ch. D. 605.

7. Upon certain contingencies which took place, a testator devised his real estate to trustees in trust to keep in repair, accumulate surplus rents and profits, and invest in real estate until the expiration of twenty-one years from the testator's death, but in no event to exceed such term, and then in trust for the second and other younger sons of A. successively in tail male; failing such issue, in trust for the first and other sons of B. successively in tail male; failing such issue, limitations over followed to the issue of certain persons; and failing such issue, to the persons who, under the Statute of Distributions, should then be his next of kin. The testator directed his personal property to be held upon the trusts declared of his real estate. At the expiration of the twenty-one years, A. and B. each had one son only. The son of B. filed a bill praying a declaration that he was absolutely entitled as tenant in tail male in possession of the real estate, and was absolutely entitled to the personal estate. *Held*, that, until it should be ascertained whether A. would have a second son, the rents and income of the real and personal estate were undisposed of; and that in the meantime the testator's heirs at law were entitled to the rents, and his next of kin to the income.—*Wade-Gery* v. *Handley*, 1 Ch. D. 653.

8. A testator gave all his property, by his will, to his niece S. for life, remainder to her husband for life, remainder "to be equally divided among the children of the above-named" S. and her husband, "either by the proceeds from sale of the properties or otherwise." S. had eight children living at the death of the testator, of whom two were attesting witnesses of the will, and thereby forfeited the shares they would have received under the will. *Held*, that the devise was to a class who would take in undivided shares the whole property devised, and that, therefore, the six children would take said property, and the forfeited shares would not pass to the testator's heir-at-law.—*Fell* v. *Biddolph*, L. R. 10 C. P. 701.

See Condition, 1; Election, 1; Executors and Administrators; Illegitimate Children; Legacy; Will, 8.

Discovery.—*See* Bill in Equity; Documents, Inspection of.

Distribution.—*See* Legacy, 2.

Documents, Inspection of.

1. A suit and cross-suit were instituted between the owners of the vessel B. and the vessel H.; the question being, which of the two vessels was to blame for a collision. The suits were ended by agreement, and an average statement made on the basis of the agreement. Subsequently an action was brought against the owners of the B. by consignees of goods on the B., and a motion made by the plaintiffs for inspection of said agreement and average statement. Inspection ordered. This order was affirmed on appeal, upon an affidavit that said suit in the Admiralty Court was on behalf of the owners of cargo as well as owners of the vessel B.—*Hutchinson* v. *Glover*, 1 Q. B. D. 138.

2. The defendant purchased wood of the K. Company, and, before he received it, agreed to sell the same wood to the plaintiff. The plaintiff declined to receive the wood sent him, on the ground that it was not according to contract; and he brought an action for breach of contract. The defendant received two letters from the plaintiff's attorneys relating to the claim, and sent them to the K. Company, requesting information respecting the claim. Correspondence by letter ensued, which resulted in the defendant receiving compensation from the K. Company. *Held*, that the plaintiff was entitled to inspection of the letters between the defendant and the K. Company.—*English* v. *Tottie*, 1 Q. B. D. 141.

Domicile.—*See* Peer of England.

Dwelling-Place.

A statute imposed a penalty for exposing certain animals for sale in any place except the seller's "dwelling-place or shop." The appellant offered for sale animals in a certain yard and sheds, the entrance to which from the street was through double-doors. After passing through the doors, there was a place about thirty feet by twenty, covered in by beams and flooring. The appellant lived in a small house supported by pillars on either

side of this place, the floor of his house forming the ceiling of this under-space. The yard then extended farther without a ceiling to the length of about a hundred and fifty-eight feet from the street-doors, and this part was fitted with said sheds for the accommodation of cattle. In order to enter the yard and sheds, the appellant descended stairs from his dwelling-house into the covered space, and then passed into the open yard and sheds. *Held*, that said yard and sheds were not the dwelling-place or shop of the appellant.—*McHole* v. *Davies*, 1 Q. B. D. 59.

Easement.—*See* Way.

Ejectment.

