DIARY FOR APRIL.

1. Mon..County Court, Term begins.
5. Fri ..Canada discovered, 1499.
6. Sat ..County Court Term ends.
18. Thur. First newspaper published in America, 1704.
19. Fri ..Good Friday.
23. Tues .St. George's day.
24. Wed..Earl Cathcart, Governor-General, 1846.
27. Sat ..Queen proclaimed Empress of India, 1876.
30. Tues. Last day for completion of rolls by Assessors.

CONTENTS.

PART I.

Canada Law Journal.

Toronto, April, 1878.

A noticeable fact is the great number of cases which are now brought to the bar of the Court of Appeal. This may partly, but cannot wholly, be accounted for by the "great expectations" formed in the minds of disappointed and exasperated litigants and sanguine young lawyers, by a too profuse sprinkling at an early period of "appeal allowed." If the Court continues to grow, as we think it is so growing, in public confidence, this plethora of work will continue; but it is not altogether a satisfactory state of things when appeals so much abound.

Before this number reaches our readers the Court of Appeal will have passed a new set of general orders, annulling all rules and orders heretofore made, except the rules now in force respecting appeals to the Privy Council. There is to be a separate set of rules for County Court appeals. This will be a great boon to the profession. The Judges have also prepared a tariff of fees under sec. 123 of the Insolvent Act, which has long been wanted. They should now, "while their hand is in," set themselves to the task of putting the Surrogate tariff, both for clerks and solicitors, in a more reasonable shape. At the present day it is an absurdity. The Lieutenant-Governor must, however, first appoint the Commission.

Let there be enrolled among the curiosities of law, the charge which a chairman of Quarter Sessions, according to the *Solicitors' Journal*, recently gave to the jury, "Let me tell you gentlemen, that a man who walks arm-in-arm down the street with a man who has stolen ducks, is equally guilty in the eye of the law."

A gross attack has recently been made by a disreputable country paper upon the County Judge of the County of Ontario. The article is so abusive that the writer has overshot his mark, and has only succeeded in bringing upon himself contempt. He is, according to his own shewing, a disappointed suitor, who seems to have endeavoured to make a municipality pay more for printing than his regular rates. The learned Judge can well afford to leave the matter to the good sense of the community, though we should be glad to see the writer receive the punishment he so richly deserves.

The House of Commons has adopted the principle that persons charged with common assault shall be competent witnesses in their own behalf, and may also be called as witnesses for the prosecution; and further, that the wife shall be a competent witness on behalf of the accused. The bill was introduced by a private member, a layman, but the Minister of Justice said he saw no objection to it, and it was fully discussed by

the lawyers on both sides of the House. Another bill of a similar nature has also been introduced by a private member, to make a defendant and his wife competent and compellable to give evidence on indictments for non-repair of highways, &c., or for a nuisance, or other proceedings for the purpose of trying a civil right only. We agree with some of those who took part in the discussion, that such important alterations as these in the Criminal Law, (and especially important in that they may be a step to a more radical change,) should emanate from the Government, or, at least, that the head of the proper Department should take them up as Government measures.

The Court of Appeal has been trying to circumscribe the limits of citation among American "authorities," so-called. One learned judge thought it would be of no value to cite Utah decisions on questions as to the property and rights of married women. Another considered that unless some case in point could be found nearer than California, he would not feel himself bound by a decision so far to the west. But speaking seriously, the complaints from the bench as to the multitudinous citation of cases which may be found almost wholesale in United States text books and digests is well-founded. It is hard enough to master the legitimate authorities, but no judge could find time to go through the mass of American case law to elucidate the matter in hand. The line should be drawn so as to include the decisions of the Supreme Court, and in other well-known reports, such as Paige, Sanford, Pickering and Wendell, and of such well-known Judges as Kent, Story, Shaw and Parsons, but outside of this, the Court should make no note of what is cited. Our law has not yet come to the pass adverted to in the *Central Law Journal*, "that the reported decisions of any judge, no matter where or when, no matter how much or how little of a jurist he may have been is more potent with nine out of ten Courts than any amount of reasoning and logic."

DISSENTING JUDGMENTS.

Our former article thus entitled has provoked a good deal of hostile criticism in the columns of our Quebec contemporary, *The Legal News*. The practice of the Privy Council in delivering one judgment which represents the joint opinion of the Court, though pronounced an admirable practice by the last editor of Austin's Jurisprudence, finds no favour with the Montreal critic. The sole reason given is the very insufficient one "that the suppression of dissentient opinions has proved highly inconvenient in several cases....in passing over important issues on which both parties desired an opinion." It may gratify the individuals interested in the particular case to have all its niceties explored, and each judge giving his views thereon; but regarding the matter from the broader point of view of the profession, such judgments do not declare the law except in so far as the judges concur in the matter decided. All else is in the nature of *obiter dicta* and the accumulation of such opinions in the reports is by all thoughtful jurists deprecated. Life is too short for the professional man to master the growing accumulations of the law, even when most carefully expurgated in the reports. Why should he further be compelled to waste time in finding out what is decided by going through the reasonings of each particular judge and aggregating the results? With all deference to opposite views, we

submit that this is the work which the judges themselves should do; and, unifying their conclusions so far as may be, the result should be given by one voice as the judgment of the Court.

We are speaking, of course, of supreme appellate tribunals, and no better illustration can be given of the two systems than a comparison of the reports in the House of Lords and those in the Privy Council. If the most cumbrous plan for embodying judge-decided law were to be chosen, surely the method of the Law Lords could not be improved upon. If the most scientifically precise plan were to be sought, where could one better look for a model than in the best judgments of the Privy Council (say those of Lord Kingsdown)? When considering the import of a decision in the Lords, one must always bear in mind the observation of Lord Westbury, that what is said by a Lord in moving the judgment of the House of Lords does not by any necessity enter into the judgment of the House: *Hill* v. *Evans*, Jur. N.S., p. 528. The same matter is more elaborately put by Chief Justice Whiteside in a case which gave the Irish bench a deal of trouble: "We are admonished," he says, "that it is the very decision of the House of Lords we are to obey, and not the observations of any noble Lord in offering his opinion. Noble Lords in giving their judgment often differ from each other in their reasons; they cannot all be right in opinions which conflict. It is not, therefore, the peculiarities of individual opinion which are to be obeyed, but the judgment of the House itself:" *Mansfield* v. *Doolin*; Ir. R. 4 C.L. 29.

