DIARY FOR DECEMBER.

1. Wed..Open Day, Q.B. New Trial Day, C.P.
2. Thu...Re-hearing Term in Chancery commences. Open Day, Q.B. and C.P. Louis Napoleon proclaimed Emperor Napoleon III, 1852.
3. Fri....N. T. Day, Q.B. Open Day, C.P. Last Day but one for Certificates
4. Sat....Michaelmas Term ends. Last Day to give Notice for Call.

5. SUN..*2nd Sunday in Advent.*
7. Tues..Last Day for Notice of Trial in County Court.

12. SUN..*3rd Sunday in Advent.*
14. Tues..County Court Sittings.
17. Fri....First Book printed in England, 1468.
18. Sat....Last Day for Notice of Primary Examinations.

19. SUN..*4th Sunday in Advent.*
21. Tues..Shortest Day in the Year.
24. Fri....Christmas Vacation in Chancery begins.
25. Sat....*Christmas Day.*

26. SUN..*Sunday after Christmas Day.* Upper Canada erected into a Province, 1791.
27. Mon...Nomination of Mayors, Aldermen, Revees, Deputy-Reeves and Councillors.

CONTENTS.

THE
Canada Law Journal.

Toronto, December, 1875.

At the time we write there are more than one hundred cases on the new trial paper in the Queen's Bench, of which some seventy have been standing since last term. About fifteen of these have been argued. There are some sixty cases still to be argued on the Common Pleas list.

In the libel suit of *Johnston* v. *The Athenæum*, upon the application for a new trial, the judges all thought that it should be granted, on the ground that the damages were excessive. Lord Neave characterised the amount of the verdict as "outrageous.' The Court, however, suggested that the parties should settle the amount without re-trying the case; whereupon it was mutually agreed that the verdict should be reduced from £1,275 to £100. And so ends the case.

Apropos of the heavy fee paid by the Guicowar of Baroda to Mr. Serjeant Ballantine, referred to in page 62 of this journal, it is recorded by M. Berryer that in the latter part of the last century a French colonial governor, accused of malversation and prosecuted criminally, handed to M. Gerbier, the brilliant leader of the Paris bar, a fee of 300,000 francs (£12,000 stg.) On the other hand, M. Dupin, in all those political trials during the reigns of Louis XVIII. and Charles X., in which he was engaged, and in which he did such good service to the cause of public liberty by defending the press and protecting authors, and reflected such lustre on his name and profession, invariably refused a fee. The picture, the book, the song, and the journal, defended by his wit, his learning and his eloquence, was his *honorarium*.

Perhaps the ceaseless and quiet course of the stream of judicial decisions does more to change the boundaries and landmarks of the law than the more violent eruptions of legislative action. The suggestion is *apropos* of the decision in *Goodwin* v. *Roberts*, 23 W. R., 915, where it was held by the Exchequer Chamber that scrip of a foreign loan issued in England by the agents of a foreign Government was negotiable, on the ground that mercantile usage had so treated it. Chief Justice Cockburn characterised the law merchant as no fixed stereotyped unaltering law, but one capable of being expanded and enlarged so as to meet the wants and requirements of trade in the varying circumstances of commerce. It is the result of well-established and clearly proved customs of trade adopted by the courts of law—the sum of certain customs standing independent of, although sanctioned by, judicial decisions.

In a recent number of the Queen's Bench Reports of Ontario, the Chief Justice of the Court is reported in *Reg.* v. *Denham*, 35 U.C.Q.B., 508, as determining with grave humour (on a motion to quash a conviction for selling liquor by retail without a license) that selling a bottle of brandy is selling by retail. He observes that "selling a bottle of brandy for $1.25 can hardly be considered doing a very large wholesale business." The reporter, with commendable research, thinks it necessary to buttress this opinion by a foot-note, calling attention to *Gorsuch* v. *Butterfield*, 2 Wis. 237, on this point. It strikes us that this is travelling rather far afield. It would have been better to have noted the case of *Reg.* v. *Strachan*, 20 C. P., 184, 190, in which the Chief Justice of the Pleas says that the Court would assume that the sale of a bottle, value sixty cents, would be a sale by retail.

EFFECT OF THE ACTS RELATING TO THE ADMINISTRATION OF JUSTICE.

There are difficulties in the administration of the law which will never be cured whilst men are men. Judicial conclusions will be diverse and conflicting, and therefore to some extent unjust, in many cases where they should harmonise and concur. The causes lie beyond the power of legislation to reach. We might refer, for example, to the whimsical instance related by Byron's friend, "Monk" Lewis, "wonder-working Lewis." He tells the story of a French nobleman who was accused of impotence by his wife before the parliament of Paris, and was also charged, before the parliament of Rouen, by a farmer's daughter with seduction, whereby she became pregnant. He thought himself perfectly sure of gaining either the one cause or the other; he was, however, to his great amazement, and doubtless to the great edification of the public, condemned in both.

Other kinds of difficulty in administering the law arise when the thing aimed at is to do complete justice to the claims of all persons interested in a given subject of litigation. These difficulties involve questions such as the true measure of one party's rights against the other; the modifications to which those strict rights are subject by way of rebate and set-off, or in consequence of equitable considerations; the remedies over which the party primarily liable may have against others, and the proper tribunal before which for once and all these rights may be vindicated and these complexities adjusted. Legislation in this Province has been addressed, and we think with no small measure of success, to the solution of these difficulties. No doubt the perfect remedy would be some well-devised amalgamation of law and equity into one comprehensive legal system, thereby re-

storing that unity which existed in the days of remote antiquity before the current of common law was disturbed by the obtrusive doctrines of equity. The English Judicature Act is an attempt at this; but whether or not a successful attempt depends upon the issue. If it stands the practical test by which all laws are now to be judged, then it will deserve the attention of Canadian legislators with a view to its incorporation into our laws; but meanwhile, pending the trial of its efficiency, it will be prudent for the Ontario House to let well alone, and not to legislate overmuch on matters of practice and procedure, which had better be left for the judges to develop by decisions, if not by general rules and orders, in applying the statutes in question to matters litigated before them.

The judges have already held with great unanimity that the law in its spirit should be carried out, so that whenever an action is begun in any court, all matters arising, and all defences and claims available, therein on legal or equitable grounds, are to be determined in that action and in that forum. The Court having once been seized of a cause, can effectually dispose of it in all its aspects and as to all persons interested therein. Reference may be made on this to *Kennedy* v. *Brown*, 21 Gr. 95; *McCabe* v. *Wragg*, *ib.* 97; and *Boulton* v. *Hugel*, 35 U.C.Q.B. 412. It is no longer optional with the defendant whether he shall set up his equitable rights in a common law action; he is compelled to do so, or suffer the penalty of being precluded from ever afterwards re-agitating the question of the recovery of those rights which he has thus foregone: see *Bigelow* v. *Staley*, 14 U.C.C.P. 283.

It is noteworthy that the judges have carried this principle so far in construing these acts that they have virtually abolished the peculiar jurisdiction of the Court of Chancery in matters of interpleader, when once a writ has been sued out against the stakeholder. It was held by Proudfoot, V.C., in *Boulton* v. *McKinnon* (not yet reported), subsequently followed in a decision of Blake, V.C., that where the stakeholder is sued at law he is bound to set up in that action all the facts entitling him to claim immunity, so as to cast upon the plaintiff the onus of bringing the other claimant before the court. In truth, this is but an extension of the principle already sanctioned by the Legislature in the Interpleader Act, in regard to certain classes of actions mentioned in the first section: see Con. Stat. U.C. cap. 30, sec. 1. But it is a decided innovation in Chancery practice, and one which demonstrates that the present occupants of the Chancery bench, so far from seeking to extend their jurisdiction (after the traditional fashion of equity), are willing even to curtail their own powers, and to relinquish territory occupied by their predecessors.

The beneficent operation of the Acts in avoiding circuity of action, and the consequent unnecessary accumulation of costs, is shown by the decision in *Howeren* v. *Bradburn*, 22 Gr. 96, in which it was held that now, in a suit to redeem property mortgaged, the Court will allow to the defendant all the interest due on his mortgage, to the same extent as he could recover it at law under the covenants contained in it.

Another very perceptible effect of the law is to increase the number of common law cases brought down for trial, and to diminish proportionately the number of equity causes heard. Many actions of ejectment, trespass, and the like, were formerly arrested at their inception by injunctions from Chancery for certain equitable reasons incapable of being investigated by law. *Nous avous changé tout cela.* Practitioners in the country, who are to some extent more familiar with the practice at law than the procedure in

equity, are now allowed to prosecute undisturbed the actions they commence. From this and other causes, there is at present a glut of common law and a dearth of Chancery business throughout the country generally. It is probable that this state of affairs will continue until it works its own cure, which will be a redistribution of the business among all the courts equally, or some similar modification of the existing system. Meanwhile the Bench and the Bar alike are daily acquiring that familiarity with the changing business of the courts, in the present transition time, which will best qualify them to discharge their several functions when the law shall have slowly settled down to that state of unification which it is the ambition of jurisconsults to realise.

FIXTURES.

What is a fixture? This is a question which has perplexed not only simple men, but great judges — a question which apparently cannot be answered with an exact and comprehensive definition. It seems to be one of those terms which are not capable of being defined with precision, the application of which must be determined by the "circumstances of the case." And yet it is most unfortunate that a clear understanding in legal as well as lay circles does not exist as to what articles, on a sale of land, pass with the freehold, having become fixtures, and what retain their normal character of chattels. The question is constantly arising in this country, where every manufactory has a mortgage on it, between mortgagor and mortgagee, and gives rise to much disquietude on account of the absence of certainty in the law upon the subject.

"According to the old rule of law," says Sir W. Page Wood, in *Mather* v. *Fraser*, 2 K. & J. 536, "if that which had otherwise been a chattel had been *affixed to the soil, whether by nails, screws, or otherwise*, it passed along with the soil to which it had been so fixed." The old rule of law was certainly a simple one, and, if it had been possible to adhere to it, would have prevented a good many conflicting decisions. But though in these latter days efforts have been made to limit the definition of fixtures to things "*actually affixed*" to the soil, as the word implies, it has been found that such a narrow interpretation could not obtain in the ever varying circumstances and complicated interests of modern times, so as to do justice between the parties. The mere fact of annexation has therefore been, for the most part, subordinated to another consideration, the intention of the person who placed the chattels on the freehold; and sometimes it has been entirely disregarded. Indeed it will be found that in certain cases judges have gone, with much doubting, to the utmost limit in adjudging chattels to have become fixtures by a mere constructive annexation.

That the fact of actual attachment cannot be taken as the sole test, will be seen on a moment's reflection. A carpet may be nailed firmly to the floor, but a purchaser of the house would not have the hardihood to claim it as a fixture. A rail fence may rest by its own weight merely upon the ground, but a mortgagor giving up possession to the mortgagee would not be permitted to remove it as a chattel. Again, circumstances will alter cases. Thus blocks of stone, to make use of an illustration suggested in *Holland* v. *Hodgson*, L. R. 7 C. P. 335, placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall, would become part of the land, though the same stones, if deposited in a builder's yard, and for convenience sake stacked one on top of another in the form of a wall, would remain chattels.

The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable, yet no one would suppose that it became part of the land, even though it should chance that the shipowner was also the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge would be part of the land.

Since then it is impossible to abide by the old and simple rule which has been mentioned, it is not a matter of surprise that judges, striving to be guided by the intention in each case, have given decisions which cannot all be reconciled. Let a few instances suffice. In *Carscallen* v. *Moodie*, 15 U. C. Q. B. 304, certain machines for planing, turning, &c., were fastened to the floors and timbers of the building, and worked by belting connected with the engine. It was held that these machines were chattels, and seizable under a *fi. fa.* goods. In *McDonald* v. *Weeks*, 8 Grant 297, a tenoning machine and moulding machine, worked similarly to the above but *not* fastened to the floor or building, were held to be fixtures and part of the realty. In an old case in Buller's Nisi Prius, 34, of *Culling* v. *Tufnell*, a barn erected on blocks of timber lying on but not let into the ground, apart from any question of a customary right of removal in the tenant, was said to be a chattel. Here the decision was evidently based upon the technical definition of the word fixture. On the other hand farming implements, such as a thrashing machine (*Wiltshear* v. *Cottrell*, 1 E. & B. 674) and a hay cutter (*Walmsley* v. *Milne*, 7 C. B., N. S., 115) attached to the soil, have been held to be fixtures. In *Gooderham* v. *Denholm*, 18 U. C. Q. B. 203, three vertical drilling machines fastened with bolts or nuts to the floor or beams of the building, were held to be part of the realty. A fourth machine of the same character, used for the same purposes and worked in the same way, but standing by its own weight merely, was held to be a chattel. In *D'Eyncourt* v. *Gregory*, L. R. 3 Eq. 382, statuary within a mansion, and stone lions and garden seats in the grounds about it, were all classed as fixtures, though resting on the freehold simply by their own weight. In *Mather* v. *Fraser*, 2 K. & J. 536, it is said that nothing is a fixture which can stand by its own weight. Such are some of the decided cases. In some it will be seen that the technical definition of fixtures is rigidly adhered to; in others it has been entirely disregarded. In most cases the Courts have looked at the surrounding circumstances, and while giving weight to the question of the mode and degree of annexation, have been principally governed by the intention with which the chattels have been placed on the freehold.