A breach of a covenant to repair was committed by a lessee after an assignment of the revision. *Held*, that the assignee could maintain ejectment, although he had given the lessee no notice of the assignment.—*Scaltock* v. *Harston*, 1 C. P. D. 106.

Election.

1. A testator devised a house to A., B. and C., in trust to sell and convert it into money, the purchase-money to be considered part of the testator's personal estate. He then gave certain legacies, and bequeathed the remainder of his estate, real and personal, to A., B. and C. Said devisees left two legacies unpaid, and did not sell the house, but remained in possession of it for fifty years. C. died, and her representative filed a bill for administration of the personal estate and execution of the trusts of said testator's will. The object of the bill was to obtain possession of C.'s share in the house, on the ground that it was, in equity, personal estate. *Held*, that A., B. and C. had elected to hold the house as real estate. The fact that said legacies were unpaid made no difference, as the legatees had no direct charge on the house other than that on the whole of the testator's estate, and therefore had no interest as to whether A., B. and C. took the house as real or personal estate, and must be held to have acquiesced in the house being held as real estate.—*Mutton* v. *Bigg*, 1 Ch. D. 385.

2. By indenture made in 1850 between a husband and wife of the first part, the wife's father of the second part, and four trustees of the third part, reciting that upon the treaty for the marriage it was agreed that certain stock belonging to the husband, and a reversionary interest belonging to the wife, should be settled upon the trusts thereinafter mentioned, and that the wife's father had agreed to transfer certain shares to said trustees to be settled upon the trusts thereinafter mentioned, it was declared that said trustees should pay the income of the husband's stocks to him for life, and after his decease to his wife for life; and should pay during the joint lives of said husband and wife one moiety of the income of said shares to the husband, and the other moiety to the wife for her separate use; and, after the decease of either, should pay the whole income to the survivor for life, and, after the decease of the survivor, should hold all of the above funds upon trusts for the children of the marriage. And it was lastly witnessed, that, in pursuance of said agreement, the wife, with the privity of her husband, assigned her said reversionary interest to said trustees to hold upon the same trusts as said shares. In 1865 the marriage was dissolved. In 1871 the said reversionary interest came into possession. *Held*, that the wife must elect between the benefits under the settlement and her right to said reversion. Another order was made directing how the accounts under the election should be taken. —*Codrington* v. *Codrington*, L. R. 7 H. L. 854; s. c. *nom. Codrington* v. *Lindsay*, L. R. 8 Ch. 578; 8 Am. Law Rev. 293.

Entail.—*See* Settlement, 4.

Equitable Assignment.—*See* Bankruptcy, 7.

Equity.—*See* Bill in Equity; Covenant; Lease, 1, 2; Specific Performance.

Estate Tail.—*See* Devise, 2.

Evidence.

In 1874 the question arose as to whether A. and B. had been married in 1773. In 1800 a son wrote to his maternal uncle, "What I want to do is to establish my legitimacy," &c. The uncle was then in possession of an estate which had been devised to B. for life, with remainder to her children lawfully begotten, and, in default of such issue, to said uncle. The uncle also wrote to a brother of A., stating that he could not give up the estate in question, as it was entailed on his children. If said son was illegitimate, said brother of A. would have taken a title which would otherwise have belonged to the son. *Held*, that declarations of members of the two families of A. and B., made after 1800 and bearing on the question of the marriage, were inadmissible.—*Frederick* v. *Attorney-General*, L. R. 3 P. and D. 270.

See Defamation; Foreign Law; Gaming; Illegitimate Children.

Executors and Administrators.

1. A testator devised his property to trustees, directing them to convert it into money, and pay his debts and funeral expenses therefrom, and pay the balance over to certain other trustees. He also directed that each executor should only be accountable for his own intromissions. *Held*, that said trustees were the executors of the will according to its tenor.—*In the Goods of Adamson*, L. R. 3 P. and D. 253.

