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DIARY FOR JULY.

1. Thur...Dominion Day. Long vacation H. C. J. and Sup. Court of Canada begins.
4. Sun.....*2nd Sunday after Trinity.*
5. Mon.....C. C. term begins, except in York.
10. Sat..... C. C. term ends, except in York.
11. Sun.....*3rd Sunday after Trinity.*
13. Tues.. Quebec founded by Champlain. Sir John Robinson 7th C. J. of Q. B., 1829.
17. Sat.....Law Society incorporated, 1797.
18. Sun.....*4th Sunday after Trinity.* First Cunard steamer arrived at Boston, 1840.
22. Thur...Boundary dispute between Ont. and Man. settled by Privy Cl., 1884. W. H. Draper 9th C.J. of Q. B., 1863. W. B. Richards 3rd C. J. of C. P. 1863.
23. Fri.....Act uniting Upper & Lower Canada assented to 1840.
25. Sun.....*5th Sunday after Trinity.*
29. Thur...Wm. Osgoode, first Chief Justice of Q. B., 1792.

TORONTO, JULY 1, 1886.

FOLLOWING our usual course no second number will be issued during the vacation months of July and August.

THE *Central Law Journal* says that a lawyer in Georgia who had lost his cause was so impressed by the supernatural ignorance and stupidity (as he construed it) of the presiding judge that he made the appropriate affidavit, and sought to procure an inquisition of lunacy upon that judge. If the practitioner acted in good faith, and out of an honest desire to protect other litigants, would his action be a contempt of court? Sometimes, however, it is the judgment, and not the criticism upon it, that brings the court into contempt.

A SUPPLEMENT to "Hodgins on the Canadian Franchise Act, 1885," containing the amendments made last session to the Franchise Act, is in the press, and will be shortly issued by Mr. Hodgins. We also learn that a second edition of Mr. Hodgins' "Manual on Voters' Lists" is in course of preparation. The intricate classification of voters under the Ontario Legislative and Municipal Franchises proves the necessity for the early publication of such a manual.

A LEADING Queen's Counsel in large practice in one of our eastern cities writes us as follows: "I note what you say in No. 11 of current volume as to judicial awards, instead of judgments, and the apropos remarks from the English *Law Journal* at p. 205. I express the hope that you will, as you propose, find it 'well to refer to this subject more at length, as there would appear to be some ground of complaint.' In my opinion, there is great ground of complaint, and not only would you confer a benefit on the public by drawing attention to it, but indeed, I think it is your duty to do so." Another letter says: "I have read with pleasure your article in your issue for June 15. It is timely, to the point and required."

We have been requested by many to take up and deal with this question. It is more important than perhaps some of our judges realize; and the mind of the profession is very strong on the subject. We shall take opportunity to refer to the matter again. It would be well, however, to leave it until after vacation, that it may receive the attention which its importance demands. Much dissatisfaction has been expressed for some time past in reference to some of the matters connected with the judiciary referred to in our last two numbers. That there are many things that should and could be remedied cannot be denied. In a country where we have hitherto been so justly proud of our Bench, it is the desire of the profession that the evils which they notice should be remedied rather than that its high reputation should be injured, and its general standard of excellence in any way lowered.

AN important point of insurance law was recently decided by the English Court of Appeal in *Canning* v. *Farquhar*, 54 L. T. N. S. 350. An application was sent to an insurance office for an insurance on the life of the applicant, setting out the state of his health and other matters, and declaring that all the statements in the application were true, and were to be the basis of the contract. The applicant was examined by the medical officer of the company, and the company then wrote to the applicant accepting the proposals, stating the amount of premium, and adding, "no insurance can take place until the first premium is paid." Before the first premium was paid the applicant met with an accident which resulted in his death. After the accident, but before the applicant's death, the premium was tendered in his behalf, but on the person making the tender informing the company of the accident, the company refused to accept the premium, and the next day the applicant died: the action was then brought by the administrator of the deceased applicant's estate for breach of the agreement to insure. But it was held by the Court of Appeal that the action was not maintainable; and the fact of there being an alteration in the risk between the date of the application for the insurance and the tender of the premium was held to justify the insurance company in refusing to accept the premium. The case was unique, and (as Lord Esher remarks) no case is to be found in the books in which such an action had ever been previously brought. The Court was unanimous that there was no concluded contract until the premium had been paid and accepted. Lord Esher even went so far as to say that, until acceptance of the premium, the insurers might at any time change their minds and refuse to insure, without assigning any reason, but in this view the Court cannot be said to have been agreed. Their are also other *dicta* of Lord Esher in his case which are important expressions of opinion. According to his view it is necessary that the statements of fact in a proposal for life insurance must be true, not only at the time they are made, but also at the time the first premium is paid, and if any alteration takes place in the meantime, the alteration must be made known to the insurers, otherwise there would be a concealment of facts which would avoid the policy.

FILING REPORTS.

As we fully anticipated, Rule 599 has been found to be a source of great practical inconvenience and expense to suitors, and has, besides, imposed on the accountant and his clerks great additional trouble and responsibility, without, as it appears to us, any adequate benefit to the public.

Under the former practice in Chancery, all reports were filed at Toronto, no matter where the suit was commenced, or where the proceedings were carried on. For over thirty years, this practice was found to work satisfactorily and smoothly, and there was never any doubt as to the proper place to file a report; the mere production of the report, showing that it had been filed in the office at Toronto, being of itself sufficient to show that it had been filed in the proper office.

Under Rule 599, all this is changed. Owing to proceedings in actions being frequently carried on in different offices, it has been necessary to give a technical construction to the provision of Rule 599, requiring the report to be filed in the office where the proceedings are "carried on." This technical construction has led to some curious and apparently incongruous conclusions. It has been assumed that it was the intention of the Rule to require

the report to be filed wherever the writ issued, and proceedings are deemed to be carried on there, though, as a matter of fact, they may be carried on hundreds of miles away.

For example, a writ may issue in Toronto, but the reference in the action may be directed to Sarnia or Cornwall, and all the substantial matters in litigation may be carried on in the office of the Master at one or other of those places, and yet according to the technical construction placed on the Rule, the proceedings are "carried on" in Toronto, and the report must be filed there.

But when an action is commenced by a motion in Chambers in Toronto, a still more curious result is reached. Assume the reference to be directed to Sarnia. Here we may have three offices to select from in which to file the report. There is the office of the Master in Chambers in Toronto, there is the office of the Master at Sarnia, and the office of the Local Registrar at Sarnia to choose between; but according to the judicial construction of the Rule in question, in neither of these offices would it be proper to file the report, because here another technical construction of the Rule comes in to play, and by analogy to actions commenced by writ, it is considered that such actions should be deemed to have been carried on at Toronto, and the report should be filed in the office where pleadings would have been filed if a writ had issued, and therefore, in such cases the report should be filed in the office of the Registrar, when the action is in the Queen's Bench or the Common Pleas Divisions, and in the office of the Clerk of Records and Writs when the action is in the Chancery Division; although in neither of these offices has any proceedings been actually "carried on."

Again there are cases where an action is commenced by writ issued by a Local Registrar, and a reference is directed to the Master in the same county. In such cases the report must be filed in the office of the Local Registrar; but if an action is commenced by a motion in Chambers to the same Master, and he directs a reference to himself, the report in that case must be filed in the Master's own office.

No wonder with all these complications mistakes are constantly arising, and reports are being filed in the wrong office, and delay and expense is incurred in rectifying the mistakes. It is greatly to be wished that the judges may see their way at an early day to revert to the simple practice of the Court of Chancery by rescinding Rule 599, and directing reports to be filed in all cases in the office of the Registrars of the Queen's Bench and Common Pleas Divisions; or the office of the Clerk of Records and Writs, according as the action is in the Queen's Bench, Common Pleas or Chancery Divisions.

RECENT ENGLISH DECISIONS.