This conflict of decisions is more apparent than real, and it is possible to elicit certain principles which it is apprehended will govern the Courts in future decisions upon this subject. And we conceive these principles are to be found in two elaborate and able judgments, viz., *McDonald* v. *Weeks*, 8 Grant 297, and *Holland* v. *Hodgson*, L. R. 7 C. P. 335. In both cases the language of the judgment in *Hellawell* v. *Eastwood*, 6 Exch. 295, is cited. It was there said that whether or not a chattel attached to the soil is a fixture, is always a question of fact, depending upon the circumstances of each case, and principally upon two considerations: first, the mode of annexation to the soil or fabric of the building, and whether it could be easily removed without injury to itself or the building; and, secondly, the object of the annexation, whether for the permanent and substantial improvement of the dwelling, or merely for a temporary purpose and the more

complete enjoyment and use of it as a chattel. In *McDonald* v. *Weeks* the present Chancellor says: "If the true criterion be the intention, the object and purpose with which an article is put up, as I think it is, it goes far to remove any reason for the distinction that has been taken between things screwed, bolted, nailed, or otherwise affixed to the soil, and things not so affixed. . . . A distinction based upon the fastening or not fastening of the article to the soil must necessarily lead to the greatest incongruities, and actually did so in the case to which I have last referred (*Gooderham* v. *Denholm*). But it may be said we are dealing with fixtures, and that is not a fixture which is not affixed, and that it requires that the affixing in fact and the intention that it should become realty should concur, otherwise the article must remain a chattel. There is certainly authority for this position; but it is founded upon very technical reasoning—the use of the word fixture and its signification. If indeed it were law that nothing could pass with the soil but that which is affixed to the soil, it would have a legal principle in its support, but the law is not so." *McDonald* v. *Weeks* is followed, though with some hesitation, by V.C. Strong in *Crawford* v. *Findlay*, 18 Grant 51.

Holland v. *Hodgson* does not go so far as *McDonald* v. *Weeks*, the articles declared to be fixtures being all attached in some way, for the purpose of steadying them while in use, to the mill. The principle of a constructive annexation is however recognised. In this case it is said, "Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels; and that, on the contrary, an article which is affixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel."

A consideration of American cases would only involve us in a hopeless mass of conflicting decisions; but it may be said that in many of the courts, as between vendor and vendees, chattels have been treated as fixtures which bore *such a relation to the land* at the time of the sale as to be essential to its use or enjoyment, and insusceptible of being removed without injury, or used advantageously elsewhere: (See Sm. L. C., Hare and Wallace's notes, II., 279).

OSGOODE HALL.

Michaelmas Term, 1875.

At the opening of the Court of Queen's Bench, the Hon. John Hillyard Cameron, as the leader of the Bar, on the new Chief Justice taking his seat, offered his own and the congratulations of his brethren to Mr. Harrison on his elevation to the bench. The Chief Justice made a happy reply, briefly thanking the Bar for their kind wishes, and expressing a hope that he might not be unworthy of the high trust which had been confided to him.

Early in the term the new rules for the conduct of business in term were promulgated. They are given at length in another place.

The following is a list of the gentlemen who succeeded in passing the recent examinations at Osgoode Hall:

Calls to the Bar: Alex. Ferguson, who passed without an oral; G. A. Raden-

hurst, D. A. O'Sullivan, T. H. McGuire, K. Goodman, E. H. Dickson. Seven students were rejected.

Attorneys admitted: The following gentlemen, out of sixteen who presented themselves for examination, were admitted: T. C. W. Haslett, A. J. McColl, D. A. O'Sullivan, D. W. Clendenan, G. W. Grote, C. M. Garvey, A. R. Lewis.

First Intermediate: Without an oral, D. M. McIntyre, O. R. Macklem, Trevyllian Ridout, J. Nichols; with an oral, James Craig, J. J. McCracken, H. D Gamble, J. G. Stone, Frank Madill, J. A. Palmer, L. B. Hall, A. Zimmerman, R. Harcourt, J. G. Kelly, J. G. Currell, T. W. Phillips, W. E. Hodgins, F. J. Brown, D. R. Springer, Wm. Lawrence, J. B. Morroll, Jas. Crowther.

Second Intermediate: Without an oral, John L. Whiting, J. Dowdall, J.W. Gordon, James Fullerton, C. L. Ferguson; with an oral, T. W. Howard, F. M. Morson, T. J. Decatur, H. P. Milligan, P. L. Palmer, W. B. Dougherty, J. L. Whiteside, G. M. Lee, Henry M. East, Thos. D. Cowper, E. F. Johnson, C. F. Smith, J. Bishop, C. Gordon, H. Vivian.

JUDICIAL COMMENTS ON JUDGES.

(*Concluded.*)

Shadwell, V.C.—"So famous for his skill in questions of construction," per Bacon, V.C., in *Re Steven's Trusts*, 21 W. R. 119. "His views as to the power of disposition over the reversionary property of married women were less strict than those established by more recent cases." See *Re Godfrey's Trusts*, Ir. R. 1 Eq. 533.

Smith, John William.—Though not a judge, his opinion on a question of mercantile law was preferred to that of a most able judge. (Taunton J.) in *Tanner* v. *Scovell*, 14 M. & W. 37.

Somers, Lord Chan.—"It ought always to be remembered it was the decision of Lord Somers. That was not the only case in which he stood against the majority of the judges, and the better consideration of subsequent times has shown his opinion deserved all the regard paid to it." Lord Loughborough, in *Thellusson* v. *Woodford*, 4 Ves. 432.

Story, Judge.—He laid down, without precedent, the rule that a master was not responsible for the negligence of a fellow-servant. It was upheld in the Lords, per Martin, B., in *Francis* v. *Cockerell*, 18 W. R. 1208.

Hall v. *Smith*, 1 B & Cr. 407, was over-ruled by the English Exchequer in *Ex P. Buckley*, 14 M. & W. 473, in conformity to an opinion adverse thereto expressed in Story on Partnership. See also *In re Clarke* 1 Phil. 562.

Talbot, Lord Chan.—"A very great Chancellor," per Willes, C.J., in Willes 472. His judgments retain an authority almost untouched by the dissent of later judges. 15 Law Mag. O. S. 50, per Shadwell, V.C., in *Cornewall* v. *Cornewall*, 5 Jur. 745. "One of the greatest real property lawyers that ever filled the office of Lord Chancellor," per Bayley, J., in *Doe* v. *Passingham*, 6 B & Cr. 315.

Tenterden, C.J.—"The chief peculiarity of his decisions consists in the frequent occurrence of 'reasonable.'" 9 Law Mag. O.S. 236. "Eminently learned and accurate," per Tindal, C. J., in *Balme* v. *Hutton*, 1 Crompt & M. 322.

Thurlow, Lord Chan.—Mr. Hargrave was Lord Thurlow's "devil," and his obligations as a judge to this famous lawyer are very great. See 7 Law Mag. O.S. 79; and 29 ib. 80. "A great judge," per Sir R. P. Arden, in *Carruthers* v. *Carruthers*, 4 Bro. Ch. Ca. 511; "of great authority," per same judge, in *Butler* v. *Butler*, 5 Ves. 539.

Tindal, C. J.—The equal of Lord Mansfield in the exposition of legal principles. 36 L. M. O. S. 105.

Trevor, Lord.—"Who had a freer way of thinking than most common law judges," per Lord Hardwicke, in *Sparrow* v. *Hardcastle*, 7 T. R. 418 *n*. "To the maxim of Lord Bacon I shall oppose the saying of Lord Trevor, a man most liberal in his constructions, that many uniform decisions ought to bear weight, that the law may be known," per Lord Hardwicke, in *Ellis* v. *Smith*, 1 Ves. Jr. 17.

Turner, V.C.—At first was a stickler for "rules of practice." See 27 Law Mag. N.S. 269.

Vaughan, B.—Was not a strong judge as compared with his brethren. See 12 Law Mag. O.S. 263.

Wensleydale, Lord.—"Whose mind was deeply imbued, not only with common law, but also with general jurisprudence," per Willes, J., in *Stevens* v. *Tillett*, 19 W. R. 187.

Wigram, V.C.—"A judge so experienced in questions of pleading," per Strong, V.C., in *Longeways* v. *Mitchell*, 17 Gr. 192.

Willes, C.B. of Exchequer in Ireland, was a feeble and inadequate chief judge, who was little aided by the other judges of that court. See Woolrych "Serjeants," Vol. II, p. 569.

Willes, C.J.—"No mean authority," per Park, J., in *Fletcher* v. *Sondes*, 3 Bing. 549. "Certainly a very great common lawyer," per Lord Eldon, in *Smith* v. *Doe*, 7 Pri. 509.

Wilmot, C.J.—"A great lawyer," per Lord Eldon, in Crowley's case, 2 Sw. 65.

Wood, B.—"No judge in modern times better skilled in the interpretation of deeds and wills." 4 Law Mag. O.S. 75. *n.*; See Woolrych "Serjeants," 682, 3.

Wright, J.—"One of the strictest law judges that ever sat in Westminster Hall," per Lord Mansfield, cited in *Milbourn* v. *Ewart*, 5 T. R. 386.

SELECTIONS.

THE HISTORY OF A TITLE.

A CONVEYANCER'S ROMANCE.

Of the locality of the parcel of real estate, the history of the title of which it is proposed to relate, it may be sufficient to say that it lies in Boston within the limits of the territory ravaged by the great fire of November 8th and 9th, 1872. In 1860 this parcel of land was in the undisturbed possession of Mr. William Ingalls, who referred his title to it to the will of his father, Mr. Thomas Ingalls, who died in 1830. Mr. Ingalls, the elder, had been a very wealthy citizen of Boston; and when he made his will, a few years before his death, he owned this one parcel of real estate, worth about $50,000, and possessed, in addition, personal property to the amount of between $200,000 and $300,000. By his will he specifically devised this parcel of land to his wife, for life, and upon her death to his only child, the William Inglass before mentioned, in fee, to whom, after directing his executor to pay to two nephews, William and Arthur Jones, the sum of $25,000 each, he gave also the large residue of his property. After the date of his will, however, Mr. Thomas Ingalls engaged in some unfortunate speculations, and upon the settlement of his estate the personal property proved to be barely sufficient for the payment of his debts, and the nephews got no portion of their legacies. The real estate, however, afforded to the widow a comfortable income, which enabled her during her life to support herself in a respectable manner. Upon her death, in 1845, the son entered into possession of the estate, which had gradually increased in value; and he had been enjoying for fifteen years a handsome income derived therefrom, when he was one day surprised to hear that the two cousins, whom his father had benevolently remembered in his will, had advanced a claim that this real estate should be sold by his father's executor, and the proceeds applied to the payment of their legacies. This claim, now first made thirty years after the death of his father, was of course a great surprise to Mr. Ingalls. He had entertained the popular idea that twenty years possession effectually cut off all claims. Here, however, were parties, after thirty years undisputed possession by his mother and himself, setting up in 1860 a claim arising out of the will of his father, that will having been proved in 1830. Not had Mr. Ingalls ever dreamed that the legacies given to his cousins could in any way have precedence over the specific devise of the parcel of real estate to himself. It was, as a matter of common sense, so clear that his father had intended by his will first to provide for his wife and son, and then to make a generous gift out of the residue of his estate to his nephews, that during the thirty years that had elapsed since his death it had never occurred to any one to suggest any other disposal of the property than that which had actually been made. Upon consulting with counsel, however, Mr. Ingalls learned that although the time within which most actions might be brought was limited to a specified number of years, there

was no such limitation affecting the bringing of an action to recover a legacy. See Mass. Gen. St. c. 97, § 22; *Kent* v. *Dunham*, 106 Mass. 586, 591; *Brooks* v. *Lynde*, 7 Allen, 64, 66. He also learned that as his father's will gave him, after his mother's death, the same estate that he would have taken by inheritance had there been no will, the law looked upon the devise to him as void, and deemed him to have taken the estate by descent. What he had supposed to be a specific devise of the estate to him was then a void devise, or no devise at all; and his parcel of real estate, being in the eye of the law simply a part of an undevised residue, was of course liable to be sold for the payment of the legacies contained in his father's will. It was assets which the executor was bound to apply to that purpose. This exact point had been determined in the then recent case of *Ellis* v. *Page*, 7 Cush. 161; and Mr. Ingalls was finally compelled to see the estate, the undisputed possession of which he had enjoyed for so many years, sold at auction by the executor of his father's will for $135,000, not quite enough to pay the legacies to his cousins, which legacies, with interest from the expiration of one year after the testator's death, amounted at the time of the sale in 1862 to $143,000. The Messrs. Jones themselves purchased the estate at the sale, deeming the purchase a good investment of the amount of their legacies, and Mr. Ingalls instituted a system of stricter economy in his domestic expenses, and pondered much on the uncertainty of the law and the mutability of human affairs.

By one of those curious coincidences which so often occur, Messrs. William and Arthur Jones had scarcely begun to enjoy the increased supply of pocket money afforded them by the rents of their newly acquired property, when they each received one morning a summons to appear before the Justices of the Superior Court, "to answer unto John Rogers in a writ of entry," the premises described in the writ being their newly acquired estate.