2. A testator made the following provisions in his will: "I appoint G., if he shall survive me, executor and trustee. I give the following legacies and annuities: namely, to G. and B. the sum of £1,000 apiece; to my great-nephew, £2,000; to my wife, £100; to my son and my daughter, £100 apiece." He then gave different legacies and annuities to

his wife, son, daughter, and sister. He then gave all his real estate and the residue of his personal estate to "the said G. for all my estate and interest therein respectively, if he shall be alive at my decease; but if he shall die in my lifetime, then I give my said real estate and residuary personal estate unto the said B. for all my estate and interest therein respectively." He empowered his trustee to invest his personal estate, and to continue subsisting investments without liability for loss, and to employ accountants and receivers; and he appointed him guardian of his children. G. survived the testator. *Held* (Lord Chelmsford dissenting), that G. was entitled to the real and residuary personal estate beneficially, and not subject to trusts.—*Williams* v. *Arkle*, L. R. 7 H. L. 606.

See Administration Suit; Insurance, 3; Marshalling Assets; Mortgage, 3.

Executory Devise.—*See* Devise, 2.

Foreign Law.

Where evidence was required in England to show the powers and position in Italy of a curator of the dormant inheritance of a testator, it was *held* that the affidavit of a person in England, who described himself as a certified special pleader and as familiar with the Italian law, was insufficient.—*In the Goods of Bonelli*, 1 P. D. 69.

See Lex Fori.

Forfeiture.—*See* Divorce, 1.

Fraud.—*See* Bankruptcy, 1, 10; Voluntary Settlement.

Frauds, Statute of.—*See* Will, 4.

Freight.

By charterparty, freight was payable upon coal delivered at the port of destination. The vessel carrying the coal met with bad weather, and put in at an intermediate port, where the master was obliged to sell part of the coal to defray the expense of repairs. An average statement was made up, under which the shipper received the net proceeds of the coal sold, but the ship-owner was not allowed freight on such coal. The coal sold as aforesaid brought a much higher price than it would have brought if sold at the port of destination. *Held*, that the ship-owner was not entitled to *pro rata* freight.—*Hopper* v. *Burness*, 1 C. P. D. 137.

Furniture Lease.—*See* Custom.

Gaming.

Information against a landlady for "suffering" gambling to be carried on on her premises. It appeared in evidence that three persons were occupying a private room, and that, at about eleven o'clock in the evening, the landlady went into the room and asked if any refreshments were required before closing. No card-playing was then going on, and the landlady saw no cards. The landlady then told the hall porter that she was going to bed; and she closed the bar, and retired. The hall porter then closed the house and retired to his own chair in a parlor at the extreme end of the house. He knew of no gambling going on in the said private room. The above three persons were discovered playing cards between one and two o'clock in the morning by the police. On these facts the landlady was convicted. *Held*, that the landlady was responsible if the hall porter, whom she left in charge of the house, connived at the gaming; and that it might be inferred from the evidence that the hall porter purposely kept out of the way, and so connived at the gaming. Conviction sustained.—*Redgate* v. *Haynes*, 1 Q. B. D. 89.

Gentleman.

A man who had, on a few occasions, collected debts and written letters for other persons, and had on four occasions drawn bills of sale, but had no regular occupation, and subsisted on an allowance from his mother, was *held* to be properly described as "gentleman."—*Smith* v. *Cheese*, 1 C. P. D. 60.

Hotchpot.—*See* Appointment.

Husband and Wife.—*See* Bankruptcy, 4.

Illegitimate Children.

1. A testator gave a fund to trustees in trust to pay the income to "my daughter A., wife of J. H., for her separate use for life," and to divide the principal between "all the children of my daughter A., as and when they shall respectively attain the ages of twenty-one years in equal shares." For some time previously to the testator's death, and at the dates of the will and his death, J. H. and the daughter A. were living together as man and wife at B., where the testator resided; but they were not married until five years after the testator's death. One child of A. was born before the testator's will, two after his will, but before the marriage, and one after the marriage. They were all baptized, and described as the children of A. and J. H. A. died. *Held*, that the legitimate child was entitled to the whole fund.—*In re Ayles' Trusts*, 1 Ch. D. 282.