The Law Reports for June comprise 17 Q. B. D. pp. 1-138; 11 P. D. pp. 53-69; 32 Chy. D. pp. 1-246; 11 App. Cas. pp. 93-231.

ALIEN—PERSONS BORN IN HANOVER BEFORE ACCESSION OF QUEEN VICTORIA.

Proceeding first to the consideration of the cases in the Queen's Bench Division, the first to be noticed is *In re Stepney Election*, 17 Q. B. D. 54, which, although an election case touching the right of certain persons to vote, is yet of general interest as casting light on the law affecting aliens. The question for the Court was, whether certain persons born in Hanover before the accession of Queen Victoria to the throne of Great Britain, and while the King of England was also King of Hanover, continued to be British subjects after Her Majesty's accession, and the Court held that they did not; and, while fully accepting the actual decision in *Calvin's case*, Co. Rep. Part vii. p. 1, yet certain *dicta* in that case which favour the notion that

in such circumstances there is a right in the subject to make an election, as to which country he will continue a subject of, were dissented from, the Court being of opinion that allegiance is, in the language of Lord Coke, "*Duplex et reciprocum ligamen*," which the subject cannot by his mere election divest himself of.

SEDUCTION—PLEADING—ALLEGATION AS TO PROCURING ABORTION—APPLICATION TO STRIKE OUT PARAGRAPH.

In *Appleby* v. *Franklin*, 17 Q. B. D. 93, the defendant applied to strike out from the statement of claim in an action for seduction of the plaintiff's daughter, an allegation that the defendant had administered noxious drugs to the daughter for the purpose of procuring abortion. The application was based on the ground that the allegation in question disclosed the commission of a felony for which the defendant ought first to have been prosecuted. But it was held by a Divisional Court (Huddleston, B. and Wills, J.) following *Osborn* v. *Gillett*, L. R. 8 Ex. 88, that the application could not be granted, inasmuch as the plaintiff was not the person upon whom the felonious act was committed, and had no duty to prosecute.

DISCOVERY OF DOCUMENTS—SUFFICIENCY OF AFFIDAVIT.

In *Nicholl* v. *Wheeler*, 17 Q. B. D. 101, which was an action for the recovery of land, the Court of Appeal, following *Jones* v. *Monte Video Gas Co.*, 5 Q. B. D. 556, and *Hall* v. *Truman*, 29 Chy. D. 307, refused to permit interrogatories to be administered for the purpose of contradicting the defendant's affidavit which alleged that certain documents were privileged from production on the ground that they supported his title, and did not contain anything impeaching his defence, or supporting the plaintiff's case.

ARBITRATION—APPLICATION TO EXTEND TIME FOR MAKING AWARD—C. L. P. ACT, 1854, s. 15—(R. S. O. c. 50, s. 219.)

An attempt was made, *In re Mackenzie*, 17 Q. B. D. 114, to induce a Divisional Court (Grove and Stephen, JJ.) to enlarge the time for making an award under the following circumstances: By a Local Government Act passed subsequent to the C. L. P. Act, 1854, provision was made for referring certain matters to arbitration; but the Act expressly provided that the time for making an award under the Act "shall not in any case be extended beyond the period of two months from the date of the submission," this time had elapsed, and it was held that the provisions of the Common Law Procedure Act, 1854, s. 15, would not authorize an enlargement of the time.

MASTER AND SERVANT—EMPLOYERS LIABILITY ACT—(49 VICT. c. 28 ONT.)

Webbin v. *Ballard*, 17 Q. B. D. 122, is a case under the Employers' Liability Act, from which the 49 Vict. c. 28 (O.) was taken. The action was brought by the widow of a deceased person who had been employed as a fireman in the defendant's brewery. In the engine room, at some distance from the floor, was a valve to turn on steam to a donkey engine. This valve could only be reached by means of a ladder placed against a lower pipe, but by reason of a bend in this pipe the ladder (though in itself perfect), being without hooks or stays, was unsafe for the purpose for which it was used. The defendant had himself seen the ladder so used. The deceased was found dead in the engine room, having been apparently killed in consequence of the ladder slipping while he was upon it. A verdict having been found for the plaintiff, the defendant moved for a new trial, on the ground that there was no evidence of a defect in the plant, for which the defendant would be liable under the Act; that the accident arose from the improper use of the plant, and that the deceased was guilty of contributory negligence. The motion was refused. The Court (Mathew and A. L. Smith, JJ.) points out that the Act has practically swept away the defences of "common employment," and "that the servant had contracted to take upon himself the known risks attendant upon the employment," which were previously open to an employer when sued by his servant for injuries sustained in the course of his employment, and that a servant or his representative suing under the Act, is now virtually in the position of any one of the public. But while of opinion that the two defences above mentioned are taken away from the employer, the Court was of opinion that the Act gave him a defence which did not theretofore exist, when sued for a defect in the ways, plant or machinery, viz., that the servant knew of the defect and did not communicate it to the employer, or to some other person superior to

himself in the service of the employer. On the question of want of evidence of defect in the plant, the Court came to the conclusion that although the ladder was perfect in itself it was not in a proper condition for the purpose for which it was used, and that therefore there was evidence of a defect in the condition of the ways or plant within the meaning of the Act. The mere fact that the deceased knew that the ladder was dangerous, was held not to be evidence of contributory negligence on his part, though it would have been otherwise if it had been shown that he had used the ladder in a negligent manner; and the fact that the defendant knew of the defect was held to exonerate the deceased from giving information to the defendant of the defect.

JURISDICTION—APPEAL FROM MASTER IN CHAMBERS.

Bryant v. *Reading*, 17 Q. B. D. 128, we think deserving of notice for the observations of Lord Esher which we quote below. On an interpleader summons the Master in Chambers had decided, at the request of one of the parties, to dispose of the matters in dispute in a summary way. The claimant objected that an issue should be directed, and appealed to a judge in chambers, who dismissed the appeal on the ground that the decision of the Master was final. An appeal to a Divisional Court was dismissed, and an appeal to the Court of Appeal was also dismissed on the ground that the decision of the Master, being a summary decision, was not the subject of appeal under *Waterhouse* v. *Gilbert*, 15 Q. B. D. 569. But Lord Esher, in giving judgment, doubted the propriety of the decision of the Divisional Court, and made use of the following observations:

One point which seemed to be raised was whether there was an appeal from the Master to the Judge in Chambers. This depends on the interpretation of two rules, 8 and 11 of Ord. 57, and two rules, 12 and 21 of Ord. 54. Order 57 r. 8 is this: "The Court or a judge may, with the consent of both claimants, or at the request of any claimant, if, having regard to the subject-matter in dispute, it seems desirable to do so, dispose of the merits of their claims and decide the same in a summary manner, and on such terms as may seem just;" and Rule 11 of the same Order declares when such decision is to be final. Now, it is argued that, inasmuch as by Ord. 54 r. 12, the Master has the authority and jurisdiction of a judge at chambers, interpleader not being one of the matters excepted in the rule, his decision, like that of the Court or a judge, is not open to appeal. I think this argument may well be contested on the ground that the order which deals with the decision of a Court or judge, and makes that decision final and conclusive, does not apply to the decision of a Master. Order 54 r. 12 gives the Master the authority and jurisdiction of a judge in such cases; but that does not make his decision that of a Court or a judge while Rule 21 of the same Order is explicit that any person affected by any order or decision of a Master may appeal therefrom to a judge at chambers.

PUBLICATION OF ADVERTISEMENTS—CONTEMPT OF COURT.

In *Brodrib* v. *Brodrib*, 11 P. D. 66., a co-respondent in a divorce suit, immediately after the service of the citation, caused advertisements to be published denying the charges made in the petition, and offering a reward of 100 guineas "for such information as will lead to the discovery and conviction of the instigators of such charges." Upon motion of the plaintiff it was adjudged that the publication of the advertisements was a contempt of court, as tending to deter witnesses from coming forward, and an attachment was ordered; but the writ was allowed to remain in the registry for a fortnight to enable the respondent to make a proper apology; and on an affidavit of the co-respondent being subsequently produced disclaiming any intention to interfere with the course of justice, and expressing his regret, the attachment was rescinded on payment of costs.