Our contemporary proceeds to affirm that the suppression of dissentient opinions is deceptive in itself, is unfair to dissenting judges, and is calculated to retard the progress of jurisprudence. In contravention of these positions, any thing that we could say would be of little weight as compared with the views which eminent judges have left on record. Of these, two may be cited, one from an English, the other from an American source. "I very much wish," is the language of Lord Mansfield to Sir Michael Foster, "that you would not enter your protest with posterity against the unanimous opinion of the other judges....The authorities which you cite prove strongly your position; but the construction of the majority is agreeable to justice; and therefore, suppose it wrong upon artificial reasonings of law, I think it better to leave the matter where it is. It is not *dignus vindice nodus*."

In a letter of Mr. Justice Story to Mr. Wheaton, the reporter, he writes as follows: "at the earnest suggestion (I will not call it by a stronger name), of Mr. Justice Washington, I have determined not to deliver a dissenting opinion in *Olivera* v. *The United States Ins. Co.* 3 Wheat. 183. The truth is, I was never more entirely satisfied that any decision was wrong than that this is, but Judge Washington thinks (and *very correctly*) that the habit of delivering dissenting opinions on ordinary reasons weakens the authority of the Court, and is of no public benefit."

Of what use or value is a dissenting opinion in the Supreme Court? The decision of the majority fixes the law irrevocably, and their conclusions can be modified or reversed by nothing short of legislative authority. It is urged that the minority should proclaim their views —that they should take means to let the world know that they are not to be held responsible for the error of the majority. We submit that such self-assertion is made at the expense of the Court of which the minority forms a part. So our contemporary goes on urging that even where the decision turns on a ques-

tion of evidence, an injustice may result from the suppression of dissent. For example, he says, the decision of the majority may attach a serious imputation of fraud to an individual. But surely this is regarding the reports from a personal instead of a professional view-point --the fallacy which pervades the whole of the article in question. For the purpose of exculpating or mitigating the guilt of the individual, the dissent may be of consequence; but it is as mere surplusage when the question is what does such a case decide? The *Central Law Journal*, one of the best informed of our American legal exchanges, heartily endorses the views we have expressed on this subject.

The *Legal News* is vexed at our slighting allusion to the Lower Canadian decisions—their uncertainty and want of unanimity. But his own correspondent "S," points the contrast between the dignified self-repression of a Story and the effusiveness of those Courts where "each judge thinks his own opinion quite as good as that of any other judge, or bench of judges, or number of judges expressed at different times and rather better."

The writer of the letter in the *Legal News* continues in this strain:—"I have very little hesitation in saying that the decisions of our Courts have a larger degree of uncertainty about them than those of the Courts of any country with which we are at all familiar. And why? Because the judges in our Courts have not sufficient unanimity—or unity, perhaps, would express it better—in their bearing towards the jurisprudence of the Province as a whole; but treat each case separately and individually, and sometimes with very little regard for the opinions of each other."

We agree with our contemporary in one of his remarks, and that is that there should be no cast-iron rule, but that the matter should be left to the discretion and wisdom of the judges themselves, to decide when they should yield their individual opinion, and refrain from entering a dissent. As we know, some judges have no discretion, even when an Act of Parliament confers it upon them. The initial numbers of the Supreme Court Reports of the Dominion appear to us of evil omen from the length and repetition and conflict in the different judgments reported, and they suggested our protest against the manner of enunciating the conclusions of the Court. In such a Court, it would be well, in our view, to follow the English and United States precedents to which we have adverted, and, without making use of a "pious fraud" by concealing the dissent of any member of the court, yet not emphasizing that disagreement by reporting it at length, we would in every such case hope that the old distich might be verified:

"The judge dissents. Kind Lethe on its banks
Receives his honour's useful gift with thanks."

LAW SOCIETY.

Hilary Term, 1878.

The following is the resumé of the proceedings of the Benchers for this Term, published by authority:

The several gentlemen whose names are published in the usual lists were called to the Bar, and were admitted as Students of the Laws.

Tuesday, February 5.

In the absence of the Treasurer, Thomas Robertson, Esq., Q.C., was appointed Chairman.

Mr. Hodgins, from Legal Education Committee, presented the report on the

result of the Primary Examinations, which was received.

Mr. Hoskin, from the Reporting Committee, presented his report.

Ordered, That the same be considered on Saturday next.

Mr. Crickmore, from Finance Committee, presented the yearly statement of receipts and expenditure, which was ordered to be considered on Saturday.

The petition of Robert Cassidy was received and read, and referred to Legal Education Committee.

The petition from Thomas C. Rothwell was received and read, and referred to Legal Education Committee.

W. H. Scott, Esq., Q.C., was elected a Bencher, in the place of E. J. Senkler, Esq., Q.C., appointed Judge of Lincoln.

Mr. Osler, from Committee on Discipline, reports *in re* a barrister, and moves, seconded by Mr. Hodgins, the adoption of the report.

Moved, in amendment, That the report be referred back to the Standing Committee on Discipline, with instructions to make further inquiry as to the affidavits of claim and to the contents thereof.—Amendment carried.

Messrs. Evans and Kingsford, were appointed Examiners for Matriculation for next Term.

Mr. Hodgins gave notice that he would move, on Saturday, the 9th instant:

"That after Easter Term next all cases of defects in articles of service or in passing examinations be not considered by Convocation or any Committee at the Term in which the application for special relief is made or the defect appears, but do stand adjourned until the following Term, and that the Secretary be ordered to receive no articles or petition in which defects appear."

Ordered, That Mr. Berthon be employed to paint the portrait of Chief-Justice Moss in the usual form.

Ordered, That Mr. Berthon be employed to paint a half-length portrait of the Treasurer.

Ordered, That Messrs. Meredith, Bethune and Hodgins be a Committee to meet the Attorney-General on the subject of short-hand writers, and to present a copy of the resolutions adopted on the 20th of November, 1877, and to wait on the Judges on the same subject, and to take all necessary steps for carrying out the wishes of Convocation as expressed in those resolutions.

The account of receipts and expenditure for the year ending 31st December, audited and signed by the Auditors, was laid before Convocation.

Mr. Hodgins' motion relating to defects in the papers of articled clerks, notice of which was given on the 5th instant, was carried.

Mr. Leith gave notice that at the next meeting of Convocation he would move the following resolution:

"That, in every matter wherein application be made to any of the Superior Courts, or any Judges thereof, against an attorney or solicitor for misconduct, the reporters be instructed to give in their reports the style of the matter and name of the attorney if a rule be made absolute or order made therein against the attorney for such misconduct."