2. Bequest in trust for "all and every my daughters, in equal shares, who shall attain the age of twenty-one years or marry." The testator died, leaving his wife and three daughters, all minors, by her, but born before his marriage; and he had always acknowledged the daughters as his children. He left no legitimate children. *Held*, that, as the testator left no daughters in the legal sense, parol evidence of the surrounding circumstances was admissible, and that said three children were entitled to the bequest.—*Laker* v. *Hordern*, 1 Ch. D. 644.

See Devise, 4.

Indorser.—*See* Bills and Notes.

Digest of English Law Reports.

Injunction.—*See* Covenant.

Inspection of Documents.—*See* Documents, Inspection of.

Insurance.

1. The plaintiff insured "goods" for a voyage, and effected reinsurance on the same terms without stating that he was reinsuring. It was proved to be the invariable practice to disclose the fact that a policy was for reinsurance; but the jury found that there was no concealment of any fact material to the risk. *Held*, that the plaintiff was entitled to recover upon his policy of reinsurance.—*Mackenzie* v. *Whitworth*, 1 Ex. D. 36; s. c. L. R. 10 Ex. 142; 10 Am. Law Rev. 116.

2. A vessel was insured on a voyage from Liverpool to Baltimore and United Kingdom. The insurers reinsured on the same terms; but, subsequently hearing that the vessel had sailed from Baltimore for Antwerp, they obtained from the reinsurers, on Jan. 2, 1873, for an additional premium, an indorsement on the policy of reinsurance, "It is hereby agreed to allow the vessel to go to Antwerp." Both insurers and reinsurers believed the vessel to be then at sea; but she had, in fact, arrived at Antwerp on Jan. 1, 1873. On Jan. 3, while the vessel was in the outer dock, and before her arrival at the inner dock, the usual place of discharge at Antwerp, she was ordered to and sailed for Leith, and, on the voyage thither, was lost. *Held*, that, under the policy and memorandum, the vessel had no right to go first to Antwerp, and thence to the United Kingdom; and that the insurers were not entitled to recover the additional premium, as, when the memorandum was made, the voyage was not at an end.—*Stone* v. *Marine Insurance Company, Ocean Limited, of Gothenburg*, 1 Ex. D. 81.

3. C. effected insurance on the life of his son, in which he had no insurable interest. The son died, and C. was appointed administrator, and the insurance-money was paid to him. *Held*, that, although the insurance company was not obliged to pay the money, C. was entitled to retain it as against his son's estate.—*Worthington* v. *Curtis*, 1 Ch. D. 419.

4. The plaintiffs insured against perils of the sea a vessel then in London, upon a time policy, and she was lost at sea before the expiration of the policy. The jury could not agree whether the ship was unseaworthy when she left London, or whether unseaworthiness was the cause of her loss; but they found, that, if unseaworthy when she started from London, the plaintiffs did not know of it. A verdict was directed for plaintiffs, and a rule for a new trial discharged by the Queen's Bench. *Held* (by Cleasby and Pollock, BB., Coleridge, C. J., and Grove, J.,—Brett, J., and Amphlett, B., dissenting), that there must be a new trial.—*Dudgeon* v. *Pembroke*, 1 Q. B. D. 96; s. c. L. R. 9 Q. B. 581; 9 Am. Law Rev. 479.

Interest.

By statute, the owners of a ship are not to be liable in respect of loss of merchandise to an aggregate amount exceeding £8 for each ton of the ship's tonnage. A vessel lost a cargo of maize owing to a collision, and damages were found to the extent of £8 per ton. Interest was allowed on this amount from the date of the collision.—*Smith* v. *Kirby*, 1 Q. B. D. 131.

Joint-Tenancy.—*See* Devise, 8.

Judge, Disqualification of.