The Messrs. Jones were at first rather startled by this unexpected proceeding; but as they had, when they received their deed from Mr. Ingalls's executor, taken the precaution to have the title to their estate examined by a conveyancer, who had reported that he had carried his examination as far back as the beginning of the century and had found the title perfectly clear and correct, they took courage, and waited for further developments. It was not long, however, before the facts upon which the writ of entry had been founded were made known. It appeared that for some time prior to 1750 the estate had belonged to one John Buttolph, who died in that year, leaving a will in which he devised the estate "to my brother Thomas, and, if he shall die without issue, then I give the same to my brother William." Thomas Buttolph had held the estate until 1775, when he died, leaving an only daughter, Mary, at that time the wife of Timothy Rogers. Mrs. Rogers held the estate until 1790, when she died, leaving two sons and a daughter. This estate she devised to her daughter, who subsequently, in 1800, conveyed it to Mr. Thomas Ingalls, before mentioned. Peter Rogers, the oldest son of Mrs. Rogers, was a non-compos, but lived until the year 1854, when he died at the age of 75. He left no children, having never been married. John Rogers, the demandant in the writ of entry, was the oldest son of John Rogers, the second son of Mrs. Mary Rogers, and the basis of the title set up by him was substantially as follows. He claimed that under the decision in *Hayward* v. *Howe*, 12 Gray 49, the will of John Buttolph tail, the law construing the intention of the testator to have been that the estate should belong to Thomas Buttolph and to his issue as long as such issue should exist, but that upon the failure of such issue, whenever such failure might occur, whether at the death of Thomas or at any subsequent time, the estate should go to William Buttolph. It had also been decided in *Corbin* v. *Healy*, 20 Pick. 514, 516, that an estate tail does not descend in Massachusetts, like other real estate, to all the children of the deceased owner, in equal shares, but, according to the old English rule, exclusively to the oldest son, if any, and to the daughters only in default of any son; and it had been further decided in *Hall* v. *Priest*, 6 Gray, 18, 24, that an estate tail cannot be devised or in any way affected by the will of a tenant in tail. Mr. John Rogers claimed then that the estate tail given by the will of John Ruttolph to Thomas Ruttolph had descended at the death of Thomas to his

only child, Mary Rogers; that at her death, instead of passing, as had been supposed at the time, by virtue of her will, to her daughter, that will had been wholly without effect upon the estate, which had, in fact, descended to her oldest son, Peter Rogers. Peter Rogers had indeed been disseized in 1800, if not before, by the acts of his sister in taking possession of and conveying away the estate; but, as he was a non-compos during the whole of his long life, the Statute of Limitations did not begin to run against him, and his heir in tail, namely, John Rogers, the oldest son of his then deceased brother, John, was allowed by Mass. Gen. St. c. 254, § 5, ten years after his uncle Peter's death, within which to bring his action. As these ten years did not expire until 1864, this action, brought in 1863, was seasonably commenced; and it was prosecuted with success, judgment in his favour having been recovered by John Rogers in 1865.

The case of *Rogers* v. *Jones* was naturally a subject of remark among the legal profession; and it happened to occur to one of the younger members of that profession that it would be well to improve some of his idle moments by studying up the facts of this case in the Suffolk Registries of Deeds and of Probate. Curiosity prompted this gentleman to extend his investigation beyond the facts directly involved in the case, and to trace the title of Mr. John Buttolph back to an earlier date. He found that Mr. Buttolph had purchased the estate in 1730 of one Hosea Johnson, to whom it had been conveyed in 1710 by Benjamin Parsons. The deed from Parsons to Johnson, however, conveyed the land to Johnson simply, without any mention of his "heirs;" and the young lawyer, having recently read the case of *Buffum* v. *Hutchinson*, 1 Allen 58, perceived that Johnson took under this deed only a life estate in the granted premises, and that at his death the premises reverted to Parsons or to his heirs. The young lawyer, being of an enterprising spirit, thought it would be well to follow out the investigation suggested by his discovery. He found, to his surprise, that Hosea Johnson did not die until 1786, the estate having, in fact, been purchased by him for a residence when he was twenty-one years of age, and about to be married. He had lived upon it for twenty years, but had then moved his residence to another part of the city, and sold the estate, as we have seen, to Mr. Buttolph. When Mr. Johnson died, in 1786, at the age of ninety-seven, it chanced that the sole party entitled to the reversion, as heir of Benjamin Parsons, was a young woman, his granddaughter, aged 18, and just married. This young lady and her husband lived, as sometimes happens, to celebrate their diamond wedding in 1861, but died during that year. As she had been under the legal disability of coverture from the time when her right of entry upon the estate, as heir of Benjamin Parsons, first accrued, at the termination of Johnson's life estate, the provision of the Statute of Limitations, before cited, gave her heirs ten years after her death within which to bring their action. These heirs proved to be three or four people of small means, residing in remote parts of the United States. What arrangements the young lawyer made with these parties and also with a Mr. John Smith, a speculating moneyed man of Boston, who was supposed to have furnished certain necessary funds, he was wise enough to keep carefully to himself. Suffice it to say that in 1869 an action was brought by the heirs of Benjamin Parsons to recover from Rogers the land which he had just recovered from William and Arthur Jones. In this action the plaintiffs were successful, and they had no sooner been put in formal possession of the estate than they conveyed it, now worth a couple of hundred thousand dollars, to the aforesaid Mr. John Smith, who was popularly supposed to have obtained in this case, as he usually did in all financial operations in which he was concerned, the lion's share of the plunder. The Parsons heirs, probably, realised very little from the results of the suit; but the young lawyer obtained sufficient to establish him as a brilliant speculator in suburban lands, second mortgages, and patent rights. Mr. Smith had been but a short time in possession of his new estate when the great fire of November, 1872, swept over it. He was, however, a most energetic citizen, and the ruins were not cold before he was at work rebuilding. He bought an adjoining lot in order to increase the size of his estate, the whole of which was soon covered by an elegant block, conspicuous on the front of which may now be seen his initials, "J. S.," cut in the stone.

While the estate which had once be-

longed to Mr. William Ingalls was passing from one person to another in the bewildering manner we have endeavoured to describe, Mr. Ingalls had himself, for a time, looked on in amazement. It finally occurred to him, however, that he would go to the root of this matter of the title. He employed a skilful conveyancer to trace that title back, if possible, to the Book of Possessions. The result of this investigation was that it appeared that the parcel which he had himself owned, together with the additional parcel bought and added to it by Smith, had, in 1643 or 1644, when the Book of Possessions was compiled, constituted one parcel, which was then the "possession" of one "Madid Engles," who subsequently, in 1660, under the name of "Mauditt Engles," conveyed it to John Vergoose, on the express condition that no building should ever be erected on a certain portion of the rear of the premises conveyed. Now it had so happened that this portion of these premises had never been built upon before the great fire, but Mr. Smith's new buildings had covered the whole of the forbidden ground. It was evident, then, that the condition had been broken; that the breach had occurred so recently that the right to enforce a forfeiture was not barred by the statute, and could not be deemed to have been waived by any neglect or delay; and that consequently, under the decision in *Gray* v. *Blanchard*, 8 Pick. 284, a forfeiture of the estate for breach of this condition could now be enforced if the true parties entitled by dissent and by residuary devises under the original "Engle" or "Engles" could only be found. It occurred to Mr. Ingalls, however, that this name "Engles" bore a certain similarity in sound to his own; and as he had heard that during the early years after the settlement of this country, great changes in the spelling of names had been brought about, he instituted an inquiry into his own genealogy, the result of which was, in brief, that he found he could prove himself to be the identical person entitled, as heir of Madrid Engle, to enforce, for breach of the condition in the old deed of 1660, the forfeiture of the estate now in the possession of John Smith.

When Mr. Smith heard of these facts, he felt that a retributive Nemesis was pursuing him. He lost the usual pluck and bull-dog determination with which he had been accustomed to fight at the law all claims against him, whether just or unjust. He consulted the spirits; and they rapped up the answer that he must make the best settlement he could with Mr. Ingalls, or he would infallibly lose all his fine estate,—not only that part which Mr. Ingalls had originally held, and which he had obtained for almost nothing from the heirs of Benjamin Parsons, but also the adjoining parcel for which he had paid its full value, together with the elegant building which he had erected at a cost exceeding the whole value of the land. Mr. Smith believed in the spirits; they had made a lucky guess once in answering an inquiry from him; he was getting old; he had worked like a steam-engine during a long and busy life, but now his health and his digestion were giving out; and when the news of Mr. Ingalls' claim reached his ears, he became, in a word, demoralised. He instructed his lawyer to make the best settlement of the matter that he could, and a settlement was soon effected by which the whole of Mr. Smith's parcel of land in the burnt district was conveyed to Mr. Ingalls, who gave back to Mr. Smith a mortgage for the whole amount which the latter had expended in the erection of his building, together with what he had paid for the parcel added by him to the original lot. Mr. Smith, not liking to have anything to remind him of his one unfortunate speculation, soon sold and assigned this mortgage to the Massachusetts Hospital Life Insurance Company; and as the well-known counsel of that institution has now examined and passed the title, we may presume that there are in it no more flaws remaining to be discovered.

In conclusion, we may say that Mr. William Ingalls, after having been for some ten years a reviler of the law, especially of that portion of it which relates to the title to real estate, is now inclined to look more complacently upon it, being again in undisturbed and undisputed possession of his old estate, now worth much more than before, and in the receipt therefrom of an ample income which will enable him to pass the remainder of his days in comfort, if not in luxury. But, though Mr. Ingalls is content with the final result of the history of his title, those lawyers who are known as "conveyancers" are by no means happy when they contem-

plate that history, for it has tended to impress upon them how full of pitfalls is the ground upon which they are accustomed to tread, and how extensive is the knowledge and how great the care required of all who travel over it; and they now look more disgusted than ever, when, as so often happens, they are requested to "just step over" to the Registry and "look down" a title; and are informed that the title is a very simple one, and will only take a few minutes; and that So-and-so, "a very careful man," did it in less than half an hour last year, and found it all right, and that *his* charge was five dollars.—*American Law Review.*

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

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

East Northumberland Election Petition.

Casey v. Ferris.

Agency—Delegates to political associations to nominate candidates and promote their return—Fraudulent device to influence voters. 32 *Vict. cap.* 21, *sec.* 72.

By the constitution of the Reform Association for the East Riding of Northumberland, each delegate to the convention was actively to promote the election of the candidate appointed by the convention. The candidate had himself been for six years a member of this organisation, and was familiar with its objects and constitution. He had also as a delegate acted for other candidates in the promotion of their elections, and expected the like assistance from the present members of the Association. No committees were formed, and it was the recognised business of the Association to see to the necessary canvass and organisation for polling day.

Held, that delegates to the Association, and acting as such in promoting the election of the candidate, were his agents, for whose acts he was responsible.

Shortly before polling day respondent's agents issued a circular, signed by the President of the Reform Association, the substance of which was that they had ascertained upon undoubted authority that Webb, despairing of election himself, was procuring his friends to vote for Cochrane. This statement Webb declared to be false.

Held, that this was not a "fraudulent device," within the meaning of sec. 72 of 32 Vict. cap. 21, to interfere with the free exercise of the franchise of voters.

[Cobourg, Sept. 22; Toronto, Oct. 1, 1875. Gwynne, J.]

The trial of this petition took place at Cobourg before Mr. Justice Gwynne.

There were three candidates—Ferris, Webb and Cochrane. Mr. Ferris was the nominee of the Reform Association, and was the successful candidate. A night or two before the polling some letters or circulars were sent to different leading men, stating that Mr. Webb had despaired of success, and wanted his friends to vote for Mr. Cochrane. Mr. Webb denied the truth of this report.

The main points that arose at the trial were (1) as to the agency of one Richmond, a delegate to the Reform Association, and acts of bribery said to have been committed by him whereby the respondent's election would have been avoided; and (2) as to the effect of the circular as to Webb's alleged resignation, spoken of above, which it was said was a fraudulent device to influence voters.

D'Alton McCarthy for petitioner.

J. D. Armour for respondent.

Gwynne, J. The evidence establishes, beyond all doubt in my mind, that it is part of the constitution and organisation of the Reform Association in this Riding (whose candidate the respondent was) that the delegates to the convention, consisting of ten persons from each township and five from each village municipality, should, so long as they might remain in office—that is, until displaced by other delegates—act in promoting the election of the candidate adopted by the convention, in all respects and in the same manner as persons appointed agents by candidates are in the habit of doing for that purpose; that the candidate looked for, expected and demanded such their assistance and agency to carry his election, and that in consequence thereof, and because of the perfection of the organisation as a canvassing and general agency to conduct the election, the candidate chosen by the convention appointed no agent of his own, but uses those provided by the organisation. The evidence also establishes that the respondent was for six years himself a delegate—that he was well aware of the nature of the organisation—that as a delegate he canvassed and acted for other candidates in the promotion of their election, and that he expected and demanded like services from all the delegates, to be rendered to him upon his candidature; and that to the perfection of that system as an electioneering agency the respondent owes his election. The evidence in like manner establishes that Cyrus Richmond was a delegate—that he was a sup-

porter of the respondent in the convention; voted for his candidature—that, although perhaps not very active at first, he worked for the respondent to promote his election in canvassing for him, arranging for the bringing up of voters, and otherwise as is customary with nominated agents, and that the respondent, as the nominee of the convention, expected and claimed to be entitled to such his support and assistance.

Under these circumstances, I must hold that Mr. Richmond was a person for whose acts the repondent is responsible. It is said that the organisation is such, in express terms, that the candidate shall only receive the assistance of the delegates as committeemen on his behalf in all matters that are legal. That is precisely the authority given to all election agents. No man appoints another his agent to do an illegal act; he appoints him only to do legal acts; but if, instead of confining himself to such, he does illegal acts amounting to bribery and such like, the candidate is responsible.

The first question then to be decided is: whether or not Cyrus Richmond did make to Arthur Lyndon the offer of a bribe, which it is charged that he did make [The learned judge, after discussing at length the evidence on this point, decided that an act of bribery had been committed by Richmond, and on that ground declared the election void.]