VENDOR AND PURCHASER—CONDITIONS OF SALE—RESCISSION OF CONTRACT.

In re Terry and White, 32 Chy. D. 14, the first of the cases in the Chancery Division to which we direct attention, was an application under the Vendors and Purchasers Act. A parcel of land, described in the particulars of sale as containing 4 a. 3 r. 37 p., was sold by auction subject to special conditions of sale, one of which stated: "3. Each lot is believed, and shall be taken to be correctly described as to quantity and otherwise . . . and the respective purchasers . . . shall be deemed to buy with full knowledge of the state and condition of the property as to repairs and otherwise, and no error, misstatement or mis-

description shall annul the sale; nor shall any compensation be allowed in respect thereof." The conditions also provided for the delivery of objections by the purchaser to the title, "or on the particulars or conditions of sale" within a limited time, and further provided that "7. If any purchaser shall insist on any objection or requisition which the respective vendors shall be unable, or on the ground of expense, or otherwise unwilling to answer, comply with, or remove, the vendors may at any time, and notwithstanding any intermediate or pending negotiations, proceedings or litigation, annul the sale." The abstract having been delivered, the purchaser by his requisition objected that the parcel in question contained, as was the fact, only 2 a. 1 r. 37 p., and claimed compensation for the deficiency. The misstatement in the acreage had been innocently made, the vendor refused compensation, but offered to annul the sale. The purchaser refused to withdraw his requisition or to consent to a rescission of the contract, and thereupon the vendor gave notice of annulment of the sale pursuant to the seventh condition. The purchaser then took proceedings under the Vendors and Purchasers Act to compel specific performance with compensation. Bacon, V. C., was of opinion that the vendor could not annul the sale; but the Court of Appeal arrived at the opposite conclusion, it being clear that though the vendor could not have specifically enforced the contract, except on the terms of giving compensation for the defect, yet where the purchaser himself was seeking specific performance the Court would not, under the conditions of sale, order the vendor to make compensation for the deficiency. The judgments of the Master of the Rolls and Lindley, J., are noteworthy for the vigorous protest they contain against the idea that the same contract can be differently construed in a Court of Law and in a Court of Equity.

SOLICITOR—TAXATION—THIRD PARTY LIABLE TO PAY.

In re Allingham, 32 Chy. D. 36, the Court of Appeal held that a trustee, on bankruptcy of a mortgagor, is entitled to an order to tax the bill of costs of the solicitor of the mortgagee incurred in selling the mortgaged premises under a power of sale.

LUNATIC—MAINTENANCE.

The Court of Appeal, *In re Tuer*, 32 Chy. D. 39, decided that the Chancery Division in giving directions for the maintenance of persons of unsound mind not so found, has power to direct capital as well as income to be applied for that purpose.

COMPANY—VOLUNTARY WINDING UP—INJUNCTION.

In *Gooch* v. *London Banking Association*, 32 Chy. D. 41, an injunction was granted by Pearson, J., on the application of a lessor of a company in voluntary liquidation, to restrain the distribution of the assets of the company among its shareholders, without first setting aside sufficient assets to provide for the payment of future accruing rent and other liabilities under the lease; and an appeal from this decision was compromised.

MORTGAGOR—MORTGAGEE—RECEIPT OF RENTS AND PROFITS.

Noyes v. *Pollock*, 32 Chy. D. 53, was a mortgage action. An agent of the mortgagor received the rents of the mortgaged property for him and applied them in payment of the interest to the mortgagees. The mortgagees wrote to this agent enclosing notices to the tenants to pay the rents to them, which the agent was instructed to serve on them if the mortgagor should attempt to interfere. The agent replied, promising to pay the rents to the mortgagees and not to the mortgagor, which he did, and the notices were not served on the tenants. Pearson, J., held that on this state of facts the mortgagees were chargeable as mortgagees in possession, but on appeal this decision was reversed. In the same case another point was determined. A married woman having an interest in certain property joined with her husband in mortgaging it along with other property of his own. Afterwards the latter property was sold by the husband, the mortgagees joining, and the purchase money was applied partly in reduction of the mortgage debt, and the balance was paid to the husband, the wife acquiescing though not joining in the transaction. The Court of Appeal (affirming Pearson, J.,) held, under these circumstances, the wife had no equity to charge the mortgagees with the moneys paid to her husband.

Recent English Decisions.

Expropriation of land—Colorable purpose—Injunction.

In *Lynch* v. *Commissioners of Sewers*, 32 Chy. D. 72, the Court of Appeal held that the plaintiff was entitled to an interlocutory injunction restraining the defendants from proceeding with the expropriation of the plaintiff's property, it being shown that there was a question to be tried at the hearing, whether the defendants were not seeking to expropriate the land in question colorably for a purpose authorized by statute, but really to effect an object for which they were not authorized to expropriate it.

Disentailing deed — Ineffectual bar of entail (R. S. O. c. 100, s. 30)—Volunteers.

The case of *Green* v. *Paterson*, 32 Chy. D. 95, although one relating to a copyhold estate, nevertheless is of use as throwing light on a branch of real property law. A married woman, being entitled to an equitable estate tail in copyholds, executed a post-nuptial deed in February, 1870, declaring that such estate should be held in trust for such persons as she and her husband should jointly appoint, and in default for herself in fee. The deed was duly acknowledged but not entered on the court rolls within six months after execution, as required by the *Fines and Recoveries Act*. By a deed made in March, 1870, she and her husband purporting to exercise this joint power appointed the copyholds in question, and covenanted to surrender them to trustees upon trust to sell, invest the proceeds and hold the und (in the events which happened) for her, for her separate use for life, then for her husband for life, and then for her children other than her eldest son. No sale or surrender of the copyholds was ever made. The husband and wife both died, leaving several children. The trustee of the settlement then petitioned for an order vesting in him all the estate of the eldest son and customary heir, who was an infant, and Hall, V.C., granted the order in April, 1881, and it was from this order that the eldest son appealed by leave of the court; and on the appeal the order of Hall, V.C., was reversed, the Court holding that the deed of February, 1870, was not a "disposition" within the *Fines and Recoveries Act*, but a mere declaration of trust, and therefore, and also on the ground of not being entered on the court rolls within six months after execution, (see R. S. O. c. 100, s. 30), was void, and inoperative to bar the entail. It was also held by the Court of Appeal that the settlement of March, 1870, being post-nuptial, the children of the settlor were merely volunteers, and therefore, were not entitled to enforce its provisions as they would have been in the case of an ante-nuptial settlement. Speaking of the settlement, Lindley, L.J., says:

> Those children were not parties to that contract, and *primâ facie*, no person who is a stranger to a contract can sue to enforce it. But upon that general rule there is, as is well known, this exception grafted, that children, born of the marriage in contemplation of which a settlement has been executed, are treated to a certain extent as if they were parties, and they are allowed to sue for the execution of that settlement. It appears to me, that in the case of a post-nuptial settlement that rule cannot apply. The consideration of marriage is not infused into that settlement. It is made for considerations which arise after the marriage, and, therefore, in point of principle, I am unable to see how the exception which applies to an ante-nuptial settlement, giving children of the marriage a right to sue for the performance of those covenants, can apply to post-nuptial settlements.

The application for the vesting order was held to be virtually a motion to enforce the settlement on behalf of the beneficiaries, and the order of Hall, V.C., was therefore vacated.

Practice—Service out of jurisdiction—(R. S. O. c. 40, ss. 93, 94.)