A local board of health entered into an agreement with H. for his receiving sewage on to his farm, and subsequently instituted proceedings against him for breach of agreement. A summons was taken out against H. for diverting the sewage from his farm into a watercourse. At the hearing of this case one M., a member of said local board, sat as one of four justices, and H. was convicted and fined. M. filed an affidavit that he exercised no influence on the proceedings at the hearing, except to recommend a mitigation of fine after the other three justices had resolved to convict. *Held*, that M. was subject to a bias, and ought not to have sat in the case. Conviction quashed on *certiorari*.—*Queen* v. *Meyer*, 1. Q. B. D. 173.

Jurisdiction.—*See* Contract, 2.

Landlord and Tenant.—*See* Ejectment.

Lapse.—*See* Appointment.

Lease.

1. A lessee covenanted to make certain repairs upon six months' notice. Notice was duly given Oct. 22, 1874; and the lessee's sub-lessees replied, asking if the lessor would purchase the short leasehold interest remaining. The lessor replied, asking the price; and the sub-lessees answered, stating their price. On Dec. 31, 1874, the lessor replied, that, having regard to the condition of the leased premises, the price was too high; and he 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 to the sub-lessees, asking for the ground-rent, and requesting the address of the lessee. On Jan. 7 the sub-lessees replied, sending the lessor's address. On April 13, 1875, the lessor wrote to the lessee, informing him that the time for completion of said repairs would expire April 21, 1875. The repairs were completed about the middle of June, 1875. The lessor began an action of ejectment against the sub-lessees on April 28, 1875. *Held* (reversing the decision of the Common Pleas Division,) that the negotiations were not ended by the letter of Dec. 31, 1874, and that the lessor had justified the sub-lessees' belief that the notice would not be insisted upon, and that the lessor would be restrained from enforcing a forfeiture.—*Hughes* v. *Metropolitan Railway Co.*, 1 C. P. D. 120.

2. Declaration that by lease M. "let" to

the defendant certain coal-mines and seams of coal under certain lands, and that M. had no title, and that he knew, and the defendant did not know, that he had no title to a large portion of the devised premises. There was no express allegation of fraud. Demurrer. *Held*, that the word "let" implied a covenant that the lessor had a good title, and that the lessee should have quiet enjoyment; and that the lessee might elect to keep the part of the leased premises to which he had a good title, and sue for damages for breach of said implied covenants. Also that, upon the alleged facts, a court of equity would have set aside the lease. See Judicature Act, 1873 (36 and 37 Vict. c. 66), ss. 24, 34.—*Mostyn* v. *West Mostyn Coal and Iron Co.*, 1 C. P. D. 145.

See Specific Performance.

(To be continued)

REVIEWS.

Forms and Precedents of Pleadings and Proceedings in the Court of Chancery for Ontario. By Wm. Leggo, of Osgoode Hall, Barrister-at-Law, late Master at Hamilton. Second Edition. Toronto: R. Carswell, 1876.

No book that has been published for some years in Canada could be more useful to the every-day Chancery practitioner than this new edition of Leggo's Chancery Forms.

The first edition of the Forms had become obsolete to such an extent as to make it a very unreliable guide. The new edition has been long promised, and, having carefully examined it, we can fairly say that it fulfils our expectations.

Judging from internal evidence, and also from our knowledge of the labour bestowed upon the work by Mr. Holmested, we think that gentleman is entitled to more credit than the rather meagre reference to him in the final clause of the preface. If the book is a success, and that may be assured, its success will be largely due to the present Registrar of the Court of Chancery, and this is especially true of Chapters VII. and XVIII.

Mr. Leggo was known for some years as an excellent Master, and his experience in that position well qualifies him to speak with authority upon proceedings in the Master's Office. See Chapter XV.

Since the publication of Ewart's Manual of Costs, some alterations have been made in the tariff of fees under general order. The revised tariff in full and the Supreme Court tariff are published in Chapter XVII.

We might call attention to one error which has caught our eye in glancing over this work. In Form 396 the words "Clerk of Records and Writs," in the seventh line, should be omitted.

The publication of the last orders transferring the duties of the Accountant to the Referee in Chambers will necessitate a few changes in the wording of the forms, which will, however, easily suggest themselves to practitioners.