As to the other point raised, namely, the issuing of the circular on the Saturday night preceding the polling day, there is no doubt in my mind that all the parties to the issuing of that circular were persons who, equally with Richmond, who was himself one of them, must for the same reason be regarded as the respondent's agents, for whom he must be held responsible. I am, however, of opinion, that even assuming the matters stated in the circular to be false to the knowledge of the parties issuing it, it does not come within the 72nd sec. of the Act of 1868, which enacts that "everybody who shall directly or indirectly, by himself, or by any other person on his behalf, by any fraudulent device or contrivance impede, prevent *or otherwise* interfere with the free exercise of the franchise of any voter, shall be deemed to have committed the offence of undue influence." It is, in my judgment, distinguishable from the *Gloucester case*, 2 O'M. & H. 60, which is the only case reported having any resemblance to the present. There the act complained of was one which if it had been designed with the intent imputed would have been calculated to have the effect of misleading persons without any exercise of judgment to place their mark on the ballot paper opposite the respondent's name only, and so have been calculated to make persons, by a trick and deception, vote for a candidate for whom at the time of voting they did not intend to vote. In the case before me, the most that can be said is (assuming the statement in the circular to be false to the knowledge of the parties issuing it), that they were by a falsehood appealing to the electors to exercise their judgment in voting for the friend of the parties issuing the circular.

Now I do not think that this clause of the statute was intended to cover cases where parties, although it be by falsehood and slander, appeal to the electors to exercise their judgment how to vote. Election squibs, it is to be regretted, are accustomed to deal freely with the character of opposing candidates; this, although a practice which is immoral in the extreme and to be condemned by all honest men, has not as yet, in my judgment, been touched by legislation.

Election set aside.

NISI PRIUS.

Swartwout v. Skead.

Certificate for costs—County Court jurisdiction.

Claim for $475, ascertained by agreement between the parties, reduced by payment to an amount within County Court jurisdiction. The plaintiff, howevere before he could recover was obliged to give evidenc, of the fulfilment of a condition. *Held*, that the plaintiff was entitled to a certificate for full costs.

[Ottawa, October 5th, 1875.—Patterson, J.]

This was a case tried at the last Ottawa Assizes.

The particulars of the plaintiff's claim were as follows:—

1872.

May 1.	To one patent log turner.....	$175 00	
	To royalty on two Swartwout patent gangs, as per agreem't	300 00	
			475 00
	Cr.		
	By cash on account....$100 00		
	By allowance for putting in logs.....	25 00	
		125 00	
	Balance due.....		$350 00

At the close of the case the presiding judge, Mr. Justice Patterson, found in effect that the defendant had agreed to pay the plaintiff $300

at the end of the sawing season if the patent was satisfactory; that as no objection was at that time made to the patent, the $300 then became due and payable by the defendant; also, that the defendant had purchased the log turner at the price of $175, and that the plaintiff had also agreed to an abatement of $25 for the putting up of the same. The learned judge entered a verdict for the plaintiff, and damages at $246 with interest.

Bethune, for plaintiff, moved for a certificate for Superior Court costs.

Christie, for defendant, opposed the application, on the ground that the claim was for liquidated damages ascertained by the act of the parties, and reduced by payment to a sum below $400.

PATTERSON, J., granted the certificate applied for on the ground that although the price was ascertained by the agreement of the parties, yet the amount did not become due and payable until the fulfilment of a condition which the plaintiff had to prove, and about which there was a conflict of evidence, and he was therefore entitled to a certificate for full costs.

Certificate granted.

COMMON LAW CHAMBERS.

CASEY v. MCGRATH.

Ejectment—Notice limiting defence.

When a defendant files his appearance, the cause is at issue, and the plaintiff may serve issue book and notice of trial. Defendant may, however, within four days, give notice limiting his defence; and, if he do, may, under the powers of amendment in the Administration of Justice Act, have the issue book amended in accordance with the limitation, but he is not entitled to have the notice of trial set aside.

[Chambers, Nov. 2, 1875.—MR. DALTON.]

The defendant having filed his appearance and notice denying plaintiff's title, and claiming title in himself in ordinary form, the plaintiff made up the issue book and served it together with notice of trial. Subsequently to the service of the issue book and notice of trial, but within the four days allowed by the C. L. P. Act, sec. 12, defendant filed notice limiting his defence; and immediately obtained a summons calling upon the plaintiff to shew cause why the issue book and notice of trial herein should not be set aside for irregularity, on the ground that the issue book did not contain defendant's notice limiting defence.

Osler shewed cause. As soon as a defendant in ejectment files his appearance, the cause is at issue, and plaintiff is at liberty to serve the issue book and notice of trial forthwith. According to section 12 of the C. L. P. Act, "an appearance without such notice confining the defence to a part, shall be deemed an appearance to defend for the whole." If defendant wish to limit his defence, the proper practice is to file and serve notice to that effect with the appearance; and if this is not done, plaintiff may proceed on the understanding that the cause is at issue. The notice which defendant files, limiting his defence, is on its face embarrassing; so that the proceeding looks very like a trick to throw the plaintiff over the Assizes, and, on the authority of *Vrooman* v. *Vrooman*, 17 U. C. C. P. 523, should be struck out. Under the powers of amendment in the Administration of Justice Act, the defendant should not be allowed to defeat the plaintiff's notice of trial.

Davidson contra. Under section 12 of C. L. P. Act, defendant's notice limiting his defence is perfectly good if filed within four days after the filing of his appearance. This is a right given by the Act, which cannot be overridden by plaintiff's voluntary expedition in making up and serving his issue book before the expiration of the four days. The notice of trial should be set aside, and the issue book amended by inserting defendant's notice limiting his defence. See *Grimshawe* v. *White*, 12 U. C. C. P. 521, and *Phillips* v. *Winter*, 3 Prac. R. 312.

MR. DALTON.—It is quite true that under the Act defendant has four days after appearance within which to file his notice limiting defence. It is also true that when a defendant wishes to defend for a portion merely of the land claimed by plaintiff, the practice is to file a notice limiting his defence to the particular portion which he claims at the same time that he files his appearance. If, then, as in the present instance, the defendant choose to take advantage of the four days allowed him by section 12, and file his appearance without such notice, the plaintiff is also justified in considering that the defendant intends to defend for the whole. This being the case, the plaintiff, when he finds a simple appearance filed, may properly treat the cause as at issue, and proceed accordingly. The clause of the Administration of Justice Act as to amendments obviates, in my opinion, the difficulties under the former practice. The defendant has, of course, a right to have the issue book amended so as to include his notice limiting defence; but I cannot set aside plaintiff's notice of trial.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS FOR MAY, JUNE, AND JULY, 1875.

(*From the American Law Review.*)

Accessory.

One Tubbs quarrelled with one Dulgar, and they agreed to settle the matter with their fists: and each put up £1 to bind each other to fight, and handed the money over to the prisoner. The fight took place in the absence of the prisoner, and Tubbs won, and Dulgar died in consequence. The prisoner, without knowledge of Dulgar's death, paid the money to Tubbs. *Held*, that the prisoner was not accessory before the fact to the manslaughter. —*Queen* v. *Taylor*, L. R. 2 C. C. 147.

Action.—*See* Res Adjudicata.

Ademption.—*See* Resulting Trust.

Adverse Possession.—*See* Dedication.

Agency.—*See* Frauds, Statute of; Principal and Agent.

Agreement.—*See* Contract; Lease, 2.

Ambiguity.—*See* Will, 2.

Ancient Light.

Bill to restrain building on a vacant lot of land, and thereby obstructing the plaintiff's land. It appeared that as far back as living memory went the windows had existed, but that two of them had been enlarged within a recent period. For twenty-five years, and nearly until the beginning of this suit, there had been unity of possession of the vacant lot and the building, but not unity of title. The defendant was restrained from interfering with the windows as they originally existed; and the Court refused to impose as a condition that the plaintiff should reduce the windows to their original size.—*Aynsley* v. *Glover*, L. R. 10 Ch. 283.

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

Apprentice.—*See* Contract, 5.

Arbitration.—*See* Partnership, 1; Specific Performance.

Assignment.—*See* Insurance, 3, 6; Trust.

Attorney's Fees.—*See* Fees.

Average.—*See* Insurance, 4.

Bankruptcy.

1. A creditor recovered judgment against his debtor, obtained judgment, and satisfied his debt. After the sale on execution, the creditor obtained a second execution against the debtor and the proceeds of the sale paid over to the creditor by the sheriff, who had no notice of any bankruptcy petition against the debtor. Afterwards the debtor was adjudicated a bankrupt upon the act of bankruptcy committed by seizure and sale under the first execution. *Held*, that though it did not appear that the creditor had any knowledge of the sale under the first execution when the second sale took place, he must be deemed to have had constructive notice, and must refund the money obtained under the second execution. *Ex parte Dawes. In re Husband*, L. R. 19 Eq. 438.

2. A bank which held acceptances against advances to J. S., took from G. S. a guarantee that it should not lose anything beyond £2000. The guarantee was given after proceedings in bankruptcy against J. S. were begun, and after the bank's representative had attended a meeting of creditors; and in consequence the bank forbore to take proceedings against J. S., or to prove against his estate, and did not attend subsequent meetings. *Held*, that the guarantee operated to give the bank a secret preference, and was invalid.—*McKewan* v. *Sanderson*, L. R. 20 Eq. 65.

See Equity to Settlement.

Bequest.—*See* Devise; Legacy; Mortmain.

Bill in Equity.—*See* Discovery; Equity; Injunction, 1; Stay of Proceedings.

Bills and Notes.

The contract for building a vessel provided that payment was to be made by payments at different stages of construction of the vessel, of cash and bills of exchange, which were to be retired at completion and transfer. As each payment was made, the vessel was to become the property of the purchaser to the extent of his payment, subject to the builder's lien for unpaid instalments. Payments were made accordingly, and the bills negotiated. The purchaser went into liquidation, and included in his statement his liability on said bills. The holders refused to accept a composition which was tendered. The purchaser gave notice to the builder that he abandoned the contract. The builder became bankrupt, his trustee completed the vessel, and said bill holders claimed a lien for the amount they had paid for the bills. *Held*, that the bill holders had no lien. *Ex parte Lambton. In re Lindsay*, L. R. 10 Ch. 405.

See Check; Contract, 6.

Bonds.—*See* Negotiable Paper.

Carrier.

1. The plaintiff travelled on a railway, paying nothing, the condition, which he knew, being that he travelled at his own risk. The train stopped on a bridge, the parapet of which was low and dangerous, and the night was dark. The plaintiff fell over the parapet and was injured. *Held*, that the plaintiff travelled at his own risk during his access and departure from the railway as well as during the transit.—*Gallin* v. *London and North-Western Railway Co.*, L. R. 10 Q. B. 212.

2. Sixty bales of flax arrived at the defendants' railway station consigned to the plaintiffs, and the next day the defendants notified the defendants that they held the flax not as carriers, but as warehousemen, at owner's sole risk, and subject to usual warehouse charges. The plaintiffs removed some of the

flax, and saw that it was stacked in the open air. The defendants had no warehouses at the station. The flax was subsequently spoiled by wet. It was admitted that if the defendants were bound to take reasonable care of the flax, they had not done so. *Held*, that the defendants were liable for the damage. *Mitchell* v. *Lancashire and Yorkshire Railway Co.*, L. R. 10 Q. B. 256.

Charitable Gift.—*See* Mortmain.

Charter-party.—*See* Demurrage.

Check.

An existing debt forms sufficient consideration for a check or negotiable instrument payable on demand so as to constitute the creditor a holder for value.—*Currie* v. *Misa*, L. R. 10 Ex. (Ex. Ch.) 153.

Class.—*See* Legacy, 4.

Coal-mine.—*See* Tenant in Common.

Codicil.—*See* Will, 1.

Compromising Criminal Proceedings.—*See* Injunction, 5.

Condition.—*See* Legacy, 2, 3; Vendor and Purchaser, 1, 2.

Consideration.—*See* Check; Vendor and Purchaser, 4.

Construction. — *See* Devise; Easement; Grant; Lease, 2; Legacy; Mortmain; Trust.

Contract.

1. The defendant invited offers for the execution of the works comprised in certain specifications and plans for the purpose of building a bridge across a river. The plaintiff covenanted that he would complete the work in the manner described in the specifications, and do the work according to the terms of the specifications; and the agreement contained a condition that if the mode of doing the work was altered, which the defendant's engineer might do, the plaintiff should do it in the altered way, and if in consequence he incurred expense, he should have compensation of the amount, of which said engineer was to be the sole judge. According to the specifications, the foundations of the piers were to be laid by means of caissons, as shown in a drawing. The plaintiff attempted to lay the piers accordingly, but after much expense it was found impracticable to do it in the above manner, and a new method was adopted, by directions of the engineer. The plaintiff brought an action for the value of the work thrown away. *Held*, that the plaintiff could not recover.—*Thorn* v. *Mayor of London*, L. R. 10 Ex. (Ex. Ch.) 112.

2. The defendants contracted to sell to the plaintiffs 2000 tons of iron, "deliverable in monthly quantities." The defendants delivered on several months less than the amount of iron due monthly, at the request of the plaintiffs. During the month when the last instalment was due, the plaintiffs requested the whole of the undelivered portion of the 2000 tons, but the defendants refused to deliver more than that due on the monthly balance for the last month. *Held*, that the defendants were obliged to deliver the iron some time, and having refused to deliver it at all they had broken their contract.—*Tyers* v. *Rosedale and Ferryhill Iron Co.*, L. R. 10 Ex. 195.