Friday, February 15.

Mr. Leith's motion, notice of which was given on the 9th instant, was put, seconded, and carried.

Ordered, That the auditors be paid fifty dollars each for their services in auditing the accounts of 1877.

Ordered, That the usual examinations be held for next Trinity Term.

Ordered, on motion of Mr. McKelcan, that the "Supreme Court Reports" be

furnished to the Judges of the Superior Courts and of the County Courts of Ontario, and that one hundred additional copies of the "Supreme Court Reports" be purchased.

The petition of Thomas Rothwell and the Report of the Committee on Legal Education therein was received and read, and the first day of next term appointed for the consideration thereof.

SELECTIONS.

THE TITLE OF HOLDERS OF NEGOTIABLE INSTRUMENTS.

We shall next refer to the cases decided in reference to fraudulent alterations of negotiable instruments, honestly obtained—a subject well treated by the *Albany Law Journal*, in a recent paper, upon which we shall draw for some of the materials of part of this article.

The general rule, as mostly prevailing and as expressed in a recent case, may be thus stated :—Where a party to a negotiable instrument entrusts it to another for use as such, with blanks not filled up, such instrument, so delivered, carries on its face an implied authority to complete the same by filling up the blanks so as to perfect, in his discretion, what is incomplete ; but, the authority implied from the existence of the blanks would not authorize the person so entrusted to vary or alter the material terms of the instrument, by erasing what is written as a part of the same, nor to pervert the scope and meaning of the same by filling the blanks with stipulations repugnant to what was plainly and clearly expressed in the instrument before it was delivered : *Angle* v. *N.W., &c., Ins. Co.*, 3 Central L. J. 229, and cases there cited. In *Garrard* v. *Hoddan* (67 Penn. St., 82, followed in *Zimmerman* v. *Rote*, 25 Sm. 188, *Brown* v. *Reed*, *ante*, p. 499), to which we alluded at the close of our previous paper, the maker of a promissory note in the usual form left a blank between the words "hundred" and "dollars" in which the words "and fifty" were introduced afterwards without his consent or knowledge. Story's Eq. Jur. sec. 387, was cited; and *Van Duzer* v. *Howe*, where (the maker having left the amount in blank, with authority to fill in a certain amount, which was exceeded) Denio, J., said, "The principle which lies at the foundation of these actions, I think, is, that the maker, who, by putting his paper in circulation, has invited the public to receive it of anyone having it in possession with apparent title is estopped to urge, the actual defect of title against a *bona fide* holder." The Court held in *Garrard's* case that, the alteration being imperceptible, the maker was liable to an innocent holder for value ; observing, "He could have saved all difficulty by scoring the blank with his pen. It would have been impossible almost to have written over this without leaving traces of the alteration. In that case a purchaser of the note would take it at his risk. This is, therefore, one of the cases in which it is a maxim 'that where one of two innocent persons must suffer, he shall suffer who by his own acts occasioned the confidence and the loss.'" The same doctrine, on similar facts, was held in *Yocum* v. *Smith*, 63 Ill. 421, and *Visher* v. *Webster*, 8 Cal. 109 ; and in *Rainblot* v. *Eddy*, 34 Iowa, 440, where a blank was fraudulently filled up by the insertion of words imposing interest and fixing its rates. (See, also, *Brown* v. *Reed*, *ante*, p. 499 ; *Trigg* v. *Taylor*, 27 Mo. 245 ; *Presburg* v. *Michael*, 33 Mo. 542 ; *Gillaski* v. *Kelly*, 41 Ind. 158 ; *Isnard* v. *Torres*, 10 La. Ann. 103 ; *Schryver* v. *Howkes*, 22 Ohio St. 308 ; *Redlick* v. *Doll*, 54 N. Y. 234 ; *M'Grath* v. *Clarke*, 56 *ib.* 34.) But in *Washington Savings Bank* v. *Ekey*, 51 Mo. 272—which case, however, is inconsistent with others in the same State (Missouri), and see *Shirts* v. *Overjohn*, *ante*, p. 430—where a blank in a note was fraudulently filled up so as to make the note bear interest at ten per cent., this was held to avoid the note in the hands of an innocent indorsee, although the alteration was imperceptible; and in *Ivory* v. *Michael*, 33 Mo. 398, the addition of the words "bearing ten per cent. after maturity" *at the end* of the note, was held to avoid it. So, in *Wade*