The work is well got up, neatly printed, and inexpensive, and in these respects it forms a striking contrast to the two volumes of Leggo's Chancery Practice. The arrangement of the forms is admirable, following the ordinary course of procedure in suits, and necessitating fewer references to the index than were necessary in using the old work. We can confidently recommend this new edition of Chancery Forms to the profession.

Showers' Cases in Parliament, Resolved and Adjudged Upon; Petitions and Writs of Error; Fourth Edition, Containing Additional Cases not Hitherto Reported, Revised and Edited by Richard Loveland Loveland, of the Inner Temple, Barrister-at-Law, Editor of "Kelyng's Crown Cases," and "Hall's Essay on the Rights of the Crown on the Seashore." London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1876.

The third edition of Sir Bartholomew Showers' Cases in Parliament was printed in the Savoy, by E. & R. Nutt and R. Gosling (assigns of Edward Sayer, Esq.,)

for Henry Lentot, MDCCXL. (1740), quarto. It has long been out of print, and is very scarce.

Messrs. Stevens & Haynes, the successful publishers of the Reprints of Bellewe, Cooke, Cunningham, Brookes, New Cases, Cleozse Cases in Chancery, William Kelyng and Kelyng's Crown Cases, determined to issue a new or fourth edition of Showers' Cases in Parliament.

The volume, although beautifully printed on old-fashioned paper, in old-fashioned type, instead of being in the quarto, is in the more convenient octavo form, and contains several additional cases not to be found in any of the previous editions of the work,

The last reported case in the edition of 1740 is "Dominus Rex *versus* Episcap, Cester, and Richard Pierce, Esq." In the edition of 1876 there are the following cases in addition, decided between the years 1726 and 1733, not hitherto reported in any series of the House of Lords :

1. Joseph Oshlen, Esq., appellant, Jonathan Smith, Esq., and others, the copartners of the joint stock in question, and Peter Delamotte, their secretary, respondents. (This case is cited as MS. in 2 Eq. Ab. Cases, 532.)

2. Mary Thurston, widow, and executrix of Joseph Thurston, Esq., deceased, who was the eldest son and heir of Joseph Thurston, the elder, deceased, and also brother and sole executor of Thomas Thurston, the younger son of the said Joseph Thurston, appellant; John Essingue, Esq., and Mary, his wife, who was the daughter and executrix of Mary Thurston, widow, and executrix of the said Joseph Thurston the elder, respondents.

3. John Morse, gent., Samuel Clark, Esq., and Thomas Bowdler, Esq., on behalf of themselves and others, the proprietors and adventurers of the late Old East India Company, at the time of the dissolution thereof, appellants ; Charles Dubow, Esq., Arthur Moore, Esq., Edward Gibbons, Esq., and Crantham Andrews, Esq., executors of Sir Jonathan Andrews, respondents. (This case is cited as MS. in 2 Eq. Ab. Cases, 279, and 7 Vict., ch. 400, pl. 28.)

4. Sarah Eare, widow, appellant ; William Parnell, respondent.

5. Sir Robert Austen, Bart., and Peter Burrell, Esq., executors and trustees of Sir Samuel Lennard, deceased, and Thomas Lennard, infants' appellants ; Sir John Leigh, Bart., respondent.

These are all cases of importance, worthy of being ushered into the light of the world by enterprizing publishers.

Showers' Cases are models for reporters, even in our day. The statements of the case, the arguments of counsel, and the opinions of the Judges, are all clearly and ably given.

This new edition with an old face of these valuable reports, under the able editorship of R. L. Loveland, Esq., should, in the language of the advertisement, "be welcomed by the profession, as well as enable the custodians of public libraries to complete or add to their series of English Law Reports."

CORRESPONDENCE.

Citation of United States Reports.

To the Editor of the Law Journal.

Sir,—It has caused a good deal of surprise in the profession that the last number of the Queen's Bench Reports should be flooded with citations of, and extracts from, American cases. These cases are of no authority in this Province, and will never be, so long as the Law of England is to be our guide.