In re Busfield, *Whaley* v. *Busfield*, 32 Chy. D. 123, the Court held, (affirming the decision of Chitty, J.,) that the court cannot order service of an originating summons out of the jurisdiction. It was contended by the appellant that the former jurisdiction of the Court of Chancery, under 2 W. IV. c. 33; 4 & 5 W. IV. c. 82, was continued under the Judicature Act. These Acts had been repealed, but one of the repealing Acts provided that the repeal effected by the Act should not affect any jurisdiction established or confirmed by the repealed Act. But the Court of Appeal held that the Judicature Rules established a complete code of cases in which the jurisdiction of the court might be exercised against persons out of the jurisdiction, and extended only to cases in which a writ was issued, except where it was merely necessary to notify a party of proceed-

ings, as distinguished from exercising any urisdiction over him. The procedure in this Province is different from the English in this respect: the latter requires an order authorizing service out of the jurisdiction before the service is effected; in this Province the service is effected, and an order must then be obtained for its allowance. This case appears to be an authority on a motion for allowance of a service effected abroad, and it may hereafter become a question whether the Ontario Rules have had the effect of superseding the provisions of R. S. O. c. 40, ss. 93, 94. We are inclined to think that, there having been no express repeal of this statute, it would be held that the practice under it has been preserved.

VENDOR AND PURCHASER—EXPROPRIATION—POSSESSION.

Bygrave v. *Metropolitan Board of Works*, 32 Chy. D. 147, is a case from which it appears that where a public body has power to expropriate and take possession of lands it must do so in the manner pointed out by the statute, and that the Court has no jurisdiction in a suit, by analogy to the procedure provided by such Act, to make an order for delivery of possession otherwise than according to the usual course of the Court. The plaintiff in the action, being lessee of the premises in question, which were required by defendant for a street improvement, contracted to sell them to the defendants. The latter subsequently found that the lease was terminable at the option of the lessor at the end of seven, or fourteen years, whereupon the defendants claimed an abatement in the purchase money, which the plaintiff refused, and brought the action for specific performance. The defendants applied *pendente lite* for an order for delivery of possession on payment into Court of the whole purchase money claimed by the plaintiff; Pearson, J., made the order, but it was reversed by the Court of Appeal.

SELECTIONS.

LIBELLING A WIFE.

All along the line of English speaking and common law peoples there has been a steady improvement in the legal *status* of married women, but it seems that, in some respects, the old original mother country lags behind the rest of the family. The *Solicitor's Journal* of London, in a recent issue, comments upon a ruling which well illustrates this proposition. It seems that the parties in question after living together as man and wife separated, and the woman supported herself by her own labour as a vocalist. The man published what, for the purposes of the case, was conceded to be a defamatory libel, to the effect that the woman was not his wife at all, but had been his mistress. She applied for a rule for a criminal proceeding against her husband for the libel, but the Court discharged the rule upon the ground that a criminal proceeding for libel is not "a proceeding for the protection and security of the separate property" of the wife, and that this latter was the only "proceeding" which, under existing laws, a wife can institute against her husband. The "fair fame" of the applicant was not, according to the ruling of the learned judges, her "separate property," nor indeed does it appear that they considered it property at all. Shakespeare says, it is "the immediate jewel of our souls," but whether Shakespeare is authority in English Courts we cannot presume to say. Certain it is, that in its most prosaic sense "fair fame," is recognized by the Courts as property, for of the good will of a business, which is fully recognized as property, the good character of the tradesman is the most valuable and indispensable constituent. *A fortiori* is this the case when a woman is engaged in business. A milliner's trade may be ruined by charges, not that she makes "frightful" bonnets, but that she is personally impure; a school-room

would be promptly denuded of its pupils by a like charge against the school-mistress.

These self-evident propositions do not seem to have occurred to the English judges in the case under consideration. In defining the words "separate property" they limit their meaning to the actual tangible material chattels. The silks, and ribbons, and laces, in the case of the milliner; the piano and the harp, the globes and the black-board, in the case of the school-mistress, constitute the separate property, and *all of it*. The fair fame which secures customers to one of these business women, and the confidence of parents and guardians to the other, seems to be ignored as too evanescent and immaterial for judicial cognizance.

There is a further ruling which is, at the least, questionable. If the wife had any remedy against the husband, which is *not* conceded, it must be a civil remedy, because the law gives her only a remedy against the husband for the "protection and security" of her separate property, and a criminal proceeding for libel cannot be regarded as such a remedy, for it is designed only to punish the offender, not to protect and secure the party injured, This idea brings us back to first principles. What is the object of punishing crime?

Not to revenge certainly, but the prevention of like offences in the future. "My Lord," said a prisoner, "you surely won't hang me for only stealing a sheep?" "Not at all," replied the judge, "but only that sheep may not be stolen." The husband in this case might well have been punished for libelling his wife, so that he should do so no more, which would tend at least partially to secure and protect the wife's separate property in her good name, as well as deter other husbands from commiting the like crime.

It appears therefore, that it is the law in England that a married woman living with her husband may, with him, prosecute any person who libels her; if her husband has abandoned her, she may prosecute any person who has libelled her *except him*, and that he after withdrawing his protection from her, may say anything against her he chooses, no matter how false, calumnious and disgraceful; he may say such things orally, or in writing, or in print; he may say them every day of his life as long as he may live, and he may thus drive her to starvation, beggary and shame, and for this the law gives her no remedy and inflicts no punishment on him.

If this is the net result, in this respect, of the recent woman law legislation of England, it is very manifest that the mother country is yet very far from having done justice to woman.—*Central Law Journal*.

RELEVANCY OF EVIDENCE.

Evidence must Tend to Prove Issue.—The most fundamental rule of evidence is that the evidence adduced must be confined to the matter in dispute. Relevancy is the term applied to evidence that tends to prove the issue, and whether evidence is admissible or not, or is relevant, is a question for the Court. Mr. Stephen makes relevancy a sole test of admissibility, but in this conclusion he is undoubtedly incorrect. A communication by a client to his legal adviser would be highly relevant, but none the less inadmissible.

It is not necessary that the evidence bear directly upon the point is issue. If it constitutes a link in the chain of proof, or tends to prove the issue, it is sufficient, although considered alone it might not justify a verdict. Neither is it essential that its relevancy appear when the evidence is offered. If it will be afterward rendered material by other evidence it may be admitted. If not subsequently connected with the issue, it may be taken from the consideration of the jury. If the order in which the evidence is admitted is discretionary with the judge, no exception lies from an exercise of such discretion.

Criminal Cases.—More breadth in the introduction of testimony is allowed in criminal than in civil cases. For instance, in criminal cases, the defendant is permitted to offer evidence of good character. This is apparently an exception to the rule requiring the evidence to be confined to the point in issue. Evidence of good character can in no way affect the question as to whether A. did a certain act. The cases go upon the ground that if a strong case is made out against the defendant, evidence of good character will not avail; it is only in doubtful cases

where testimony of this sort can properly be introduced. It is said that good character will of itself sometimes create a doubt where none could exist without it.

There is another class of cases where there is an apparent exception to the rule of relevancy; and in these, evidence has been received of facts before and after the principal transaction, and which have no ostensible connection with in. The reasons seem to be that the guilty knowledge or intent is material. Evidence of other crimes which are in no way connected with the one in issue is excluded, but where the crime charged is so linked with another, that in proving the one it would prove the other also, the rule does not apply.

For instance, where one was accused of larceny, evidence which shows his whereabouts at the time of the larceny is admissible, although it proves another larceny. In order that the prosecution may introduce evidence of other crimes than that charged, they must in some way be connected with the principal case. Such evidence may be admitted, when it becomes necessary to prove *scienter*, to prove such intent, to show a motive for the commission of the offence; when the two crimes form one transaction and are connected; and where the offence is one of a series, and to make out the offence charged others must also be proven.

Testimony otherwise competent is not rendered incompetent by reason of its proving an offence other than the one charged in the indictment. So, also, evidence of other receipts of stolen goods from the same thief, knowing them to be stolen, are admissible on the question of intent under an indictment for receiving stolen goods, although it proves the violation of another law. In *Shaffner* v. *State*, the Court only went so far as to say that it was necessary to identify the action with the offence, by making it appear that he who committed one act must have done the other also.