v. *Withington*, 1 Allen, 561, it was held that the fraudulent alteration of a promissory note by the insertion of words which make it appear to be for a greater sum than that for which it was originally given, avoids the note in the hands of a *bona fide* indorsee for a valuable consideration, although the alteration could not be detected on careful scrutiny. The original note was for one hundred dollars, and the words "and forty" were added, but the case does not disclose how or where, or whether the maker had not exercised due care. The Court held that, where the alteration has been made by one holding no relation of agency to the parties, and after the instrument has been executed and delivered as a binding contract, the instrument is avoided, and that the sanction which the law give to negotiate paper in the hands of innocent purchasers does not go to the extent of rendering a party liable on a contract which he never entered into, and to which he never assented. And *Young* v. *Grote* (4 Bing. 253), was distinguished on the ground that "where one of two innocent parties is to bear a loss, it must fall on him who employed a dishonest agent, and carelessly furnished him with the means of committing a fraud. (See, further, as to this principle, *Hern* v. *Nicholas*, 1 Salk. 279; *Fowler* v. *Hollins*, L. R. 7 Q. B. 635; *Ex p. Swan*, 7 C. B. N. S. 440; *Lickbarrow* v. *Mason*, 2 T. R. 63; *Chipman* v. *Tucker*, 38 Wis. 43; *Somes* v. *Brewer*, 2 Pick. 184; *Trigg* v. *Taylor*, 27 Mo. 245; *Butler* v. *United States*, 21 Wall. 272; *Garrard* v. *Haddan*, *ubi. sup.* In *M'Grath* v. *Clarke*, 56 N. Y. 34, where the defendant indorsed a note with the time and place of payment in blank, and delivered it to the maker, who filled the blanks and added at the end the words "with interest," the Court observed, "The rule that 'whenever one of two innocent parties must suffer by the acts of the third, he who has enabled such third person to occasion the loss must sustain it,' is not applicable, for the reason that the indorser did not, in any legal sense, *enable* the maker to make the alteration. He endorsed a note for a specific sum, which, as we have seen, conferred no authority upon the maker to change or alter it." And it was held that the filling of the blanks was impliedly authorised, but that the addition of the words at the end of the note rendered it void even in the hands of a *bona fide* holder for value. Again, in *Holmes* v. *Trumper*, 22 Mich. 427, where the payee of a promissory note drawn upon a printed form added, without the maker's consent, after its delivery, the words "ten per cent." in the blank after "interest at," the Court held the note to be void, even in the hands of a *bona fide* purchaser for value. That conclusion, in conflict with *Rainbolt* v. *Eddy*, *ubi sup.*, *inter alia*, is supported by *Fulmer Seitz*, 68 Penn. 237; *Worrell Gheen*, 39 Penn. St. 388; *Goodman* v. *Eastman*, 4 N. H. 455; *Bruce* v. *Westcott*, 3 Barb. 374; and see *Abbott* v. *Rose*, 62 Me. 194, *Kuntz* v. *Kennedy*, 63 Penn. 187, and the following cases, where alterations wilfully made, having an effect to alter the liability of the maker of an instrument, are held to be forgeries, and the instrument void:—*Slate* v. *Stratton*, 27 Iowa, 420; *Waite* v. *Pomeroy*, 20 Mich. 425; *Benedict* v. *Cowden*, 49 N. Y. 396. In *Gerrish* v. *Glines*, 55 N. H. 9, 3 Central L. J. 213, where a negotiable promissory note was made payable upon a condition, and the condition was written below the note on the same piece of paper, it was held that the note and condition were parts of a single entire contract, and that the fraudulent removal of the condition, by tearing the paper, was such a material alteration as rendered the note void in the hands of a *bona fide* holder. But see *Citizens' Nat. Bank* v. *Smith*, *ante*, p. 528; *Brown* v. *Reed*, *ante*, p. 499. In *Harvey* v. *Smith*, 55 Ill. 224, Breese, J., said: "If a person signs a note written partly in ink, but containing a material condition qualifying his liability, written only in pencil, he is guilty of gross carelessness, and if the writing in pencil is erased so as to leave no trace behind, or any indication of alteration, as it easily may be, we are of opinion an innocent holder, taking the note before maturity, for a valuable consideration, will take it discharged of any defence arising from the erased portion of the note, or from the fact of alteration."

In the State of Illinois there is a special statutable provision that "if any

fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid (promissory notes, &c.), such fraud or circumvention may be pleaded in bar to any action to be brought by the party committing such fraud or circumvention, or any assignee of such instrument:" s. 10, ch. 98, Rev. Stat, 1874. In the cases of *Taylor* v. *Atchinson*, 54 Ill. 196, *Sims* v. *Bice*, 67 *ib.* 88, 2 Central L. J. 689, and *Comstock* v. *Hannah*, 7 Chicago L. N. 358, the defences were under that provision; but the decisions arrived at possess an extrinsic interest sufficient to justify a detailed notice. *Taylor* v. *Atchinson* (like *Douglas* v. *Matting*, 29 Iowa, 498) was decided in the same month as *Foster* v. *Mackinnon*, but apparently without cognizance of that decision. The defendant was induced to sign the note by the fraudulent representations of the payee that it was a contract. Two papers of about the same size and appearance were signed. One of these papers was used by the payee of the note, at the request of the maker who could read, but not very well. A third party, in no way connected with the transaction, was present when the note was signed, and was a witness for the defendant on the trial. It does not appear that he was unable to read, or that he was requested to read the instruments signed. The Court conceded that at Common Law the defendant would have been liable, but placed its decision on the ground that the local statute authorized the defence. It then added: "It is, however, necessary that a person executing such an instrument, which is procured by fraud or circumvention, should use reasonable and ordinary precaution to avoid imposition, when the suit is by an indorsee before maturity. If able to read readily, he should examine the instrument, *or procure it to be read by some one in whom he can place confidence.* If he is unable to read readily, or does so with difficulty, then he may avail himself of the usual means of information by having it read by some person present. He cannot act recklessly, and disregard all the usual precautions, to learn the contents of the instrument, and then interpose the defence against an assignee." The Court then held, as a matter of law, that the defendant used ordinary precaution. And the Court further held that the indorsee of the note was guilty of negligence in purchasing it of a stranger without first making inquiries of the maker as to its validity. In other words, it was negligent for one to buy a note from a stranger, although he knew the signature to be genuine, but not negligent for a party to sign a paper creating some kind of an obligation, trusting in the representations of the same stranger as to its contents. In *Sims* v. *Bice*, Jan. 1873, the defendant was procured to sign what turned out to be a promissory note, under the assurance that he was signing an agreement respecting his agency to sell machinery, he not being able to read writing readily, and the proof showed that he did not sign the same recklessly, but commenced to read the papers he signed, and was prevented by the restiveness of his team in the field where he was ploughing. The Court held that a verdict finding that the execution of the note was procured through fraud and circumvention, in a suit by an assignee before maturity, was not against the preponderance of the evidence. The following doctrines were laid down: 1st. Where a party is induced to sign a promissory note under the representation and belief that the same is an agreement appointing him agent for the sale of machines, and a statement of his ownership of property, and he cannot read writing readily, as between the parties it will be void, as having been executed through fraud and circumvention. 2nd. Where a person executes a note he must be diligent, and use all the reasonable means to prevent a fraud being practised upon him, or he will be liable to an innocent purchaser before maturity. He is not required to use every possible precaution, but only such as would be expected from men of ordinary prudence. 3rd. The assignee, equally with the maker of a note, is bound to use proper diligence; and when agents for the sale of patent rights and such matters, who are strangers, offer to sell promissory notes taken by them, a prudent man would have his suspicions aroused, and in such case the purchaser ought to protect himself by inquiring of the apparent maker. From these deci-

sions it seemed that the Court were disposed to carry the doctrine of *Gill* v. *Cubit* (3 B. & Cr. 466, followed in *Gould* v. *Stephens*, 43 Vt. 125) to an extreme length, requiring the purchaser of a note to exercise even greater diligence than the maker; but, in the subsequent case of *Comstock* v. *Hannah* (*ubi supra*), the Court said, "We find nothing in the previous decisions of this Court which would conclude us from adopting, what upon investigation we are satisfied is the correct doctrine in principle, and the prevailing rule of law;" and there the rule, as formulated in the head-note, was laid down as follows:—"A party who purchases commercial paper before due, for a valuable consideration, without knowledge of any defect of title, and in good faith, holds it by a valid title; suspicion of defect of title, or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the purchaser, at the time of the transfer will not defeat the title. That result can only be produced by bad faith on his part." The Court quoted the judgment of Lord Denman in the case of *Goodman* v. *Harvey*, 4 Ad. & E. 870; *Goodman* v. *Simonds*, 20 How. 343, *Chipman* v. *Rose*, *ante*, p. 429, and several others of like import; and said, "We accept the doctrine of these cases as correct in principle, and the one sustained by the great weight of authority." The doctrine established in *Goodman* v. *Harvey* is followed in most of the States (see cases cited in note to *Rock Island Nat Bank* v. *Nelson*, 3 Central L. J. 6); and has been accepted in the recent case of *Johnson* v. *Way*, *ante*, p. 459, of which, and *Dresser* v. *M. & T. R. Constr. Co.*, *ante*, p. 458, and *Hamilton* v. *Marks* (51 Mo. 78, which will be printed in our next issue), a detailed notice is here unnecessary.