Lord Campbell and other eminent Judges in England, although appreciating the legal acumen of many of the Judges in the States, discountenanced any attempt on the part of counsel to cite Ameri-

can authorities—excepting those, however, on the subject of International, and in some few instances, Commercial, Law.

The practice has also been disapproved by the Judges of this Province. The late eminent and lamented Chief Justice Robinson, in the judgment of the *Bank of Montreal* v. *Delatre*, 5 U. C. Q. B., did not acknowledge or recognize the American cases as authorities, but only thought it might be useful to refer to them—on the subject of Mercantile Agency—as they would embody the *English* decisions, and one might expect to find *such* authorities cited as far as any existed.

I do not know if the powers of the Editor-in-Chief are as extensive as those of the editor of the English Reports. If they are, I would respectfully suggest that the names, &c., of any American cases referred to in judgments should alone be stated.

Yours, &c.

Octogenarian.

References in matters of Account.—Practice.

To the Editor of the Law Journal.

Sir,—The Act 39 Vict. cap. 28, sec. 2, Ont., defining the procedure on a reference of matters of account thereunder, provides that after the making of the report or certificate, the depositions of the witnesses examined together with the exhibits referred to therein, and the award or certificate shall be filed with the officer of the Court with whom the præcipe for the said writ was filed; this *primâ facie* applying as well in cases where the writ issued in York as in outer counties.

In the latter the præcipe and subsequent pleadings being filed in one office, there can be no difficulty; but in the County of York, owing to the existence of a separate office for the issuing of writs, and an omission in the Act to provide for the practice therein, we are not so fortunate.

Read alone and literally, the section referred to would indicate that in this County an award is to be filed with the Clerk of the Process, as *the person with whom the præcipe was filed*; and this view is taken, we learn, by Mr. Jackson, who urges that although præcipes are sent him daily by that official, yet they are never filed with or by him, being merely docketed to conform to a practice which has obtained for years. In the Queen's Bench, on the other hand, the practice has been followed (and in this I think the statute has been intelligently construed) of filing in that Court.

In my view the intention, at all events, of the Legislature is explained by the section following, which, providing that for the purposes of appeal on proper notice given to a Deputy the filings shall be transmitted to the "proper principal office at Toronto, addressed to the Clerk thereof," clearly indicates that in all cases the proper Crown Office shall be considered the headquarters for all filings under this Act.

Yours, etc.,

Attorney.

TO CORRESPONDENTS.

In answer to two questions which have been addressed to us by "Another Second Year," with reference to the subjects for First Intermediate Examinations, we would say that our own opinion (which has been confirmed by one of the examiners) is, that students presenting themselves for the examination in question are not liable to be examined on Acts amending Consol. Stat. cap. 12. As to the second question, we do not think that our correspondent need be under any fear of having to make himself "conversant with the whole Statute Law of Ontario" in order to pass the First Intermediate Examination. However desirable it may be for all law students to make themselves as soon as possible familiar with the points in which the law laid down in English textbooks is altered by our statutes, we are quite certain that for the purposes of this examination it is sufficient for the candidates to be thoroughly acquainted with the particular books and statutes prescribed therefor. It is only at the final examinations for call and certificates of fitness that the whole Statute Law of this Province is prescribed as a subject for examination.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Easter Term, 39th Victoria.

DURING this Term, the following gentlemen were called to the Bar namely:

Daniel Edmund Thomson.
Robert Pearson.
Henry J. Scott.
R. Martin Meredith.
J. Bond Clarke.
Albert Monkman.
James Leitch.
Charles J. Holman.
John Fisher Wood.
Thomas Cooke Johnstone.
Hugh O'Leary.
Edmund John Reynolds.
Philip Holt.
Michael Kew.
William Hall Kingston.
Alexander Haggart.
William Myddelton Hall.
J. Pliny Whitney.
Theophilus H. Begue.
Edward Kenrick.
Thomas Street Plumb.