3. Case stated. The plaintiffs claimed to recover certain boilers and machinery detained by the defendants, or to recover back two sums of £2000 each, paid under the following circumstances: The defendants contracted to supply new boilers and machinery for the plaintiffs' steamer, to the satisfaction of the plaintiffs' inspector. Notice was to be given of the date when the steamer would be placed in the defendants' hands, and the steamer was to be ready in sixty days thereafter. The price to be paid was £5800, payable as follows: When the boilers were plated, £2000; when the whole of the work was ready for fixing on board, £2000; when the steamer was completed and tried under steam, £1800. The boilers were plated, and the defendants received £2000. The old materials taken from the steamer were to become the property of the plaintiffs. The work was completed, and the second £2000 paid by the plaintiffs, who then knew, though the defendants did not know, that the vessel was lost. The defendants then learned of the loss, and requested the remaining £1800, but it was not paid; and then the plaintiffs demanded the boilers and machinery. *Held*, that the plaintiffs were not entitled to recover either the machinery or the £4000 already paid by them.—*Anglo-Egyptian Navigation Co.* v. *Rennie*, L. R. 10 C. P. 271.

4. The defendants, a municipal corporation, owned a dock, for the use of which there were certain printed regulations, to the effect that the dock would be let to parties requiring the same for the repair of vessels, at a certain rate; a book was to be kept by the defendants in which the names of all vessels intended for repair in the dock would be entered, and priority was to be given in the order of entry; the defendants to have a lien on the vessel and detain her for dockage. There were many other regulations relating to the management of the dock by the defendants. The plaintiff's vessel was not admitted in its proper turn. *Held*, that the contract for admission was not a contract for an interest in land under the Statute of Frauds, and that the contract need not be under the seal of the corporation.—*Wells* v. *Kingston-upon-Hull*, L. R. 10 C. P. 402.

5. The defendant agreed to take the plaintiff's son as an apprentice, and teach him the business of a tea-broker, provided he should obey all commands, and give his services entirely to the business during office hours. The defendant dismissed the son for wilful disobedience and habitual neglect of his duties in the office. *Held*, that the defendant was entitled to discharge the son under the proviso.—*Westwick* v. *Theodor*, L. R. 10 Q. B. 224.

6. We hereby agree to borrow of C. R. the sum of £50, at the rate of £6 per cent. per

annum; and the said C. R. agrees to lend the said society the above sum for the term of nine or six months. *Held*, that the option of nine or six months was with the borrowers.—*Reed* v. *Kilburn Co-operative Society*, L. R. 10 Q. B. 264.

See CARRIER, 2; DAMAGES; ESTOPPEL; FRAUDS, STATUTE OF, 2; INJUNCTION, 1; INSURANCE; PARTNERSHIP, 1; PATENT, 1; SALE; SPECIFIC PERFORMANCE.

COPYRIGHT.

The plaintiff employed a person to collect and compile monumental designs taken from different tombstones in cemeteries, by means of photographs and drawings. A book containing these designs and scarcely any letter-press was duly registered. *Held*, that the plaintiff had a copyright in the book.—*Grace* v. *Newman*, L. R. 19 Eq. 623.

CORPORATION.—*See* CONTRACT, 4.

COUNSEL FEES.—*See* FEES.

COVENANT.—*See* CONTRACT, 5; LEASE, 4.

DAMAGES.

1. The plaintiffs lost the carriage of certain emigrants to America in a vessel called the "Peter Jebsen," because of the defendants' breach of contract; and the emigrants were carried to America in a vessel belonging to another line, in which certain of the plaintiffs were interested. *Held*, that the damages were not to be reduced by the profits made by such of the plaintiffs as were interested in the second line.—*Jebsen* v. *East and West India Dock Co.*, L. R. 10 C. P. 300.

2. The defendants contracted to deliver 2000 gray shirtings on October 20. On October 15, the defendants informed the plaintiff that they could not execute the order by the time specified. The plaintiff being unable to find goods of the required quality, or to have them manufactured by October 20, bought shirtings near the quality contracted for, although somewhat superior, for which he paid an advanced price, and he delivered them to his vendee without obtaining any advance in price for them, or any advantage from their superior quality. *Held*, that the plaintiff was entitled to recover the difference between the contract price with his vendee and the price he had to give for the shirtings he purchased. *Hinde* v. *Liddell*, L. R. 10 Q. B. 265.

DEATH.

A quarterly payment of about £5 was paid, near the end of March, 1866, to a woman fifty-two years of age, who was entitled to a life-interest in a fund. She left her home March 25, 1866, stating that she was going on a pedestrian tour in Lincolnshire; and she was never heard of again. A petition was presented in March, 1875, for the purpose of having the fund paid over to the persons entitled on the death of said woman. *Held*, that she must be presumed to have died soon after June, 1866.—*Hickman* v. *Upsall*, L. R. 20 Eq. 136.

DEDICATION.

In January, 1850, the owner of a lot of land demised two seams of coal under it to K., the owner of an adjoining lot, for six years, by deed, containing a covenant that a street should, within five years from the date of the deed, be formed and opened over and along both the said lots, and that a sewer should be made under such road, and that each of them, the lessor and lessee, should, at his own cost, form, construct, and repair so much of the said road and sewer as should extend along the respective lands belonging to him; and that the said road should be used as a public road for all purposes for ever thereafter, and should be maintained by each of said parties so far as the same might extend over the land belonging to him until the same should be taken by the surveyor of highways. No such road or sewer were ever begun. In 1851, openings were made in the walls surrounding the leased lot, through which carts and foot passengers passed. In 1869, posts and chains were placed across the openings, but were removed after a few months. In 1871, K.'s land was conveyed to the plaintiff, who in 1872 received notice from a board of health to sewer and pave said road. *Held*, that there had been no dedication of the way to the public.—*Healey* v. *Corporation of Batley*, L. R. 19 Eq. 375.

DEED.—*See* EASEMENT.

DEMURRAGE.

Under a charter-party a ship was to proceed to W., and there load a cargo in the customary manner, and proceed to R., and there deliver the cargo, to be discharged in ten working days, weather permitting. Demurrage at £2 per 100 tons per day. The ship to have an absolute lien on cargo for freight and demurrage, the charterer's liability to any clauses in this charter ceasing when he has delivered the cargo alongside ship. The ship proceeded to W., and the plaintiff subsequently claimed damages for her delay in loading there. *Held*, that "demurrage" in the charter-party did not extend to improper detention at the port of loading.—*Lockhart* v. *Falk*, L. R. 10 Ex. 132.

DEMURRER.—*See* EQUITY.

DEPOSIT.—*See* VENDOR AND PURCHASER, 1.

DEVISE.

A testator who owned real estate, and held leasehold collieries, devised his real estate, and also all his leasehold estates, to trustees upon trust, as to one moiety in trust for a married daughter for life, and after her death, in trust for her husband for life, and after the death of the survivor, in trust for the daughter's son absolutely. And as to the other moiety in trust for the separate use of his unmarried daughter for life, without restraint upon anticipation. The testator empowered the married daughter and her husband, or the survivor of them, and also the unmarried daughter, to appoint such sums as they should think proper to be raised and paid out of his

real and personal estates respectively, for portions for younger children ; and he empowered his unmarried daughter to appoint that any part, not exceeding one-half of the rents, issues, and profits, interest, dividends, and annual income of her moiety, should be paid to any husband she might marry. He empowered his trustees at any time, and from time to time, to levy, raise, pay, and apply, for the advancement of the respective eldest sons of his daughters, any part of the respective moieties. He authorised his trustees to apply so much as they should think fit of the income and annual produce of the respective moieties for the education and maintenance of such eldest sons. The testator authorised his trustees to lease all or any part of his freehold or leasehold estates for any term of years, not exceeding twenty-one years, at a yearly rent ; to alter, vary, and transpose the state of investment of the property held by them in trust ; provided that the same should consist of real estate, securities upon real estate, or shares in the public funds ; for which purpose it should be lawful for the trustees to sell and convert into money all or any part of the trade estates, or to mortgage the same in fee, or for a term of years ; and in case they should deem it beneficial, to carry on the collieries, and either to increase or to abridge the business thereof, and he directed that all losses, costs, charges and expenses of carrying on and continuing the said business should be paid out of his real and personal estate ; and he empowered the trustees to procure the renewal of any lease of the collieries, and also to continue the business thereof after such renewal. The trustees continued the business for thirty-seven years, greatly increased the colliery plant, and made large profits. Upon the question arising whether the tenants for life were entitled to only four per cent. upon the value of the collieries at the testator's death, leaving the surplus to form part of the testator's estate, it was *held*, that the tenants for life were entitled to receive the rents and profits of the collieries in specie.—*Thursby* v. *Thursby*, L. R. 19 Eq. 395.

See Legacy ; Mortmain.

Discovery.

The plaintiff, who had been a domestic in the defendant's service, left it, and made an engagement to serve H. The defendant wrote to H. a letter concerning the plaintiff, which induced H. to decline to take the plaintiff into his service. The plaintiff brought an action for libel, and filed an affidavit stating that he had reason to believe that said letter was a libel on him, and that it was necessary for his case that he should have inspection of the letter. *Held* (by Coleridge, C.J., and Grove, J. ; Brett, J., dissenting), that discovery would not have been granted under a bill in equity, and that, therefore, inspection must be refused.—*Hill* v. *Campbell*, L. R. 10 C. P. 222.

See Stay of Proceedings.

Documents, Production of.

The plaintiff took out a summons for the production of certain documents, and the defendant replied that he had put the documents in the hands of his solicitors, that he had subsequently changed his solicitors, and that his former solicitors claimed a lien on the documents. An order for production was made, with liberty to the defendant to apply, if he should be really unable to get the documents. James, L.J. : "A solicitor has no right to set up a lien acquired in the cause, against the rights of the other parties in the cause to production."—*Vale* v. *Oppert*, L. R. 10 Ch. 340.

See Discovery.

Drain.—*See* Easement.

Due Bill.—*See* Contract, 6.

Duress.—*See* Injunction, 5.

Easement.

A. conveyed by indenture a piece of land to B., subject, nevertheless, to the joint ownership and right to the use by A., his heirs, assigns, and the owners and occupiers for the time being of the land belonging to A., and adjoining the premises conveyed, of the drain running through the conveyed premises, according to the course and direction delineated on the margin of the indenture, and subject to the right of A., his heirs, &c., to enter upon the conveyed premises for the purpose of repairing the drain, and relaying or replacing the pipes therein. The sewer into which said drain emptied was subsequently lowered by the local board of health, and A. entered upon said conveyed premises and lowered the drain so as to connect it with the new sewer. B. brought trespass. *Held*, that A. had a right to connect the drain with the new sewer.—*Finlinson* v. *Porter*, L. R. 10 Q. B. 188.

See Ancient Light ; Dedication.

Election.

Election by conduct must be by a person who has positive information as to his rights to the property, and with that knowledge really means to give that property up.—James, L.J., in *Wilson* v. *Thornbury*, L. R. 10 Ch. 239.

See Vendor and Purchaser, 1.

Equitable Assignment.—*See* Trust.

Equitable Mortgage.—*See* Mortgage, 1.

Equity.

Bill praying a declaration that the defendant, a solicitor, was liable to make good to the plaintiff the loss it had sustained from the defendant's negligence in examining a title, and that he should take the security in question off the plaintiff's hands. Demurrer allowed.—*British Mutual Investment Co.* v. *Cobbold*, L. R. 19 Eq. 627.

See Ancient Light ; Discovery ; Injunction ; Res Adjudicata ; Stay of Proceedings.

Equity to Settlement.

A woman who was entitled to a sum of money secured by her brother's promissory

note, married. Subsequently she separated from her husband, and a deed was executed whereby it was agreed that the interest of said sum should be paid to the wife for life; after her death to the husband for life; and that after his death the principal should go to the child of the marriage absolutely. Afterward the parties came together again, the husband became bankrupt, and the trustee in bankruptcy claimed said money. *Held*, that the wife was entitled in equity to a settlement.—*Ruffles* v. *Alston*, L. R. 19 Eq. 539.

ESTOPPEL.

A railway company informed the plaintiff that they had received certain goods for his account, and had received warehouse rent and charges upon the goods, in consequence of which the plaintiff contracted for the sale of the goods, which, in fact, were not with the company. Under the circumstances it was *held*, that the company was not estopped from showing that the goods never reached them. Discussion of estoppel *in pais*.—*Carr* v. *London and North-western Railway Co.*, L. R. 10 C. P. 307.

EVIDENCE.—*See* DEATH; NEGLIGENCE, 2; WILL, 2.

EXECUTION.—*See* BANKRUPTCY, 1.

EXECUTORS AND ADMINISTRATORS.

A testator directed his trustees to permit his wife to receive the rents and profits of his estate, and carry on his business. The wife took out administration, and carried on the business, and died intestate and insolvent. The persons entitled to the reversion of the testator's estate were cited, but did not accept administration *de bonis non*. *Held*, that a creditor of the wife, for debts contracted while she was carrying on the business, must take out administration to the wife's estate before he could take out administration *de bonis non* of the testator's estate.—*Fairland* v. *Percy*, 3 P. & D. 217.

See SET-OFF.

EXTORTIONATE BARGAIN.—*See* MORTGAGE, 3.

FEES.

In a patent suit, where costs were taxed as between solicitor and client, the costs of drawings to be affixed to counsel's brief were disallowed. Charge for attendance of solicitor's clerk, in addition to the solicitor's costs, were disallowed. £15 15*s.* were allowed for fees to a scientific witness for being engaged two days in reading the papers, swearing to affidavit, &c. £7 7*s.* is not too high a daily fee for each day's attendance of the cross-examining counsel. Fees for attendance of a third counsel are generally disallowed. Refreshers allowed where the case extends over two days.—*Smith* v. *Buller*, L. R. 19 Eq. 473.

FIXTURES.

Shop-fixtures were sold under a condition of sale, requiring the purchaser to remove them within two days after the sale. The purchaser, by arrangement with the trustee of the bankrupt owner, did not remove the fixtures, as he intended to take the shop, and negotiated with the landlord for that purpose; but the negotiations fell through, and the trustee sent the keys to the landlord. Afterward the plaintiff applied to the landlord for the fixtures, when it appeared that the premises had been let to the defendant. *Held*, that the plaintiff was entitled to the fixtures.—*Saint* v. *Pilley*, L. R. 10 Ex. 137.