From the foregoing statement it appears that there is a notable absence of uniformity in the American adjudications on the rule of the law-merchant, or at all events as to its application, in reference to the subject of those papers. All, or almost all those cases, numerous as they now are, have been decided within the last decade, and perhaps their want of harmony is owing to the circumstance that the leading cases were decided about the same period and without reference to each other. But, be the cause what it may, the conflict is to be deplored. Mercantile law is a system of jurisprudence recognised by all nations, and demands, as far as practicable, uniformity of decision throughout the world; and the use of negotiable instruments deserving to be encouraged by the law on account of their universal convenience in mercantile transactions, any conflict of adjudications tending to create distrust would be calamitous in the highest degree, even as any course of judicial decision calculated to restrain or impede their unembarrassed circulation, would be contrary to the soundest principles of public policy. The recent cases, however, published in our columns, appear to us to be worthy of special consideration, as tending to establish, to the fullest extent, the integrity of commercial paper, and to prevent injury to innocent parties who cannot be charged with any want of care or caution; while upholding the salutary principle that, where one of two persons must suffer, it must rather be he through whose negligence the exigency has been occasioned. And considering that without the aid of such instruments as a circulating medium, commerce, in the proportions to which it has now attained, could not subsist; and that to fetter their negotiability, while tending to ostracise them from the exchanges of the world, would not tend in the direction of those substantial benefits which flow from a specie monetary basis; we trust that the reasoning of the able jurists of the United States, fortified by the plain dictates of public policy, will be deemed not without weight in this country also, and that on questions so profoundly affecting one of the leading evidences of commercial credit a "common jurisprudence" may yet, in the words of Lord Cockburn, "assist to cement the bonds of international amity."—*Irish Law Times.*

DISSENTIENT OPINIONS.

Last week, referring to the suggestion of a contemporary, that dissentient opinions in the Supreme Court should be sup-

pressed, we remarked that such a course seemed to us objectionable as being deceptive in itself, as unfair to dissentient Judges, and calculated to retard the progress of the science of jurisprudence. That it would be a deception admits, we think, of no doubt. What would be the object of suppressing the dissent if not to present the appearance of unanimity? And if the Court be made to appear unanimous when it is not so, somebody must be deceived or misled by the artifice. Now, however good the end in view, we cannot think it should be attained by misrepresentation. The day for such pious frauds is past. But it may be said, there is no deception because the judgment is not represented to be more than the judgment of a majority. If so, that numerous class of judgments in which the Court is actually unanimous loses in force just as much as the non-unanimous judgments gain through the failure to state exactly how the Court stands. The force of important enunciations of principle may be weakened by the whisper or the surmise that the principles laid down by the Court are the views of a bare majority. The Court will often be supposed to be at variance when it is perfectly agreed, and Judges who fail to state their opinions from the bench at the time the judgments are delivered may improperly be counted as dissentients.

This leads us to the second ground of objection above stated—that the suppression of dissent is unfair to the Judges themselves. The minority may be condemned by such a rule to remain silent while a doctrine of which they are convinced that time will demonstrate the unsoundness, is proclaimed from the bench by their colleagues, and no disclaimer will be possible. How often in the past has an erroneous principle obtained judicial sanction for a time until the strong light of criticism and debate has exhibited its weakness and led to its rejection? Surely the minority in such a case would be justified in taking some means to let the world know that they are not to be held responsible for the error. Number does not always constitute strength, and the minority may be men of extraordinary powers, while the majority are quite the reverse. Even where the decision turns on a question of evidence, an injustice may result from the suppression of dissent. For example, the decision of the majority may attach a serious imputation of fraud to an individual. Is not the latter entitled to the benefit of the statement that certain members of the Court did not share in a view which dishonours him? In an election case, the judgment of the majority may disqualify a member of Parliament. Are the minority to refrain from expressing their disbelief of the evidence on which the majority have based so serious a condemnation?

The third ground of objection, that the suppression of dissent would retard the progress of the science of jurisprudence, appears to us to be equally clear. If the dissentient opinions are unsound, it is better, nevertheless, to put them on record. Their unsoundness will become more and more apparent, the longer they are scrutinized and canvassed. On the other hand, if the dissentient opinions are the sounder of the two, their suppression can only have the effect of giving to error the mantle of increased authority. It will be more difficult to correct the error; but *magna est veritas*—in the end the truth will get the upper hand, however obstinately the vicious precedent may fight for existence and respect. We cannot find any words in which to describe this disintegrating process so apt as those employed by a Westminster Reviewer some years ago, in referring to the obstruction to justice caused by a bad decision. "Judges," says this writer, "are not infallible, and though actuated by the purest intentions, they sometimes decide wrongly, Such decisions are, nevertheless, available for citation, like all other precedents. Now, when an erroneous decision in the past comes to be pressed upon a Judge in the present, one of two things must happen—either precedent must be followed, or it must be disregarded. The traditions of the profession point in one direction, while the instinct of justice exercises its influence in the opposite. The result is oftentimes a compromise. The decision is in effect disregarded, but its authority is saved by recourse being had to some shadowy and

fictitious distinction. This practice was recently satirized by a living Judge, who, on a case which we will call "Brown v. Robinson being cited in argument, informed the bar that he should not feel himself bound by that case unless a suit were before him in which the facts were precisely similar; 'indeed,' added his lordship, 'unless the plaintiff's name were Brown, and the defendant's Robinson!'"

The suppression of dissentient opinions would greatly aggravate the mischievous consequences of an erroneous precedent. However unsound a decision might be shown to be, it would be hard to get over it unless legislative action was invoked; and the growth of the science of jurisprudence would be stunted correspondingly.