And the following gentlemen received Certificates of Fitness, namely:

Henry James Scott.
Thomas Hodgkin.
Daniel Edmund Thomson.
George W. Wells.
Edmund John Reynolds.
William Henry Ross.
William Clark Perkins.
George Rose.
George S. Goodwillie.
John Fisher Wood.
Charles Joseph Holman.
Alexander Haggart.
Eugene McMahon.
Philip Holt.
Charles H—— McConkery.
John Wallace Nesbitt.
Joseph Burgin.
William Cowan Moscrip.
Elias Talbot Malone.
James Pliny Whitney.
George Howes Galbraith.
Thomas Mercer Morton.
Silas Corbett Locke.

And the following gentlemen were admitted into the Society as Students of the Law:

Graduates.

Murdoch Munro.
William John Ferguson.
Charles Wesley Colter.

Junior Class.

Henry Walter Hall.
Charles Edward Irvine.
John O'Meara.
Charles Wright.
Frederick Weir Harcourt.
Daniel McLean.
James Scott.
Frank Jeffrey Howell.
William Chalmers.
Angus McCrimmon.
Frederick Herbert Thompson.
Rufus Shorey Neville.
Albert Beresford Wood.
John Birnie.
Wallace Leslie Palmer.
Frank Andrew Hilton.
Frederick W. Harper.
Stewart Campbell Johnston.
Charles Herbert Allen.
Hedley Vicars Knight.
Henry Hobart Fuller.
Robert Edson Bush.
William David Smith.
William Forsyth McCreary.
Francis Edward Galbraith.
Lawrence John Munro.
James Leland Darling.
Robert Abercrombie Pringle.
Arthur William Gundry.
S. G. McKay.
Delos Charles McDonall.
Daniel R. Cunningham.
Æneas Donald McKay.

Ordered, That the division of candidates for admission on the Books of the Society into three classes be abolished.

That a graduate in the Faculty of Arts in any University in Her Majesty's 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.

That all other candidates for admission shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination upon the following subject namely, (Latin) Horace, Odes, Book 3; Virgil, Æneid, Book 6; Cæsar, Commentaries, Books 5 and 6; Cicero, Pro Milone. (Mathematics) Arithmetic, Algebra to the end of Quadratic Equations; Euclid, Books 1, 2, and 3. Outlines of Modern Geography, History of England (W. DouglasHamilton's), English Grammar and Composition

Law Society, Easter Term.

That Articled Clerks shall pass a preliminary examination upon the following subjects:—Cæsar, Commentaries Books 5 and 6; Arithmetic; Euclid, Books 1, 2, and 3, Outlines of Modern Geography, History of England (W. Doug. Hamilton's), English Grammar and Composition, Elements of Book-keeping.

That the subjects and books for the first Intermediate Examination shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and amending Acts.

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

That the books for the final examination for Students-at-Law shall be as follows:—

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

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

That the subjects for the final examination of Articled Clerks shall be as follows:—Leith's Blackstone, 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.

That the Books for the Scholarship Examinations shall be as follows:—

1st year.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes 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 Vol. II., chaps. 10, 11 and 12.

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

That no one who has been admitted on the books of the Society as a Student shall be required to pass preliminary examination as an Articled Clerk.

J. HILLYARD CAMERON,
Treasurer.

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

To the Benches on the Law Society:

The Committee on Legal Education beg leave to submit the following report:

Your Committee have had under consideration the representations made from time to time to the Benchers, and referred to your Committee, respecting the different courses of study prescribed for Matriculation in the Universities, and for Primary Examination in the Law Society, and now recommend:—

1. That after Hilary Term, 1877, candidates for admission as Students-at-Law, (except Graduates of Universities) be required to 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. Musaeus; Stumme Liebe Schiller, Lied Von der Glocke.

2. That after Hilary Term, 1877, candidates for admission as Articled Clerks (except graduates of Universitie and Students-at-Law), be 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.

3. That 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.

4. That all examinations of Students-at-Law or Articled Clerks be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

THOMAS HODGKINS, *Chairman.*

Osgoode Hall, Trinity Term, 1876.

Adopted by the Benchers in Convocation August 29, 1876.

J. HILLYARD CAMERON,
Treasurer