FORECLOSURE.—*See* MORTGAGE, 1.

FOREIGN STATE.—*See* STAY OF PROCEEDINGS.

FRAUDS, STATUTE OF.

1. An agreement for the sale of real estate was signed by C., the agent of the vendors, and it appeared from the agreement that the vendors were a company in possession, and that the interests of a company in property on which it had been carrying on operations were to be sold. *Held*, that the vendors were sufficiently described to satisfy the Statute of Frauds.—*Commins* v. *Scott*, L. R. 20 Eq. 10.

2. The plaintiff's traveller called on the defendant, and obtained an order for the supply of clocks. The traveller wrote the order in duplicate, handing the duplicate to the defendant, and keeping the original. The order contained the defendant's name and all the terms of a contract. *Held*, that it did not appear that the traveller signed the order as the defendant's agent, so that there was no memorandum sufficient to satisfy the 17th section of the Statute of Frauds.—*Murphy* v. *Boese*, L. R. 10 Ex. 126.

3. The defendant, while negotiating with the plaintiff for the lease of the former's messuage, promised to make certain repairs upon and send additional furniture to the premises if the plaintiff would forthwith become his tenant. The plaintiff entered into occupation of the house, and the defendant again promised to make the repairs and supply the furniture. *Held*, that the defendant's promise did not relate to an interest in or concerning land within the Statute of Frauds (29 Car. 2, c. 3, § 4).—*Angell* v. *Duke*, L. R. 10, Q. B. 174.

See CONTRACT, 4; LEASE, 1.

FRAUDULENT PREFERENCE.—*See* BANKRUPTCY 2.

GENERAL AVERAGE.—*See* INSURANCE, 4.

GRANT.

Queen Elizabeth, in the thirty-first year of her reign, of her special grace, certain knowledge, and mere motion granted by letters-patent to the town of Hastings "all that her parcel of land and her hereditaments called the Stone Beache, with the appurtenances in and upon the aforesaid parcel of land called the Stone Beache, then or lately built or constructed." The defendant deposited earth on the beach, and the town prayed an injunction. *Held*, that the grant included the whole of the beach to low-water mark. Injunction granted.—*Corporation of Hastings* v. *Ivall*, L. R. 19 Eq. 588.

See EASEMENT; INJUNCTION, 6.

Digest of the English Law Reports.

Guarantee.—*See* Bankruptcy, 2.

Husband and Wife.

Money standing on the books of a firm in the name of a woman was transferred to an account headed, "Captain and Mrs. M." Captain M., the husband, gave directions to the firm to keep this money separate and distinct from his other property in their hands. Both Captain and Mrs. M. drew drafts on this fund, which were honoured. Both husband and wife were drowned at the same time. The husband left a will, in which he bequeathed said money. *Held*, that it did not appear that the husband had reduced the money into possession during his life, and that it passed to the wife's personal representatives.—*Scrutton* v. *Pattillo*, L. R. 19 Eq. 369.

See Equity to Settlement.

Infant.—*See* Company, 2; Judgment.

Injunction.

1. A corporation invited tenders for the supply of stone. A., B., C. and D. agreed together that A. should purchase from B. a certain quantity of stone; that B. should not send in any tender, nor supply the corporation with stone during 1875; that A. should purchase a certain quantity of stone, and that A., C. and D. should send in tenders at different prices, A.'s being the lowest. B. sent in a tender in breach of his agreement, and it was accepted. A. filed a bill praying an injunction against B., and B. demurred for want of equity. *Held*, that it was not necessary to make the corporation a party, and the injunction was granted.—*Jones* v. *North*, L. R. 19 Eq. 426.

2. Bill to restrain erecting, or allowing to remain, a building in London, causing obstruction to ancient lights, and for further relief. The plaintiff, who was aware that something would be done on the defendant's premises, was in London for four days, when there was no building erected, and then left for the continent. She became aware shortly before filing her bill that the defendant was erecting said building. A mandatory injunction was refused, but an inquiry as to damages was directed, although not specifically directed.—*Lady Stanley of Alderly* v. *Earl of Shrewsbury*, L. R. 19 Eq. 616.

3. A reversioner was held not entitled to an injunction to restrain the defendants from converting a portion of a street opposite the reversioner's premises into a stable-yard by allowing carts and vans to be constantly kept standing there.—*Mott* v. *Shoolbred*, L. R. 20 Eq. 22.

4. A sewage company which had leased the sewage works and a piece of land of a town covenanted to keep the works in proper repair, so that there should be no stoppage of the sewage. The local board of health of the town prayed an injunction, restraining the defendant company "from causing or permitting the said sewage and other refuse matters to remain in the sewers or drains of the plaintiffs, so as to be or become or cause a nuisance, damage, or annoyance to the plaintiffs, and from damming or heading back into the sewers or drains of the plaintiffs the said sewage or refuse matter, and from preventing the free flow of the said sewage and waste water through the said sewers or drains of the plaintiffs. Demurrer. Injunction granted.—*Nuneaton Local Board* v. *General Sewage Co.*, L. R. 20 Eq. 127.

5. Criminal proceedings were instituted by the defendant against the plaintiff for unlawfully using the former's trade-mark. At the trial no evidence was offered against the plaintiff, and he was found not guilty; and in pursuance of an arrangement made under duress of said criminal proceedings, he gave the defendant a letter of apology, and authority to publish it. The defendant published it several times in the papers, and the plaintiff prayed an injunction, restraining such publication on the ground of duress and injury to his business. The injunction was refused. Where a person has his choice between a civil and criminal remedy, it is against the law to compromise the criminal proceedings.—*Fisher & Co.* v. *Apollinari's Co.*, L. R. 10 Ch. 297.

6. A piece of land was conveyed with a covenant to build a cotton mill thereon, but reserving to the grantor the right to work all mines and minerals under the land, making compensation for damage. The mill was built; and the defendants began to work the mines, causing damage to the mill. The plaintiff prayed an injunction, restraining the defendants from so working the mines as to cause injury to the plaintiff. Injunction refused.—*Aspden* v. *Seddon*, L. R. 10 Ch. 394.

See Ancient Light; Grant; Patent, 2; Res Adjudicata.

Innkeeper.

B. hired a piano of the plaintiff, took it to an inn, and subsequently left the inn in debt to the landlord, who claimed a lien on the piano. *Held*, that the landlord was entitled to his lien.—*Threfall* v. *Borwick*, L. R. 10 Q. B. 210.

Inspection of Documents.—*See* Discovery.

Insurance.

1. A policy was conditioned to be void if there was any material misdescription of the property insured. A brick building was described in the policy as slated, when, in fact, its roof was of tarred felt. *Held*, on the facts not to be a breach of the condition.—*In re Universal Non-Tariff Fire Insurance Co.*, L. R. 10 Eq. 485.

2. A lessee covenanted to keep the premises insured in a certain sum in the joint names of lessor and lessee. The lessee had the option of purchasing the premises. The lessee insured accordingly; a loss occurred; and the lessee then first learned that the lessor held a policy on the premises in his own name. The offices apportioned the damage; and the lessee gave notice of his desire to purchase, and suggested that the insurance money received from both offices should be applied in part payment.

The lessor insisted that the money received from the lessee's policy should be applied in reinstating the premises, and that he was entitled to retain the money received from his own policy. *Held*, that the insurance money from both policies must be applied in part payment for the premises.—*Reynold* v. *Arnold*, L. R. 10 Ch. 386.

3. Verbal notice of assignment of a life policy by way of mortgage, *held*, sufficient.—See *Alletson* v. *Chichester*, L. R. 10 C. P. 319.

4. A policy was effected on wheat shipped to Marseilles, and warranted free from average unless general; general average as per foreign statement. The vessel containing the wheat was obliged to put in from stress of weather to Constantinople. It was found that one-fifth of the wheat was damaged, and the surveyors recommended that at the voyage end, the damaged wheat be sold, and the remainder forwarded to Marseilles. Repairs necessary for the ship would require two months. The surveyor's recommendation was adopted, and average in respect of ship and cargo adjusted at Constantinople. The damage to the wheat was treated as general; and a certain sum became payable by the insurers According to the law of Constantinople, the adjustment was made according to the law of France. The damage to the wheat was not, by the law of England, a general average loss. *Held*, that there was a loss within the policy; and that the adjustment was properly made at Constantinople.—*Mavro* v. *Ocean Marine Insurance Co.*, L. R. 10 C. P. Ex. Ch. 414; s. c. L. R. 9 C. P. 595.

5. The plaintiff insured "goods" from New Orleans to Revel, 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 undue concealment. *Held*, that the plaintiff was entitled to recover on his policy of reinsurance.—*Mackenzie* v. *Whitworth*, L. R. 10 Ex. 142.

6. The defendants insured V. Brothers and their assigns against loss on a cargo of linseed, upon a certain voyage. V. Brothers sold the cargo to the plaintiffs to be paid for in fourteen days from being ready for delivery, or at seller's option, on handing shipping documents. The bill of lading was indorsed to the plaintiffs. In February, a loss occurred, while part of the cargo was in the plaintiffs' lighters, within the policy, before the plaintiffs had paid for the cargo. In June, the policy was handed to the plaintiffs by the V. Brothers, who in October indorsed on it an assignment to the plaintiffs. *Held*, that the plaintiffs were not entitled to recover, as the policy was not assigned to them by the contract of sale; and as V. Brothers' interest in the cargo ceased on its delivery into the plaintiffs' lighters, so that the subsequent assignment was of no avail.—*North of England Oil-cake Co.* v. *Archangel Insurance Co.*, L. R. 10 Q. B. 249.

See Ship.

Interest.—*See* Legacy, 1; Specific Performance.

Interrogatories.—*See* Libel.

Judgment.

An infant gave a bill of exchange, payable after his arriving at full age, in payment for jewellery. A judgment was obtained by default on the bill after its maturity. *Held* that the Court would look into the judgment, and that if the judgment operated as a ratification of the infant's contract, the ratification was void under the Infant's Relief Act.—*Ex parte Kibble*. *In re Onslow*, L. R. 10 Ch. 373.

Jurisdiction.—*See* Trust.

Landlord and Tenant.—*See* Fixtures; Insurance, 2; Lease 4; Notice to Quit.

Lease.

1. The plaintiff, who was in possession of an inn, under a verbal agreement for a lease, sublet the premises to L., who made repairs and additions thereto, with the knowledge and consent of the owner of the premises. *Held*, that the outlay by L. was equivalent to part performance by the plaintiff, and that the plaintiff was entitled to specific performance.—*Williams* v. *Evans*, L. R. 19 Eq. 547.

2. An agreement for a lease of coal-mines provided that the lease should contain all usual and customary mining clauses. *Held*, that the lease need not contain a clause of forfeiture in the event of the lessee becoming bankrupt, or compromising with his creditors for less than 20s. in the pound; nor a clause in restraint of assignment, without the license of the lessor.—*Hodgkinson* v. *Crowe*, L. R. 19 Eq. 591.

3. The defendant demised a mansion-house, with the grounds, and about seventeen acres of land, together with the exclusive right of shooting, coursing, and fishing over thirteen hundred acres of land adjoining. *Held*, that the defendant had a right to cut down the timber trees on the thirteen hundred acres.—*Gearns* v. *Baker*, L. R. 10 Ch. 355.

4. The defendant covenanted in a lease not to assign or demise to or permit any other person to occupy the demised premises, or any part thereof, without the consent in writing of the lessor. The defendant demised without consent; and the plaintiff afterward, with knowledge of the demise, distrained for and accepted rent becoming due after the demise. *Held*, that the plaintiff had waived the breach, and that every day's occupation by the sub-lessee was not a continuing breach.—*Walbond* v. *Hawkins*, L. R. 10 C. P. 342.

See Insurance, 2; Notice to Quit.

Legacy.

1. A testatrix made a will as follows: "I give to my sister A. the interest of £4500 in the funds for her absolute use and benefit; and I also give to A. all my furniture, books, &c., and at her decease to M.; and to H. the funded property." The testatrix at the date

of her will had four thousand consols standing in the name of trustees for her. *Held*, that there was a specific gift of the consols to A. for life, with remainder to H. absolutely. The testatrix also gave her uncle any small sum remaining in the bank after her funeral expenses had been paid. At the date of her will her balance at the bank was £480, but had increased to £1373 at the date of her death. *Held*, that the whole balance passed.—*Page* v. *Young*, L. R. 19 Eq. 501.

2. Bequest to husband and wife for life, remainder to the survivor for life, with a gift over if the wife should die in the lifetime of the husband, and he should marry again. The husband married a second time. *Held*, that the gift over was invalid, being founded on a condition subsequent in restraint of marriage. —*Allen* v. *Jackson*, L. R. 19 Eq. 631.

3. A testator gave personal property to his wife for life, and after her death "to the University College, London, for the purpose of founding in it a new professorship of archæology, for the regulation of which I propose preparing a code of rules, which I intend to authenticate under my hand." The testator then directed that his executors should communicate to said college the fact of his bequest, and a copy of said rules; and that if the college should not within twelve months thereafter accept or refuse the bequest, the same should be void, and said personal property should form a part of the testator's residuary estate. The testator died without having made any rules. *Held*, that the college was entitled to the legacy.—*Yates* v. *University College, London*, L. R. 7 H. L. 438; s. c. L. R. 8 Ch. 454.