If Judges are to be present at the rendering of the judgment, and to refrain from indicating their dissent from the views which may be expressed, the decisions of the highest tribunal will tend to resolve themselves into a mere vote of yea or nay upon the judgments submitted to them. As soon as the fact has become known during the deliberation that a majority of the Court are inclined one way or the other in any particular case, the other members of the Court will have small encouragement undertake to an arduous examination of the questions involved, knowing, as they do, that it is labour in vain, as they will be debarred from stating the conclusions at which they may arrive.

To conclude: instead of adopting a cast-iron rule, is it not preferable to leave it to the discretion and wisdom of the Judges themselves to decide when they shall yield their individual opinion and refrain from entering a dissent? Who so well qualified as they to appreciate the importance of certainty in the law, and the advantage, where it can be done without the sacrifice of strong convictions, of presenting a harmonious judgment? For our part, with a vivid realization of the mischief caused by crude or hasty dissents, we are still disposed to favour a straightforward policy, be the consequences what they may.—*Legal News.*

It is suggested that judges may be relieved very much by the use of certain aids which, though not heretofore adopted vere, are practical and proper. The greater part of the labour connected with the determination of a case consists in (1) the collocation of the authorities bearing upon the issues involved in it, and (2) the writing out of the results of such collocation. In other words, looking up cases, and writing opinions, constitute a considerable part of the judicial work. Now the case law bearing upon the points argued in any cause could be looked up and arranged by any good lawyer, so that all the judge or court would have to do would be to apply the same. This could be done in an opinion delivered orally, and written down by a stenographer. A practice something like this we understand prevails, to some extent, in England. The magistrates have clerks who prepare the argued cases for decision, and the opinion, when is given, is delivered *viva voce.* Such a plan might at first work awkwardly, but we are confident that once fairly tried, there would be no return to the one now in vogue. Not only would the judges be relieved of much drudgery, but they could dispose of business much more rapidly, and thus more nearly accomplish the duties which are imposed upon them. It is at least worth while to make a trial of the system suggested. That now in use certainly is the proper one.—*Albany Law Journal.*

It has recently been held by the Supreme Court of the United States, (in *Good* v. *Martin*) that when a promissory note, made payable to a particular person or order, is first indorsed by a third person, such third person is an original promisor, guarantor, or indorser: (1.) If he put his name in blank on the back of the note to give the maker credit with the payee, or if he participated in the consideration of the note, he is held as joint maker; (2.) If subsequent to the making and delivery of the note he did the act in pursuance of a contract between the maker and payee for forbearance, he is held as guarantor; (3.) If he did it with the understanding of all parties that the note was to be inoperative until indorsed

by the payee, he would be held liable only as second indorser. The presumption where such an indorsement is made in blank, is, that the party is liable as maker or guarantor. Where the party is held as a promisor or a second indorser, it is not necessary to allege or prove any other than the original consideration, but if it is attempted to hold him as guarantor, a distinct consideration must appear.—*Ex.*

NOTES OF CASES.

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

COURT OF APPEAL.

From C.C. York.] [February 20.

Re Walls & Co.

Insolvency.

This was an appeal by joint creditors of the insolvents against an order confirming the deed of composition and discharge. The objection to the deed was, that it did not provide for separate creditors, of whom there were two, viz. : The Stadacona Fire Insurance Company, and the Huddersfield Banking Company. The Stadacona Company proved for a sum due for calls on stock which stood in the name of T. Walls, one of the insolvents. Pending proceedings for the confirmation of the discharge, a friend of the Insolvents, for the purpose of removing the objection, took a transfer of this stock, which was shown to be of no value, and paid off the calls: *Held*, that the effect of this transaction was the extinguishment of the debt, and that the deed was not invalidated, because it did not provide for the payment of this debt. The Huddersfield Bank claim was due by the firm and fully secured by a mortgage on the partnership assets, which contained T. W.'s covenant to pay the money : *Held*, that although this was a separate debt, it did not come within the principle which vitiates a deed of composition on the ground that the separate creditors are not provided for, since by resorting to the mortgage security the Bank would only take what was theirs already, while if they took a different course, and inforced payment from other assets they set free the mortgaged property.

The deed of composition was filed with a certificate from the assignee under sec. 52, dated 21st November, 1877. It stated that the total number of proved claims of $100 and upwards was thirty-four, and that the number who had proved for that amount, and who had executed the deed, was thirty-one. The deed, however, as produced, had the signatures of fifty creditors, and from the affidavit of execution it appeared that all these had signed before the date of the certificate. There was nothing in the papers or the evidence of the assignee to explain the discrepancy between the numbers in the deed and the certificate. *Held*, that the deed was void, as it did not appear that it had been executed by a sufficient proportion in number and value.

The deed was executed by procuration, but with the exception of a few cases no authority to execute was shown. The assignee swore that nearly all had accepted the composition under it, but it did not appear that he had paid it directly to the creditors, or had their acknowledgment for it, or that those to whom it was paid had power to ratify the Deed by accepting the composition. *Held*, that as neither power to execute or to ratify was shewn, the deed was void.

Held, that the mere fact that no objections to the deed of composition were filed with the assignee, in compliance with sec. 51, does not compel the judge to confirm the discharge under sec. 54.

The affidavits of justification and of the execution of the appeal bond were made before a commissioner in B. R. ; they were entitled in the matter of the insolvency, and referred to the Insolvent Act of 1875 and amending Acts.

Held, that it was no objection that they were not entitled in any court.

The accuracy of styling insolvency proceedings in the County Court questioned.

The bond recited the judgment as being in a matter under the Insolvent Act of 1875.

Held, that even if a reference to the amending Acts had been proper, its absence would not have invalidated the bond so long as there was sufficient to show without ambiguity what was the particular decision attacked by the appeal.

The condition of the bond was that the ap-

pellant would "prosecute" the appeal instead of "duly prosecute" as required by sec. 128

Held, that the omission of the word "duly" was immaterial.

Several creditors, who are not interested in the debts due to each other may join in one appeal.

In computing the eight days within which proceedings must be adopted for an appeal under sec. 128, the day on which the final order or judgment is rendered is excluded.

The effect of sec. 124 of the Insolvent Act of 1875 is to continue the rules of practice given in secs. 84 and 85 of the Insolvent Act of 1869, as modified by sec. 128 until they are replaced by others.

The appellants completed their security and served the application and notice within the eight days, but failed to notify the assignee. *Held* that they must be considered as "having adopted proceedings" within the meaning of sec. 128; but the appellants were ordered to serve the assignee.