Evidence is always admissible to prove a motive for doing an act, if the act is in issue on the evidence, tends to prove a fact in issue; or to prove whether an act was accidental or intentional, to show that it was one of a series of similar occurrences, in each of which the person doing the act was concerned.

Where the question is one of self-defence, the custom of deceased in carrying dangerous weapons, and his reputation for violence are, if known to defendant, facts relevant to the issue. And also if there is a dispute as to who first began an encounter, evidence of threats made by either party against the other, although unknown to the threatened party, are relevant. Whenever it becomes necessary to prove adultery, evidence may be given of other adulterous acts before and after the act charged to show the adulterous disposition. So, also, in cases of alleged rape, bastardy or indecent assault, the character of plaintiff for chastity is relevant. But it has been held that evidence of particular acts of unchastity is not admissible; it may only be extended to general reputation.

Civil Cases.— In civil cases, the question being whether one did or did not do a certain thing, the fact that the actor is of a particular character is not in general admissible. Such evidence is only admitted when the nature of the action involves the general character of the party, or goes directly to affect it. For instance, the social standing of the parties is clearly irrelevant on the trial of a breach of contract.

In the trial of civil causes, there are one or two notable exceptions to the rule requiring the evidence to be confined to the matter in dispute, or what at least appears to be an exception. Thus, in matters of science, experts may be called to testify to their opinions not within the knowledge of ordinary witnesses; and the result of experiments based upon facts similar to those in dispute. These rules are well recognized.

The cases are not in harmony upon the point as to whether in an action for libel or slander the character of the plaintiff may be inquired into. The weight of authority is that such evidence may correctly be admitted. And in an action for breach of promise of marriage the rule is the same. Where the mental state of a person is material, evidence of acts similar to the one which is the subject of the action may be admitted if it shows the state of mind of such person. This rule is usually applied to fraudulent transactions. Evidence of other acts of a similar nature are admitted to show the fradulent intent. Evidence of collateral facts is sometimes admitted, even when not strictly bearing

on the case, for the purpose of conforming the testimony of witnesses; although in general they are excluded. In *Melhurst* v. *Collier*, the Court held that where a witness for the plaintiff denied the existence of a material fact, and testified that the plaintiff had offered him money to assert its existence, plaintiff was allowed to prove the fact and to disprove the subornation, on the ground that it had become material to the issue.—*Central Law Journal.*

[NOTE.—The authorities for the propositions above stated will be found on reference to the article from which this extract is taken, Vol. 22, p. 493.—Ed. L.J.]

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

Wilson, C.J.] [May 11.

REGINA v. MCNICOL.

By-law for licensing hawkers and petty chapmen—Agent for person residing out of county—Accused compelled to testify—Intent to evade by-law—Quashing conviction—48 Vict. cap. 40 (O.).

Under a by-law of the county of Bruce, passed in pursuance of sec. 495 of the Con. Mun. Act, 1883, the defendant was convicted for selling and delivering teas as the agent of one P. W., of the city of London, contrary to the said by-law. The third section of the by-law was a copy of sec. 1 of 48 Vict. cap. 40 (O.).

It appeared from the evidence of the defendant himself, who was called for the prosecution, the objection of his solicitors to his being made a witness being overruled, that he bought the tea, for selling which contrary to the by-law he was charged, of one W., of the city of London. He was not the agent of W. in the sale, but was himself the owner of the tea, having purchased it out and out. The defendant formerly had sold tea on commission for W., but now purchased, as he said, to evade the by-law. The conviction alleged that the defendant was the agent of P. W., of the city of London, but did not allege that the defendant had not the necessary license to entitle him to do the act complained of.

Held, that inasmuch as the defendant was, according to the evidence, an independent trader, and not an agent, he did not come within the provisions of Con. Mun. Act, 1883, sec. 495, sub-sec. 3, nor within 48 Vict. cap. 40 (O.).

Held, also, that the conviction was insufficient in not stating that P. W. was "not resident within the county," and that the expression "of the city of London" was insufficient.

Held, also, that it was improper to compel the defendant to give evidence against himself.

Held, also, that the possession of a license is a matter of defence, and not of proof for the prosecution.

Held, also, that the intention to evade the by-law was immaterial, so long as the agency did not in fact exist.

Upon these and other grounds the order to quash the conviction was made absolute.

Clement, for the motion.

H. J. Scott, Q.C., contra.

Galt, J.]

REGINA v. MCCARTHY.

Amending conviction—Plea of guilty to defective information.

The convicting magistrate may amend his conviction at any time before the return of the certiorari, and the Court refused to quash because there had been a conviction previously returned which was bad, especially as this had not been filed.

The objection that the defendant has pleaded guilty to a defective information is, under 32-33 Vict. ch. 31, sec. 5 (D.), not admissible.

H. J. Scott, Q.C., for motion.

Aylesworth, contra.

CHANCERY DIVISION.

Proudfoot, J.] [April 28.

PLATT V. THE GRAND TRUNK RY. CO. OF CANADA.

Covenant for quiet enjoyment—Covenant for title—Breach — Damages — Set off of arbitration damages—Different causes of action—Mortgagees—Parties.

On February 3rd, 1873, the company granted to A. T. P. (through whom S. P., the original plaintiff in this action, claimed) a certain mill site on the River Maitland, with certain easements, one of which was the right to erect a dam across the river, high enough to take up eight feet of the fall of the river, the location of the dam being defined by the deed, and covenanted that they had the right to convey and for quiet enjoyment. The company had previously granted (without reserving any of the easements granted to A. T. P.) an island in the river, called "Island C.," and two parcels of land, one on each bank immediately opposite to each other, and adjoining the property of the plaintiff, called respectively "The Grant Meadow" and "Block F.," all three of which were above the land granted to A. T. P., and subsequently became the property of H. T. A. In an action by S. P., who died after action brought, M. A. P. was made plaintiff by order of revivor against the company, it was alleged and proved that a dam could not be maintained across the river high enough to take up eight feet of the fall of the river without submerging a great part, if not the whole, of "Island C," and penning back water and ice on "The Great Meadow" and "Block F," and encroaching upon the rights of H. T. A. as riparian proprietor of the said lands. It was contended on the part of the defendants that the mortgagees of the property should be made parties.

Held, that O. J. A. sec. 17, sub-sec. 5, enables a mortgagor entitled to the possession of land as to which the mortgagee has given no notice of his intention to take possession, to sue, to prevent, or recover damages in respect of any trespass or other wrong relative thereto in his own name only, and that the objection for want of parties ought not to prevail.

Held, also, that in an action on a covenant for quiet enjoyment a plaintiff must show an interruption, or obstruction of the easement, in order to entitle him to recover, and that S. P. not having attempted to enjoy his easement by building a dam in the place and manner specified, and been interrupted, he could not succeed on the covenant for quiet enjoyment.

Held, also, as to the covenant for title, that as the Supreme Court had decided in *Platt* v. *Attrill*, 10 S. C. R. 425, that the company had no right to grant the easement to A. T. P., that decision was binding here, although the company were not parties to the suit and that the covenant was broken as soon as it was made, and the plaintiff entitled to such damages as accrued during the life of S. P., and following *The Empire Gold Mining Co.* v. *Jones*, 19 C. P. 245, that the damages would be the value of the estate that had passed, and that which the deed purported to convey, and the company covenanted they had the right to convey. It appeared that during S. P.'s ownership the government had constructed a breakwater at the mouth of the river, and that S. P. had been awarded damages "on account of the penning or damming up of the waters by the construction of the breakwater, and forcing them back on S. P.'s property," and on another account not material to this action.

Held, that as the sum awarded was a lump sum for both accounts together, and as the evidence on the arbitration showed that the breakwater only affected S. P. to the extent of three feet of water, leaving him a fall of five feet, the value of which could only be ascertained by a reference, and as the subjects of the arbitration and the action on the covenant were not the same, the company are not entitled to set off the money recovered from the government against their liability for damages for their breach of contract.