4. A testatrix gave money in trust for all the nephews and nieces of her late husband who were living at the time of his decease except E. and J., in equal shares as tenants in common. One nephew died before the date of the will, and another after the date, but in the lifetime of the testatrix. *Held*, that the gift was to a class, and must be shared by the nephews and nieces living at the death of the testatrix.—*Dimond* v. *Bostock*, L. R. 10 Ch. 358.

5. Bequest as follows: "I bequeath to my sister £1000 for her life, and after her death to her daughter G. If G. should die unmarried or without children, the £1000 I here will to revert to my nephew H." The testatrix appointed J. her residuary legatee. Said sister of the testatrix and H. died in the lifetime of the testatrix. G. married, and enjoyed the income of the gift during her life; but she died childless. *Held*, that the gift to J. took effect, and that he was entitled to the £1000. —*O'Mahoney* v. *Burdett*, L. R. 7 H. L. 388.

6. Gift of moneys upon trust for M., her executors, &c.; but in case she should depart this life without leaving any issue of her body, lawfully begotten, living at the time of her decease, then over. M. married, and subsequently succeeded to the property; and she died childless. *Held*, that the gift over took effect.—*Ingram* v. *Soutten*, L. R. 7 H. L. 408; s. c. L. R. 9 Ch. 45.

See Devise.

Libel.

The plaintiff in an action for libel made an affidavit that the handbill containing the libel had no printer's name attached, and that he could not ascertain who the printer was, and that he had reason to believe that the handbills were printed and circulated under the direction of the defendant; that the defendant was with a man who affixed and delivered the handbills, and that the plaintiff saw the defendant affix a handbill to the shutters of a shop. The plaintiff moved for interrogatories as to whether the defendant had not been instrumental in printing and circulating and posting the libel. The Court ordered the interrogatories to be administered.—*Greenfield* v. *Reay*, L. R. 10 Q. B. 217.

See Injunction, 5.

License.—*See* Tenants in Common.

Lien.—*See* Bills and Notes; Documents, Production of; Innkeeper.

Manslaughter.—*See* Accessory.

Marriage, Restraint of.—*See* Legacy, 2.

Master.—*See* Ship.

Master and Apprentice.—*See* Contract, 5.

Mine.—*See* Tenants in Common.

Mortgage.

1. A mortgagor filed a bill for the redemption of a mortgage. The mortgagee filed an answer setting up subsequent advances made on the security of a deposit of title-deeds of another estate, and claiming to be paid the whole debt advanced on the two estates. The mortgagor amended his bill by introducing the statements made in said answer; but subsequently obtained an order *ex parte*, under which the bill was dismissed with costs. The mortgagor subsequently died, and the mortgagee filed a bill of administration of his estate, and praying permission to carry out a sale of the mortgaged estates, and for payment of his whole debt out of the mortgagor's estate. *Held*, that the equitable mortgage was not foreclosed, and that the mortgagee was entitled to the relief prayed for.—*Marshall* v. *Shrewsbury*, L. R. 10 Ch. 250.

2. For a case where a mortgage of chattels of various kinds was held not to include the stock in trade, see *Ex parte Jardine. In re McManus*, L. R. 10 Ch. 322.

3. A young man, twenty-six years of age, borrowed £85, and gave a mortgage of a reversion of £600 to secure £100 with interest at the rate of five per cent. a month. Twelve years afterward the reversion fell in. He was allowed to redeem on repayment of the sum borrowed, with interest at five per cent. per annum.—*Beynon* v. *Cook*, L. R. 10 Ch. 389.

See Company, 3.

Mortmain.

A woman covenanted with trustees that she would by will secure to the trustees a certain sum of money whose income should be applied to certain charitable uses. The testatrix ac-

cordingly bequeathed said sum to the trustees. She died, leaving both pure and impure personalty. *Held*, that the legacy must abate in proportion of the impure to the pure personalty.—*Fox* v. *Lownds*, L. R. 19 Eq. 453.

NEGLIGENCE.

1. The plaintiffs, colliery owners, owned a side track used for waggons carrying coal. The defendant railway company was accustomed to bring empty return waggons, and shunt them on to the sidings without notice to the plaintiffs, and the waggons were left there under the plaintiffs' control. The defendants brought several empty waggons together, with a disabled waggon loaded on another waggon, and marked "home for repairs," along their road, and shunted them on to the siding, and left them there. On a subsequent night, when it was very dark, the defendants brought up other waggons, and pushed them on to the siding, and then pushed all the waggons there onward, until the disabled waggon struck a bridge belonging to the plaintiffs, and which was not high enough above the track to avoid the disabled waggon. *Held* (by Blackburn, Mellor, Brett, and Archibald, JJ.; Denman, J., dissenting), that there was evidence of contributory negligence on the part of the plaintiffs to go to the jury.—*Radley* v. *London and North-western Railway Co.*, L. R. 10 Ex. (Ex. Ch.) 100.

2. The plaintiff was a passenger on the defendants' railway to a small station called B. On arrival, the carriage in which was the plaintiff was driven beyond the platform. The plaintiff arose and stepped on to the iron step, and looked to see if there were any servants about, and saw only the station-master attending to the luggage. She stood looking for some one, until she became afraid that the train would move away; and no one coming, she tried to alight by getting on to the footboard, and in so doing slipped and fell, and was injured. She had on her left arm a small bag, and in her left hand a small basket, a small quart case, and an umbrella, but nothing in her right hand. *Held*, that there was evidence of negligence on the part of the defendants to go to the jury.—*Robson* v. *North-eastern Railway Co.*, L. R. 10 Q. B. 271.

See CARRIER, 1; EQUITY.

NEGOTIABLE PAPER.

For a case where scrip issued in England, by an agent of Russia, by which the holder was to be entitled, on payment of the instalments, to bonds of Russia, on their arrival in England, was *held* to be negotiable, and pass by delivery to a *bona fide* holder for value, without title.—See *Goodwin* v. *Robarts*, L. R. 10 Ex. 76.

See BILLS AND NOTES; CHECK.

NOTICE.—*See* BANKRUPTCY, 1; INSURANCE, 3.

NOTICE TO QUIT.

Tenancy under a written agreement, dated December 20, 1872, but containing no date for the commencement of the term, but it was expressed to be for a half year certain, and so on from year to year until a half year's notice to quit should be given by either party. *Held*, that a notice to quit on June 24 was sufficient.—*Sandill* v. *Franklin*, L. R. 10 C. P. 377.

NUISANCE.—*See* INJUNCTION, 3, 4.

OWNERS OF LAND.

1. The owners of certain land dedicated a portion thereof to the public as streets, but no steps had been taken to make them repairable by the parish. *Held*, that the owners were not owners of the land so dedicated, so as to be taxable for a portion of the cost of paving the same.—*Plumstead Board of Works* v. *British Land Co.*, L. R. 10 Q. B. (Ex. Ch.) 203.

2. By statute, commissioners were authorised to send fire-engines beyond the town limits, to extinguish fires in the neighbourhood, and the owners of the lands and buildings where such fire occurred were to defray the expense. *Held*, that "owner" included an occupier who did not own the land.—*Lewis* v. *Arnold*, L. R. 10 Q. B. 245.

PARTNERSHIP.

1. Articles of partnership for one year were entered into by the plaintiff and defendant. The articles contained an arbitration clause. The partnership continued beyond one year. *Held*, that the arbitration clause was in force.—*Gillett* v. *Thornton*, L. R. 19 Eq. 599.

2. A., who owned a mill, formed a partnership with B., and it was agreed that the business should be carried on at the mill, and the value of the mill was entered on the books as the capital of A. During the partnership the mill was enlarged and improved. The mill was entered on the yearly balance sheets at its original value, increased by the sums spent in repairs and improvements, but less a certain sum for depreciation. Some years after the formation of the partnership the mill was sold at a price largely exceeding its value in the books. *Held*, that the difference between the selling and the estimated value must be divided between A. and B.—*Robinson* v. *Ashton*, L. R. 20 Eq. 25.

PART PERFORMANCE.—*See* LEASE, 1.

PARTIES.—*See* DAMAGES, 1; INSURANCE, 1.

PATENT.

1. An agreement by the vendor of a patent to assign to the purchaser "all future patent rights, or in the nature of patent rights, which the vendor may acquire hereafter, with respect to said invention," is not contrary to public policy.—*Printing and Numerical Registering Co.* v. *Sampson*, L. R. 19 Eq. 462.

2. The plaintiff, who obtained a patent in 1865, moved for an interim injunction restraining the defendant, who had a patent, dated 1875, from making, selling, or using an article alleged to be an infringement. There was no evidence of actual use of the plaintiff's patent, except of recent date. Injunction re-

fused for want of evidence that there had been actual use of the plaintiff's patent.—*Plympton* v. *Malcolmsen*, L. R. 20 Eq. 37.

Plans.—*See* Contract, 1.

Possession.—*See* Husband and Wife.

Preference.—*See* Bankruptcy, 2.

Presumption of Death.—*See* Death.

Principal and Agent.—*See* Frauds, Stat. of, 2.

Prize Ring.—*See* Accessory.

Production of Documents.—*See* Documents, Production of.

Railway.—*See* Carrier, 1, 2; Estoppel; Negligence.

Ratification.—*See* Judgment.

Reinsurance.—*See* Insurance, 5.

Remainderman.—*See* Devise.

Res Adjudicata.

The plaintiffs filed a bill in equity to have a policy declared valid in equity, alleging it to be void at law. The bill was dismissed, and then the plaintiffs brought an action at law on the policy. An injunction was granted restraining the action.—*Lord Tredegar* v. *Windus*, L. R. 19 Eq. 607.

Residuary Gift.—*See* Legacy, 5, 6; Resulting Trust.

Resulting Trust.

A testatrix purchased annuities in the name of herself and the son of her daughter-in-law, and had other annuities which she owned transferred to the same names. She bequeathed her leaseholds and personalty and residuary real estate to her daughter-in-law for life, and after her death to such of her children as should attain twenty-one. Said son and a daughter of the daughter-in-law attained twenty-one. *Held*, that under the circumstances there was no resulting trust affecting the annuities, and that the son was entitled to them; and that the gift did not operate as an ademption or partial satisfaction of the son's share of the residuary estate bequeathed him by the testatrix.—*Fowkes* v. *Pascoe*, L. R. 10 Ch. 343.

Sale.

The defendants purchased tares by sample, and they were delivered at his barn. On the day of the delivery the defendant met the plaintiff and told him that the tares were in his, the defendant's barn, that they were bad, and that he would not have them nor pay for them, and that the plaintiff might do what he liked with them. The tares remained in the barn. *Held*, that the defendant was not obliged to send the tares back, and that he was not liable for the price.—*Grimoldby* v. *Wells*, L. R. 10 C. P. 391.

See Contract, 2, 3; Frauds, Statute of; Ship; Vendor and Purchaser.

Scrip.—*See* Negotiable Paper.

Seal.—*See* Contract, 4.

Separation Deed.—*See* Equity to Settlement.

Set-off.

N. and C. were trustees of a testator's real and personal estate, and were the testator's executors. N. and F. were entitled to the income of the estate in equal moieties. C. being abroad, and N. about to go abroad, N. gave P. a power to act for both trustees in receiving rents and profits, paying them over. P. died insolvent, and leaving a considerable sum due the trust estate. N. was indebted to trustees for P. in a sum which was secured by mortgage; and N. under an order of court paid the debt into court to a separate account without prejudice to any question of set-off. After the administration decree against P.'s estate was made, F. assigned to N. all her interest in the sum due from P.'s estate. N. thereupon claimed to be entitled to set off the sum due from P. against his debt, and he therefore prayed that P.'s debt be paid from the sum paid into court by N. *Held*, that N. was not entitled to set off the shares of P.'s debt assigned by F. to N., as it was assigned after administration decree; nor the other share, as it was due N. only in his capacity of executor and trustee.—*Middleton* v. *Pollock*, L. R. 20 Eq. 29.

Settlement.—*See* Equity to Settlement.

Ship.

The master of a vessel is only justified in selling a vessel when he has no alternative, as a prudent and skilful man acting *bona fide* for the best interests of all concerned, and with the best and soundest judgment that can be found under the circumstances; and if he come to this conclusion hastily, either without sufficient examination into the actual state of the ship, or without having previously made every exertion in his power, with the means then at his disposal, to extricate her from the perils, or to raise funds for the repair, he will not be justified in selling, even although the danger at the time appear exceedingly imminent.—Sir Henry S. Keating, adopting the language of Arnold on Insurance, in *Cobequid Marine Insurance Co.* v. *Barteaux*, L. R. 6 P. C. 319.

See Bills and Notes; Contract, 3; Demurrage; Insurance, 4.

Solicitor.—*See* Equity.

Solicitor's Lien.—*See* Documents, Production of.

Specification.—*See* Contract, 1.

Specific Performance.

An agreement was made between a landowner and a railway company, whereby the company was to pay a certain sum, and construct certain bridges, &c. A substituted agreement was subsequently made, whereby it was agreed that the company's engineer should make an estimate of the cost of completing the road, and submit it to A., the land-owner's agent, for approval; and, in case of difference, the amount to be determined by B. A. died before the estimate was made. *Held*, that the submission of the estimate to

A. was of the essence of the contract, and that there could be no specific performance because of his death; and specific performance of the original contract was ordered, with interest on the purchase-money from the date of the company's taking possession of the land.—*Firth* v. *Midland Railway Co.*, L. R. 20 Eq. 100.

See Lease, 1; Vendor and Purchaser, 2.

Stakeholder.—*See* Accessory.

Statute.—*See* Discovery; Owner of Lands.

Stay of Proceedings.

Proceedings in a suit in England, by the Republic of Peru, were stayed until the republic should appoint some one to be a defendant in a cross suit for the purpose of enabling the plaintiff in the cross suit to obtain discovery.—*Republic of Peru* v. *Weguelin*, L. R. 20 Eq. 140.