J. S Ewart, for the appellants.

Ferguson, Q. C., (with him *Monkman*), for the respondents.

Appeal allowed.

From C. P.] [March 4.

MCEDWARDS, ASSIGNEE, v. PALMER.

Insolvent Act 1875, secs. 130, 132, 134—Preference.

The insolvent, six months before an attachment in insolvency issued against him, conveyed his equity of redemption in certain lands to the defendant upon trust, to sell the same and apply the proceeds, after payment of a mortgage thereon, in payment of pre-existing debts due to the defendant and one T., and to pay over the surplus, if any, to the insolvent, The defendant sold the land subject to the mortgage, and paid himself and T. out of the proceeds. It did not appear what other property the insolvent had at the date of the deed, or what other debts he owed. The estate, however, which came into the hands of the assignee, consisted of a watch, and the claims proved amounted to $277.80. The evidence did not shew that the deed was made in contemplation of insolvency.

The learned Judge at the trial found that there was no fraud or preference in the making of the deed, and that it was a *bona fide* transaction.

Held, that the deed was not under sec. 132, as the evidence did not shew that creditors were injured, obstructed, or delayed; nor under the 133rd sec., as it did not appear that it was an unjust preference, or made in contemplation of insolvency.

M. C. Cameron, Q.C., and *Osler*, Q.C., for the appellant.

Kerr, Q.C., and *Boyd*, Q.C., for the respondent.

Appeal allowed.

From Chy.] [March 4.

INGLIS v. BEATTY.

Executor—Annual rest.

The rule upon which the Court acts in charging interest rests upon the basis of compensating the *cestui qui* trust and depriving the trustee of the advantage he has wrongfully obtained.

An executor will not necessarily be charged with compound interest in all cases except those in which there is a mere neglect to invest.

Where an executor retained a portion of the trust money under the belief that it was his own and had acted on that supposition without objection from those interested under the will—and it did not appear that he had used the money in business,

Held, reversing the decree of Blake, V.-C., that under the circumstances he was only chargeable with simple interest.

C. Moss for the appellant.

J. A. Boyd, Q. C. (with him *W. Cassels*), for the respondent.

Appeal allowed.

From Chy.] [March 4.

WILSON v. BEATTY.

Will—Construction of.

A testator devised all his estate to his issue —if a son, on attaining the age of 25 years, and if a daughter, on her attaining the age of 18 or marriage, "and in the event of there being no such issue of the said marriage of myself and my said wife, *born, or if born, not living within one year* from my decease," then over.

A few weeks after the testator's death, his widow had a son, who lived only a few days.

Held, that the gift over must take effect as there was no child living at the end of the year.

J. A. Boyd, Q. C., (*Donovan* with him), for the appellant.

The *Attorney-General* (*O'Donohue* with him), for the respondent.

Appeal dismissed.

From Chy.] [March 4.

The Canada Fire Insurance Co. v. the Northern Insurance Co.

Reinsurance—Misrepresentation.

The plaintiffs, by their bill, sought to have one of their policies by which they reinsured the defendants for the amount of a policy of $2,800, declared null and void on the ground that they had been induced to accept the risk at seven per cent by a fraudulent representation by the defendants' agent that the rate at which the defendants had insured the property was seven per cent; whereas, in fact, it was eight, and that the other insurance companies, holding risks on the same property, had reduced their rates from eight to seven per cent.

It appeared that when the plaintiffs' agent accepted the risk in November, 1875, he was well acquainted with the property and every circumstance which it would be necessary to consider in determining whether to accept the risk. He renewed the risk on the 10th March, 1876, at 8 per cent, but on the 25th April he alleged that he was induced to accept 7 per cent, owing the above misrepresentations.

Held, that even if these representations were made, they would, under the circumstances, afford no ground for avoiding the policy, inasmuch as the defendants had already accepted the policy, and the alleged misrepresentation only had the effect of inducing them to take a lower premium.

One of the conditions of the policy was: "This reinsurance is subject to the same specifications, terms and conditions as policy No. of the Northern Assurance Company which it reinsures, it being well understood that the Northern Assurance Company do not retain any sum or risk on the property covered by this policy, but retain an amount equal at least thereto, on other parts" of the property.

It happened that before the fire occurred, a policy of the defendants expired and was not renewed, so that at the time of the fire they had only risks over and above their reinsurance to the amount of $2,500.

Held, that the defendants had not violated the condition, as the effect of it merely was that defendants were to retain, or, in other words, to forbear to reinsure the stipulated proportion.

Held, also, that the difference of the rate of premium was not such a departure from the "specifications, terms and conditions" as to violate the policy.

Boyd, Q. C., (with him *C. Moss*), for the appellants.

Ferguson, Q. C., (with him *G. Patterson* for the respondents.

Appeal allowed.

From C. P.] [March 4.

O'Connor v. Beatty.

Deed—Investigation of title—Dower.

On a sale of land, the deed and mortgage back were executed by the vendor and purchaser, and left with one K until their respective wives should come in and bar their dower: nothing, however, was said as to title. The defendant went into possession of the land, made a payment on the mortgage, and endeavoured to raise money on the land, when he discovered (after he had been in possession four years) that there was a defect in the title.

Held, that he was entitled to have a release of dower; but that he had waived his right to demand an unlimited inquiry as to title.

McCarthy, Q.C. (*Pepler* with him), for the appellant.

Lount, Q.C., for the respondent.

Appeal dismissed.

From C. C., York.] [March 4.

Smith v. Hutchison.

Insolvent Act 1875, secs. 133 and 134.

A payment by an insolvent in the ordinary course of business, within thirty days before an assignment or the issue of a writ of attachment is not void under section 134 of the Insolvent Act of 1875, unless the payee has actual or constructive knowledge of the insolvent's inability to meet his engagements in full; nor can such a payment be avoided under section 133, by shewing that it was made in contemplation of insolvency, and that it gave the debtor an unjust preference, as a payment in money does not come within that section.

W. A. Foster, for the appellant.

Rose, for the defendant.

Appeal dismissed.

From Q. B.] [March 4.

Bacon v. Hayes.

Lease—Covenant not to assign—Breach—Forfeiture—Waiver.