Held, also, that the registration of the previous conveyances, even if that was notice, was no bar to a recovery on the covenant. The plaintiff, therefore, was held entitled to damages for breach of the covenant for title, and a reference was directed.

Maclennan, Q.C., and *M. G. Cameron*, for the plaintiff.

S. H. Blake, Q.C., *Cassels*, Q.C., and *Garrow*, Q.C., for the defendants.

Boyd, C.] [June 12.

GEMMILL v. GARLAND.

Copyright—Notice of entry—38 Vict. c. 88 (D.), secs. 9, 17.

The writer of a book printed the book which he intended to copyright with notice therein of copyright having been secured, although he had not at the time actually taken the steps to obtain copyright. He, however, did this merely in anticipation of applying for copyright, which he subsequently applied for and obtained. Furthermore, it appeared to be sanctioned by the practice at the office at Ottawa, and there was no publication of the book till after the statutory title of the author was complete.

Held, that this did not constitute an infringement of sec. 17 of the Act respecting copyrights, 38 Vict. ch. 88 (D.).

On the title page of the book as published the plaintiff caused these words to be printed: "Entered, according to Act of Parliament, in the year 1883, by J. A. Gemmill, in the office of the Minister of Agriculture at Ottawa."

Held, that this was a sufficient compliance with sec. 9 of the said Act, although the form of words used was not exactly the same as these prescribed, the divergencies being immaterial.

Christie, for the plaintiff.

W. Cassels, Q.C., for the defendant.

Proudfoot, J.] [June 16.

WOOD v. ARMOUR.

Will—Construction—Intestacy—Blended fund—Distribution per capita.

A testator directed his executors to pay his debts, funeral expenses and legacies thereinafter given out of his estate, and proceeded: "My executors are hereby ordered to sell all my real estate, after the payment of my just debts and funeral expenses, and all my property and personal effects, money or chattels are to be equally divided between my children and their heirs—that is, the heirs of my son G., and daughter S., now deceased, and my son J., Mary and Hannah, or their heirs. Should any of my said heirs not be of age at my death, my executors are to place their legacies in some of the banks of Ontario until the said heirs are of age."

Held (1) That there was no intestacy either of the real or personal estate. It is to be presumed that the testator did not intend to die intestate, and the language shows he did not intend his heirs to take his property as real estate, as he peremptorily directs a sale, makes an actual conversion of it into money, thus blending the real and personal property into a common fund, and then bequeaths it all to the legatees.

(2) That the persons entitled to share under the will took per capita and not per stirpes, upon the same principle as in the case of *Abrey* v. *Newman*, 16 Bab. 431. Where the gift is to the children of several persons they take per capita and not per stirpes.

(3) That the grandchild of G. was not entitled to a share, the children of G. taking in their own right and not in a representative capacity.

W. R. Meredith, Q.C., for the plaintiff.

R. M. Meredith, for the executor and two grandchildren.

Harcourt, for the infants.

Proudfoot, J.] [June 16.

FOSTER v. RUSSELL.

Contract—Specific performance—Uncertainty—Security.

One F., a bookkeeper and accountant, entered into the following agreement with the firm of R. & Co. The agreement was in the form of a letter addressed to the plaintiff, and worded thus: "In consideration of your advancing us the sum of $3,000, we agree to give you collateral security and to pay you interest on same at rate of eight per cent. per annum." The plaintiff advanced money for the benefit of the firm of R. & Co., but before he had received any security the firm made an assignment for the benefit of creditors. The plaintiff now sought to have it declared that he had a lien on the assets and effects of the firm, real and personal, and to have them assigned to him.

Held (1) that the agreement was incapable of specific performance by the court for the reason that the terms were too vague and uncertain to be entertained. No kind of security was specified in the agreement, and parol evidence could not be given to supply the defect. The plaintiff was, however, entitled to have judgment at law against the firm of R. & Co. for the $1,900, and interest and costs of action.

De Gear v. *Smith*, 11 Grant, 570, followed.

Proudfoot, J.] [June 17.

RE BRITON MEDICAL AND GENERAL LIFE ASSOCIATION (2).

Foreign corporation—Deposit with Minister of Finance—31 Vict. c. 48 (D.)—34 Vict. c. 9 (D.) —Constitutional law.

Canadian policy-holders petitioned for distribution of the deposit made by the above company, a foreign corporation, with the Minister of Finance, under 31 Vict. c. 48 (D.) and 34 Vict. c. 9 (D.), the company being insolvent.

Held, that they were entitled to the relief asked, notwithstanding that proceedings to wind up the company were pending before the English courts, and that the above Acts were not *ultra vires* the Dominion Parliament.

C. Moss, Q.C., and *J. T. Small*, for petitioners.

J. Maclennan, Q.C., and *Francis*, for the company.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Investment of trust funds.—*American Law Register*, April.

Actions by and against receivers.—*Ib.*

Proving criminal intent.—*Criminal Law Magazine*, March.

The defence of insanity in criminal cases.—*Ib.*, April, May.

The legal status of sleeping car companies.—*American Law Review*, March, April.

Indian citizenship.—*Ib.*

Combinations to stifle or diminish competition from the standpoint of public policy.—*Ib.*

Exchange by-law in their relation to "option dealing."—*Ib.*

Life tenant and remainderman.—*Albany Law Journal*, May 29, June 5.

Forcible entry and detainer as a civil action.—*Central Law Journal*, March 26.

Patentability of mechanical processes.—*Ib.*

Handwriting as evidence of identity.—*Ib.*, April 2.

Power of municipal corporations.—*Ib.*

Liability of municipal corporations for negligence.—*Ib.*, April 9.

The right to inspect public records.—*Ib.*

Powers of bank directors.—*Ib.*, April 16.

What is an "action"?—*Law Journal* (London) March 13.

The privileges of an attaché.—*Ib.*

Appeal in interpleader.—*Ib.*, March 27, April 3.

Security from foreign counter-claimants.—*Ib.*, April 10.

Solicitors and special circumstances.—*Ib.*, April 24.

Stay of proceedings on nonpayment of costs.—*Ib.* May 1.

Agreements for leases and forfeiture.—*Ib.*, May 15.

The report of the bar committee on land transfer. *Ib.*

Rent, execution and bankruptcy.—*Ib.*, May 29.

The fiduciary position of directors.—*Irish Law Times*, March 13.

Exemptions from distress.—*Ib.*

Execution of testamentary power of appointment. *Ib.*, March 27.

Taxation of bill of costs more than twelve months after delivery.—*Ib.*, April 10.

Perverse verdicts.—*Ib.*, April 24.

Must a felon be prosecuted before he is sued.—*Ib*

Damages for dismissing servant.—*Ib.*, May 1.

Forfeiture of workman's wages.—*Ib.*

Change of risk between acceptance of proposal for life policy and tender of premium.—*Ib.*, May 8.

Transferred malice—striking at one and wounding another.—*Ib.*, May 29.

FLOTSAM AND JETSAM.