Stock in Trade.—*See* Mortgage, 2.

Street.—*See* Owner of Lands, 1.

Tax.—*See* Owner of Lands, 1.

Tenant for Life.—*See* Devise.

Tenants in Common.

Two out of three tenants in common of a coal-mine leased to the defendant two undivided thirds of the mine, with license to work the same. The defendant mined less than two-thirds of the coal, and kept one-third of the royalty for the plaintiff, the third tenant in common. The plaintiff filed a bill, praying an inquiry as to the value of the coal raised, allowing no deduction for cost of raising, and that a sum equal to one-third of such value be ordered to be paid to the plaintiff; for an injunction, a receiver, and damages. *Held*, that working the mine was not a trespass; and an inquiry was ordered as to what coal had been raised from the mine, its value at the pit's mouth, less the cost of raising; and it was ordered that the defendant pay the plaintiff one-third of the amount of such value.—*Job* v. *Potton*, L. R. 20 Eq. 84.

Title.—*See* Grant; Vendor and Purchaser, 3, 4.

Trespass.—*See* Easement; Tenants in Common.

Trust.

L. contracted with J., as delegate in London of the French Minister of War, to supply 20,000,000 ball cartridges to the French Government. Under the contract the cartridges were to be delivered by a certain date, and time was to be of the essence of the contract. The cartridges were to be tried in London by a French delegate; and they were to be paid for immediately after having been accepted, through the care of the French ambassador, who would issue checks for the amount; L. could not claim acceptance of any of the cartridges after the date for delivery nor indemnity for any delivered after that date. L. asked for a deposit of money with some London banker. None was made, but M. and G., who acted as financial agents of the French Government, wrote under the direction of J. as follows: "Gentlemen, we are instructed by J. to advise you that a special credit of £40,000 has been opened with us in your favour, and that it will be paid to you ratably, as the goods are delivered, upon receipt of certificates of reception issued by J." Part of the cartridges were supplied and paid for. Alterations were then proposed and experiments tried, which L. alleged prevented him from delivering the cartridges within the contract time. M. and G., upon the expiration of the time for delivery, informed L. that by direction of J. they should make no further payments. L. filed a bill praying that M. and G. be declared trustees for him of the residue of the £40,000, for injuries, and for an injunction restraining the defendants from parting with the said residue. *Held*, that the letter written by M. and G. constituted neither an equitable assignment nor a trust of said £40,000, and that, therefore, the Court of Chancery had no jurisdiction.—*Morgan* v. *Lariviere*, L. R. 7 H. L. 423; s. c. L. R. 7 Ch. 550.

See Devise; Resulting Trust; Set-off; Vendor and Purchaser, 3.

Unconscionable Bargain.—*See* Mortgage, 3.

Vendor and Purchaser.

1. Sale was made in a particular suit, one of the conditions of sale being that if the purchaser should make any objection which the vendors should be unwilling or unable to comply with, the vendors should be at liberty, with the leave of the judge, to cancel the contract, which should thereupon be delivered up, and the deposit returned without interest or costs to either side. The sale was invalid. The deposit was invested in bank annuities, and dividends accrued thereon. *Held*, that the purchaser was entitled to the annuities and the dividends thereon, or to the money itself, and all dividends arising from its investment at his election.—*Powell* v. *Powell*, L. R. 19 Eq. 422.

2. An estate was sold by auction, one of the conditions of sale being that the title to the beneficial ownership of the property should begin with the will of C., and that the purchaser should assume that C. was at his death beneficially entitled in fee-simple, free from incumbrances. It appeared that C. had contracted for the purchase of the estate, but that the vendor could not make a title, and that the purchase-money was invested and actually paid after C.'s death. *Held*, that as the condition was founded on an erroneous statement of facts, it could not be enforced against the purchaser; and that there must either be a reference to title, or that the bill for specific performance must be dismissed.—*Harnett* v. *Baker*, L. R. 20 Eq. 50.

3. A testator devised his real estate in trust for sale. The trustees of his marriage settlement held adjoining land upon trust to pay certain charges, afterward pay the remainder

to the testator. Under a decree of Court the testator's real estate was ordered to be sold and the proceeds paid into court to the account, "Proceeds of sale of testator's real estate." Both said lots were put up together. The purchaser objected to the title on the ground that there appeared no right to sell the lots together, and have the purchase-money paid into court. The Court overruled the objection, but ordered the purchase-money to be apportioned, "through tenderness for the over-scrupulosity of the purchaser."—*Cavendish* v. *Cavendish*, L. R. 10 Ch. 319.

4. S. mortgaged her leasehold houses, and subsequently married L., who died, appointing the defendants his executors. The mortgagee then, with consent of the executors, put the premises up for sale, and C. purchased them. The purchase-money was used in paying off the mortgage debt, and the balance was paid to the executors by C. The executors supposed that such balance formed part of L.'s estate, and used it as such. S. filed a bill against C. to recover possession, and a decree was pronounced compelling C. to pay over to S. the value of the equity. C. then brought an action against the executors to compel them to reimburse him. *Held*, that C. could not recover from the executors, on the ground of failure of consideration. The rule of *caveat emptor* applied.—*Clare* v. *Lamb*, L. R. 10 C. P. 334.

See Sale, 1.

Waiver.—*See* Lease, 4.

Warehouseman.—*See* Carrier, 2.

Way.—*See* Dedication.

Will.

1. A codicil, in which the signature and attestation of the witnesses were on a separate sheet of paper attached by a string to the codicil, was *held* to be validly executed.—*In the Goods of Horsford*, L. R. 3 P. & D. 211.

2. A testator had had a son named Forster Charter, who died before the testator made his will. At the date of his will the testator had two sons, named William Forster Charter and Charles Charter. William Forster Charter, while yet a young man, left his father's house, and in 1850 set up business about a hundred miles distant from his father's house. In 1853 he went to Australia, but returned in 1856, and resumed his business, only paying occasional visits to his father. He was never called "Forster," but always "William." In 1859 the testator made his will, wherein he appointed "my son Forster Charter as the executor of this my will," and he gave him all his messuages, &c.; and the testator repeated the name of Forster Charter twice. Probate was granted to William Forster Charter by the district registrar of Newcastle; and thereupon Charles Charter applied to the Court of Probate for recall of probate. Evidence of expressions and declarations made by the testator as to his intentions, of the state and circumstances of the members of the family, their habits and conduct, was offered on both sides. Lord Penzance finally revoked probate, and granted it to Charles Charter. Lords Chelmsford and Hatherby *held* that probate should be granted to William Forster Charter; but the Lord Chancellor (Cairns) and Lord Selborne *held* that probate should be granted to Charles Charter; and the House of Lords being equally divided, the decree of the Court of Probate in favour of Charles Charter was affirmed. It was *held* by all the Lords that the evidence of the testator's declarations as to his intentions was improperly admitted.—*Charter* v. *Charter*, L. R. 7 H. L. 364; s. c. L. R. 2 P. & M. 315.

See Devise; Executors and Administrators; Legacy; Mortmain.

Words.

"*General Average as per Foreign Statement.*"—*See* Insurance, 4.

"*Goods.*"—*See* Insurance, 5.

"*Occupier.*"—*See* Owner of Lands.

"*Owner.*"—*See* Owner of Lands.

"*Usual and Customary Mining Clauses.*"—*See* Lease, 2.

"*Warranted free from Average unless general.*"—*See* Insurance, 4.

REGULÆ GENERALES.

Michaelmas Term, 39 Vict.

The business of the Court in term shall be conducted as follows:—

Every day in term, the Court shall first hear Motions for Rules by Consent, or which may be had without argument, which shall be called Motions of Course.

Motions upon or against any trial, verdict, assessment or non-suit shall, after the Motions of Course, take precedence of all other business upon the days now appointed by the Court, or which are allowed by statute for such purpose, excepting on paper days.

The *first* Friday and the *second* Monday in the Queen's Bench, and the *first* Saturday and the *second* Tuesday in the Common Pleas, shall be paper days; and also any other day or days which the Court may, from press of business or other necessity, from time to time appoint.

County Court and Controverted Election Appeals shall be set down for hearing as at present, on the first and second of such paper days, and appeals or re-hearings from the decisions of a single judge sitting for the full court, and Crown cases reserved, shall be set down on any paper day of the term.

On the last day of term, after Motions of Course have been taken, other general business may be proceeded with, but no case involving

argument, unless affecting personal liberty, shall be heard without the leave of the Court.

Upon other days in term than those already mentioned and provided for, the business shall be proceeded with as follows:—

1. Motions of Course.

2. Motions for Rules Nisi on special motions.

3. The cases on the Peremptory List in the order in which they are entered.

After the special business on any day is over, the Court may take any other matter in which the parties are prepared to proceed.

Every rule, demurrer, and special case to be heard by the full Court shall, before argument, be entered by the Master on a general list in its order, as set down by either party, and no such case shall be heard which is not so entered, unless by special order of the Court.

Eight cases, in the order of their priority on the general list, shall be set down by the Master in the peremptory list for argument on each day in term, except on paper days and upon the last Saturday; and no argument shall be heard in any other case until the cases in the peremptory list for the day are disposed of.

Any case on the general list may be heard on any day by consent, and by leave of the Court.

Any case entered on the peremptory list for any day, and postponed by order or by default, shall be placed at the foot of the general list, unless for sufficient cause it shall be otherwise specially ordered by the Court.

If either party to a case on the peremptory list is prepared to be heard and the other party is not prepared, and it is not duly postponed as aforesaid, the Court may hear the party so prepared, whereupon the case shall stand for judgment, or the Court may extend the time on sufficient cause being shown by affidavit, to enable the other party to be heard, on payment of the costs of the day, if the Court shall so order. If neither party to a case in the peremptory list is ready, the Court may, if it see fit, strike the case out of the list.

If all the cases on the peremptory list for any day are not disposed of on that day, such cases shall be entered by the Master first on the peremptory list for the next day, as part of the eight cases for such next day.

In case it is required, in the opinion of the Court, for the more convenient and expeditious disposal of business, that a change should be made in the above rules for the hearing of any particular matters, the same shall be made from time to time as may be necessary to meet the emergency, as in matters relating to contempts of Court, or to attorneys, or to writs of *habeas corpus*, or other proceedings affecting personal liberty, or to any other matter or business of the Court.

The present list of cases for argument in court shall remain as it is and be the general list of cases under these rules.

Nothing in these rules contained shall affect any priority which the Court has customarily granted to the Attorney-General, of moving when he comes into Court.

These rules shall come into force on and after Monday, 22nd November, 1875; and all rules heretofore made, which are inconsistent with the above rules, are hereby repealed.

(Signed) JOHN H. HAGARTY.
ROBERT A. HARRISON.
JOS. C. MORRISON.
ADAM WILSON.
JOHN W. GWYNNE.
THOMAS GALT.

Dated 17th November, 1875.

FLOTSAM AND JETSAM.

In a bill for pulling down the old Newgate, in Dublin, and rebuilding it on the same spot, it was enacted that the prisoners should *remain in the old jail till the new one was completed.*

In May, 1874, a bill to limit the privilege of franking was sent from the Parliament of Ireland for the royal approbation. It contained a clause that any member who, from illness or other cause, should be *unable to write* might authorise another to frank for him by a *writing under his hand.*

In a case in the time of Elizabeth, the plaintiff, for putting in a long replication, was fined ten pounds and imprisoned, and a hole to be made through the replication, and to go from bar to bar with it hung round his neck. *Milward* v. *Welden*, Tothill, 101.

Christian quotes 1 Ld. Raym. 147, to the effect "that the Court of Common Pleas, so late as the 5 W. & M., held that a man might have a property in a negro boy, and might have an action of trover for him, because negroes are heathens." 1 Bl. Com. 425, note.

Law Society, Easter Term.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Trinity Term, 38th Victoria.

During this Term, the following gentlemen were called to the Degree of Barrister-at-Law :

No. 1337—James Frederic Lister.
Nelson Gordon Bigelow.
Alexander Stronach Wink.
George Robert Howard.
No. 1341—Francis Edward Philip Pepler.

The above named gentlemen were called in the order in which they entered the Society, and not in the order of merit.

The following gentlemen received Certificates of Fitness :

J. Bond Clarke.
Albert Monkman.
John S. Fraser.
Walter D. Ebbels.
J. W. Liddell.
Francis Love.
Henry Hatton Gowan Ardagh.
John William Frost.
Thomas H. Pardon.
Angus M. Macdonald.

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

Graduates.

No. 2564—George Young.
F. W. Barrett.
George R. Webster.
Joshua A. Wright.
B. Edward Bull.
Robert W. Shannon.
John Moore.
David M. Snider.
Henry T. Beck.
John George Douse.

Junior Class.

Harris Buchanan.
Patrick McPhillips.
John Alexander McLean.
Frederick L. Rodgers.
Alonzo Hodges Manning.
William Bruce Ellison.
Patrick Joseph King.
Nehemiah Gilbert.
Duncan Arthur McIntyre.
Thomas E. Parke.
No. 2584—W. J. Delaney.

A change has been made in some of the books contained in the list published with this notice, which will come into effect for the first time at the examinations held immediately before Hilary Term, 1876. Circulars can be obtained from the Secretary containing a list of the changed books.

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 subjects 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. Douglas Hamilton's), English Grammar and Composition.

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.

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, Statutes of Canada, 29 Vict. c. 28, Insolvency Act.

That the books for the final examination for students-at-law shall be as follows :—

1. For Call.—Blackstone, Vol. I., Leake on Contracts, Watkins on Conveyancing, Story'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, Jarman 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, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story'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. 43.

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, Story'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.

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EDITORIALS—