MR. JUSTICE PEARSON, of the Chancery Division of the High Court of Justice, died at a quarter past four o'clock in the afternoon of Thursday, the 13th May, at his residence in Onslow Square. In the second week of October, 1882, on the retirement of the late Vice-Chancellor Hall, Mr. John Pearson, Q.C., was appointed judge. He had been a leader successively in the Courts of Vice-Chancellor Malins and of Mr. Justice (now Lord Justice) Fry, had appeared in most cases of importance which passed before those tribunals, and had for years possessed a high reputation as a sound and pains-taking lawyer. During twenty-two years of practice at the junior bar he had gained wide experience as an equity draftsman, and for fourteen years more he had sat in the front row of his Court. Many of his juniors, such as Mr. Justice Kay (who was called four years later than Mr. Justice Pearson), Mr. Justice Chitty, and Mr. Justice North (both called twelve years later) were already on the bench. Mr. Justice Kay's list of causes was bodily transferred "for trial or hearing only" to the new judge. Sir John Pearson, like several other modern judges, was the son of a country clergyman, the Rev. John Norman Pearson, of Tunbridge Wells. He was born in 1819, and at an early age went to Cambridge, where he entered at Caius College, and was the contemporary of Lord Esher and Lord Justice Baggallay. Mr. Pearson was a scholar of his college, took prizes for classics as a freshman and junior soph., and for moral science also in his second year. He took his B.A. degree without honours on February 20th, 1841. On June 11th, 1844, he was called to the Bar by the Honourable Society of Lincoln's Inn, of which he afterwards became (in 1867) bencher, and, in 1884, treasurer. He married, on December 21st, 1854, Charlotte Augusta, daughter of the Rev. William Short, rector of St. George's, Bloomsbury. He took silk in December, 1866, and had his share of company cases. He had somewhat of a specialty for trade-mark and patent cases, and one of the last which he conducted before his elevation to the bench was *The United Telephone Co.* v. *Harrison*. An account of his career on the bench is given elsewhere. On the Lords Justices taking their seats in Appeal Court II. on Friday, 14th May, Lord Justice Cotton said that they had suffered a severe loss by the death of Mr. Justice Pearson. He personally had known him well for many years; they were of about the same standing and when Queen's Counsel had long practised in the same Court; and his death was to him the loss of a dear friend. But he must speak of him as a judge. Since his appointment Mr. Justice Pearson had discharged his duties with great zeal, ability and expedition, and his judicial work was done in a way which was satisfactory to the suitors, and agreeable to the Bar practising in his Court and to the solicitors who had business there. His death would be deeply felt by all branches of the profession, as well as by the public, and also, as the loss of an able and esteemed judge, by all members of the Court of Appeal. Mr. Higgins, Q.C., said that no judge had ever shown greater or more unvarying courtesy and kindness to the members of the Bar when he was one of them or when he attained the bench. No one had ever heard anything from his lips which could give offence to the most delicate susceptibility. His great erudition and high qualifications were shown in his judgments, which the reports would hand down to posterity. It was impossible to adequately express the sorrow which his death would create in all ranks of the profession; and on behalf of the Bar, the learned counsel said he could cordially affirm everything which had fallen from Lord Justice Cotton. The religion he inherited and made his own was of a robust and practical type; his belief in the truths of revelation firm and intelligent; his nature was too large-hearted to permit of his being exclusive, and his mind was so judicial that he could not fail to be tolerant; not that he was indifferent to truth or error, but wherever he believed that an honest religious motive was at work he accepted and honoured it. So that, while a decided Churchman and a sincere and devout Christian, he never attached himself to any Church party. During some years of his life he took an active part in the Clerical and Lay Union which met in the vestry of St. George's, Bloomsbury, for discussing matters of social and religious interest, and was also occasionally a frequenter of the meetings of a kindred character still held in the vestry of St. James's, Piccadilly. He was a careful observer of the day of rest, and on more than one occasion came forward publicly to vindicate its sanctity. He presided, by request, in the first year of his judgeship at a meeting of

the "Lawyers' Prayer Union," and gave a brief practical address. He was genial in society, and had a fondness for children (though he left none of his own), was at all times a kind and generous relative, an affectionate and constant friend.—*Law Journal.*

LORD FARNBOROUGH, better known as Sir Thomas Erskine May, died on the evening of Monday, the 17th May, at Westminster Palace. Ill-health was the immediate cause of his resignation of his office, and a chill caught on the preceding Tuesday at Folkestone produced a congestion which had a fatal result. Sir Thomas May was born in 1815, and was educated at Bedford School, under Dr. Brereton. He was no more than sixteen years old when Mr. Tanners-Sutton, the Speaker of the House of Commons, nominated him to the office of assistant-librarian. In 1838 he was called to the Bar at the Middle Temple; he was appointed Examiner of Petitions for Private Bills in 1846, Taxing-master of the House of Commons in 1847, Clerk Assistant at the Table of the House in 1856, and Clerk of the House of Commons in 1871. He received for his services the Companionship of the Bath in 1860, and became a Knight Commander in 1866. In 1873 he was made a bencher of the Middle Temple, and was a member of the Commission for Statute Law Revision. On the 10th of this month he was created a peer by the title of Baron Farnborough of Farnborough in the county of Southampton, an honour which he has not lived to enjoy. He was a student from the very beginning of his career, and the history of his valuable but eventful life is a catalogue of his political studies and treatises. In 1844, when he was not thirty years old, he published his "Treatise on the Law, Privileges, Proceedings and Usage of Parliament," a concise and scientific digest of all that had been previously written on the subject. In 1861 he brought out the first part of his "Constitutional History of England since the Accession of George III.," a book which takes up the narrative where Hallam left it, and continues it in a more popular but not less impartial manner. Hallam found a not unworthy successor, whose good fortune it was to treat subjects of more present interest to this generation than the constitutional difficulties of the Tudor or the Stuart periods. The power of the Crown, the relations of Church and State, the position and rights of the House of Lords, freedom of speech, and the growing influence of the press in modern days, are subjects discussed learnedly and judicially by Sir Thomas May. His latest work, "Democracy in Europe," which was produced in 1877, although a careful summing-up of the main facts relating to the development of democracy, is of less value than books of which the weight and authority cannot be surpassed. He wrote in early life articles for Charles Knight and the "Penny Cyclopædia," and is credited with occasional contributions to the *Edinburgh Review.* —*Law Journal.*

MR. JAMES STIRLING, who has been appointed a judge of the High Court of Justice in the place of the late Sir John Pearson, is the eldest son of the Rev. James Stirling, of Aberdeen. He was born in 1836, and was educated at Trinity College, Cambridge, where he took his degree of M.A. in 1863, having been Senior Wrangler and First Smith's Prizeman. He was called to the Bar at Lincoln's Inn in Michaelmas Term, 1862, and in 1881 was appointed Junior Equity Counsel to the Treasury. He was from 1865 to 1876 a reporter at the Rolls, and has been a member of the Bar Committee since 1883.—*Law Journal.*

IN reading our recent London exchanges we have been struck by the outspoken severity and sarcasm of their remarks upon several of the English judges. Of course we have no opportunity to know whether these criticisms are well or ill founded, but it speaks well for the freedom of a country governed by a monarch that the subjects can with impunity attack judges appointed by the crown, and holding office for life. Our generally judicious London correspondent, in his letter in last week's issue, concluded with a sentence of such severity concerning the judicial manners of some of the English judges that we preferred to suppress it rather than run the risk of doing any of them a possible injustice.—*Albany Law Journal.*

INSANE JUDGES.—We have had occasion once or twice lately to chronicle charges of insanity against judges. We observe now still another case of the same character. A judge, it is said, becoming insane resigned his office. His resignation was accepted and his successor appointed. Upon recovering his senses he reclaimed his office, and the *ad interim* judge is said to have held the following colloquy with the governor:

Judge L.—"I suppose, that Judge C., now that he is restored to his office, will overrule all the decisions rendered by me while I held it."

The Governor—"Certainly; he has become entirely restored to his reason."—*The Central Law Journal.*

A LAWYER in Western Tennessee asked one of his four ebony-hued clients, indicted jointly for hog-stealing:—"How many of you are accused?" "Fo', sah! but I tell you, lawyer, dey got dis ting all wrong. I ought to be one of de witnesses, but dey got me down as one of de men dat done de 'dultery."

"MY dear fellow," said an Indiana sheriff to his prisoner, "I must apologize to you for the sanitary condition of this jail. Several of the prisoners are down with the measles, but I assure you that it is not my fault." "Oh, no excuses," replied the prisoner, "it was my intention to break out as soon as possible, any way."

MAGISTRATE—"The serious charge of chicken-stealing is preferred against you, Uncle Rastus." Uncle Rastus—"Do de indictment say chicken-stealin', yo' Honah?" Magistrate—"Yes." Uncle Rastus—"Den de indictment am defecktive, yo' Honah. It war a turkey I stole. I demands a *habeous corpeus*, and takes adwantage ob de tecnumcalities of de law."

A JUDGE'S first charge is thus reported by the *Medical and Surgical Reporter*:—He said—"Gentlemen of the jury, charging a jury is a new business to me, as this is my first case. You have heard all the evidence, as well as myself; you have also heard what the learned counsel have said. If you believe what the counsel for the plaintiff has told you your verdict will be for the plaintiff; but if, on the other hand, you believe what the defendant's counsel have told you, then you will give a verdict for the defendant. But if you are like me, and don't believe what either of them has said, then I'll be hanged if I know what you will do. Constable, take charge of the jury."

SATIRICAL.—A lawyer cannot always trust his witnesses with impunity, any more than they can him. A coloured man once sued a neighbour for damages for the loss of his dog that the neighbour had killed. The defendant wished to prove that the dog was a worthless cur, for whose destruction no damages ought to be recovered.

The attorney for the defence called one Sam Parker (coloured) to the witness stand, whereupon the following conversation ensued:

"Sam, did you know this dog that was killed by Mr. Jones?"

"Yessah, I war pussonally acquainted wid dat dog."

"Well, tell the jury what kind of a dog he was.'

"He war a big yaller dog."

"What was he good for?"

"Well, he wouldn't hunt, an' he wouldn't do no gyard duty; he jes' lay round an' eat. Dat make 'em call 'im wat dey did."

"Yes. Well, what did they call him?"

"Well, sah, I don't want ter hurt yer feelin's, sah, an' I is mighty sorry you ax me dat, sah, but er fack is, dey call 'im 'Lawyer,' sah."—*The Central Law Journal.*

"THE herders on the ranch," writes a Texas traveller, "were all Mexicans, save an old Scotchman, who was a solitary instance to the contrary. He was a most markedly benevolent-looking old man, and had about him that copious halo of hair with which benevolence seems to delight to surround itself. He carried a crook, as seemed fitting, and had with him two sheep dogs, one of which the kindly man assured us he had frequently cured of a recurrent disease by cutting off pieces of its tail. This sacrificial part having been pretty well used up, the beast's situation in view of another attack was very ticklish: and it had in fact the air of occupying the anxious-seat."

This recurrent caudal-clipping was a desperate remedy even when applied to save the poor beast's *own* life—would it have been less desperate if the repeated sacrifice had been made to save the life of the *other* beast? If Gladstonian statesmanship continue to offer up clippings from the British lion's tail to cure the intermittent fever of the Irish beast, will not the life of that once noble animal speedily become very ticklish? Is it not indeed now occupying the anxious-seat?

Law Society of Upper Canada.

OSGOODE HALL.

HILARY TERM, 49 VICT., 1886.

During Hilary Term the following gentlemen were called to the Bar, namely: Messrs. Edward K. C. Martin and George L. Taylor, who passed their examination for Call last Term, and Messrs. Ernest Frederick Gunther, John Greer, Daniel Coughlin, Albert Edward Kennedy, Francis Robert Latchford, Frederick Weir Harcourt, Henry Wissler, Alfred Mitchell Lafferty, Thomas Davy Jermyn Farmer, John Wendell McCullough, Jos. Nason, Frederick Sheppard O'Connor, William Edward McKeough, Robert Bertram Beaumont, Charles Franklin Farewell.

The following gentlemen were granted Certificates of Fitness, namely: Messrs. J. A. McIntosh, W. D. McPherson, H. J. Wright, T. B. Lafferty, M. Wilkins, Jr., T. D. J. Farmer, O. E. Fleming, J. Nason, A. B. Shaw, W. Morris, A. S. Campbell, R. Walker, E. A. Wismer, E. M. Yarwood, W. E. McKeough, J. F. Williamson, H. Wessler, R. B. Beaumont, J. S. Mackay, D. Coughlin, J. Thacker, W. B. Raymond, J. W. McCullough, A. McKechnie, G. E. Martin.

The following gentlemen were admitted as students-at-law, namely:

Graduates.—Victor Crossley McGirr, Archibald Weir, Isaac Newlands.

Matriculants.—Frederick William Hill, Arthur Franklin Crowe, Edward Lindsay Middleton, James Hamilton McCurry, Robert Ernest Gemmell, Hugh James Minhinnick, Merritt Oaklands Sheets, A. E. Slater.

Juniors—George Edmund Jackson, John Agnew, George Turbill Falkiner, Dighton Winans Baxter, Charles Edwin Oles, Charles James Notter, William Carnew, Henry Lumley Drayton, Charles Franklin Gilchriese, Edward John Harper, William Herbert Cawthra, John Francis Lennox, Augustus Grant Malcolm, Honore Chatelaine.

Articled Clerk.—Alfred James Fitzgerald Sullivan passed the Articled Clerks' Examination.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1883.
- 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.

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

Students-at-Law.

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

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

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

Translation from English into Latin Prose.

Mathematics.

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

English.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

History and Geography.

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

Optional subjects instead of Greek:

French.

A paper on Grammar,

Translation from English into French prose.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de Bonnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

First Intermediate.

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

Three scholarships can be competed for in connection with this intermediate.

Second Intermediate.

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

Three scholarships can be competed for in connection with this intermediate.

For Certificate of Fitness.

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

For Call.

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

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

1. 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 on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Socity as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

3. Every other candidate for admission to the Society as a Student-at-Law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with clause four of this curriculum.

4. Every candidate for admission as a Student-at-Law, or Articled Clerk, shall file with the secretary, six weeks before the term in which he intends to come up, a notice (on prescribed form), signed by a Bencher, and pay $1 fee; and, on or before the day of presentation or examination, file with the secretary a petition and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

8 The First Intermediate examination will begin on the second Tuesday before each term at 9 a.m. Oral on the Wednesday at 2 p.m.

9. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

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

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six

months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive certificates of fitness, examinations passed before or during Term shall be construed as passed at the actual date of the examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

17. Candidates for call to the Bar must give notice, signed by a Bencher, during the preceding Term.

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

PRIMARY EXAMINATION CURRICULUM

FOR 1886, 1887, 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1886.	Cicero, Cato Major. Virgil, Æneid, B. I., vv. 1-304. Cæsar, Bellum Britannicum. Xenophon, Anabasis, B. V. Homer, Iliad, B. VI.
1887.	Xenophon, Anabasis, B. I. Homer, Iliad, B. VI. Cicero, In Catilinam, I. Virgil, Æneid, B. I. Cæsar, Bellum Britannicum.
1888.	Xenophon, Anabasis, B. I. Homer, Iliad, B. IV. Cæsar, B. G. I. (vv. 133.) Cicero, In Catilinam, I. Virgil, Æneid, B. I.
1889.	Xenophon, Anabasis, B. II. Homer, Iliad, B. IV. Cicero, In Catilinam, I. Virgil, Æneid, B. V. Cæsar, B. G. I. (vv. 1-33)
1890.	Xenophon, Anabasis, B. II. Homer, Iliad, B. VI. Cicero, In Catilinam, II. Virgil, Æneid, B. V. Cæsar, Bellum Britannicum.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's Composition, and re-translation of single passages.

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical reading of a Selected Poem:—
1886—Coleridge, Ancient Mariner and Christabel.
1887—Thomson, The Seasons, Autumn and Winter.
1888—Cowper, the Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:—

FRENCH.

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

1886 1888 1890	Souvestre, Un Philosophe sous le toits.
1887 1889	Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics; *or* Peck's Ganot's Popular Physics, and Somerville's Physical Geography.

ARTICLED CLERKS.

Cicero, Cato Major; *or*, Virgil, Æneid, B. I., vv. 1-304, in the year 1886: and in the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, as noted above for Students-at-Law.
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.

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.