The plaintiff leased land for ten years, from 1st December, 1871, to one D, who covenanted that neither he nor his assigns would assign, transfer or sub-let the premises without the plaintiff's consent in writing first obtained, with a proviso for re-entry. D mortgaged his interest to one H, to secure him against his endorsement of a note for D, the proceeds of which D expended in converting the premises into a race-course and pleasure grounds, and erecting buildings thereon. The note being dishonoured, H informed the plaintiff of the mortgage, and that owing to the plaintiff's absence it had been taken without his consent, whereupon the plaintiff waived all objections on this ground, and declared that he would take no advantage of the omission, and H then paid the note and afterwards expended a large sum in foreclosing the mortgage and improving the premises.

H having foreclosed, advertised the land for lease. One W took possession in 1874 on the understanding that he was to have the place for five years, with the privilege of remaining the whole of the original term, at a rent of $530 a year, and there was to be a written agreement to be drawn up if possible so as not to effect H's lease. W remained ten months and made improvements, and while in possession sub-let part of the land to one C for $300 a year. W gave up possession to H in April, 1875, not being able to obtain the written agreement which had been promised him; and on arbitration with H, the arbitrators awarded to W $524 in full for improvements, "less $224 due for rent," on which basis they settled.

Held, affirming the judgment of the Queen's Bench, that what took place between H and W was a breach of the covenant.

Held, also that the plaintiff had waived the forfeiture caused by the mortgage to H.

McMichael, Q. C. (*Monkman* with him), for the appellant.

S. Richards, Q. C. (*E. Crombie* with him), for the respondent.

From Q. B.] [March 4.

Shannon v. Gore District Mutual Insurance Company.

Double Insurance—Knowledge of Agent—Estoppel.

Held, that the knowledge of a double insurance by the agent did not estop the Company from setting up such double insurance to defeat the plaintiff's claim.

Bethune, Q.C., for the appellant.

Strathy, for the respondent.

Appeal allowed.

From Chy.] [March 4.

Crysler v. McKay.

Sale of land for taxes—Taxes not in arrear for five years—32 Vict., cap. 26, sec. 155.

When it appears that no portion of the taxes on the land have been over due for the period prescribed by the Statute under which the sale took place, the sale is invalid; and the defect is not cured by section 155 of 32 Vict., ch. 36, as it only applies to defects in procedure.

Where there is *prima facie* evidence of arrears, it must be shewn affirmatively that the arrears were not sufficient to authorize the sale.

Bethune, Q.C., for the appellant.

Maclennan, Q.C. for the respondent.

Appeal dismissed.

ELECTION COURT.

Before Patterson, J.A., and Blake, V.C.

[March 1.

Re Lincoln Election.

Voters' list—Income—Description.

Held, that a Judge has no power to add to the voters' list, in the revision thereof, names of persons as voters in respect of income, who were not assessed for income on the last revised assessment roll.

Held, also, that a sufficient description of the real property on which the qualification of a voter depends, must appear on the voters' list in all cases of additions thereto where it does not appear on the assessment roll.

Hodgins. Q.C., for the petitioner.

Bethune, Q.C., for the respondent.

[March 2.

Re Lincoln Election.

Admissions.

The respondent, who was conducting the case, against the claim of the petitioner to the seat, and the attorney and counsel for the petitioner consulted as to the extent to which they could mutually admit without inspection of the ballot papers how certain voters had voted, and as the result they stated to the Re-

gistrar that they had agreed that 22 whose names were mentioned had voted for the respondent, and four for the petitioner, and that there were 15 others as to whom they had not been able to agree, but proposed to consider them further. Subsequently the respondent objected to the Registrar acting on these admissions, on the ground that he had only accepted the agreement conditionally upon it extending to the 15 votes which had not yet been decided, and also that he had no power to bind the constituency by his admission.

Held, that the admissions were properly received as evidence of the facts.

Hodgins, Q.C., for the petitioner.

Bethune, Q.C., for the respondent.

[March 4.

RE LINCOLN ELECTION.

Contempt—Publication.

All the powers which the Court of Queen's Bench possessed with respect to Controverted Elections were transferred to the Court of Appeal by section 2 of 38 Vict., c. 3; the latter Court, therefore, has now the power to punish for commissions of contempt in election cases.

Pending an election scrutiny, the publisher of a paper at St. Catharines, where the scrutiny was being carried on, copied a letter, which purported to have been written by the respondent, from the daily *Mail* of Toronto, commenting very severely on the character and evidence of the petitioner's witnesses, as well as on the motives of those prosecuting the petition. Upon a motion to commit the publisher for contempt of Court, he filed an affidavit stating that the letter in question was an answer to an editorial which had appeared in the *Globe* newspaper, charging the respondent with having improperly interfered with the voters' list before the elections, and reflecting on his conduct in such a manner as to do him serious injury in St. Catharines, where he lived; that he had published the letter as a simple act of justice to the respondent, and without his knowledge or consent. He further denied any intention of giving any offence to the Court or of interfering with the fair trial of the case.

Held, that the publication contained expressions which amounted to a contempt of Court, but under the circumstances the Court refused to make any order.

Hodgins, Q.C., moved the rule absolute.

M. C. Cameron, Q.C., shewed cause.

QUEEN'S BENCH.

VACATION COURT.

Gwynne, J.] [February 22.

REGINA v. LAWRENCE.

Conviction—Tampering with witnesses—Rev. Stat. cap. 181, sec. 57—Local Legislature—Ultra vires.

A conviction under Rev. Stat. ch. 181, sec. 57, for tampering with a witness, was quashed, on the ground that the section was *ultra vires* of the Local Legislature, because tampering with a witness was a crime—subornation of perjury—at common law (or if not at common law, then made a crime by the section), and being a crime, sec. 91 of the B. N. A. Act, gave the exclusive jurisdiction to the Dominion Legislature.

Fenton, Co. Attorney for the Crown.

Blackstock for defendant.

[This matter was re-heard before the full Court, and the judgment affirmed.]

Galt, J.] [March 5.

SCHLESINGER v. DAVIS.

Guarantee—Release by acts of parties—Married woman—Separate estate.

Demurrer: Declaration against defendants for payment of rent by W.

Plea: That after the making the guarantee, and after the accrual of the rent sued for, the plaintiff and W., without the consent or knowledge of defendant, agreed to surrender, and did surrender, the lease, &c. &c.; and before, and at the time of such surrender, &c., there were goods and chattels and W. on the premises liable to distress.

Held, that the plea shewed a good defence, as the sureties were discharged by the dealings of W. and the plaintiff.

There was also a plea that defendant was a married woman.

Replication: That at said time defendant had separate estate liable, &c.

Held, replication insufficient.

J. K. Kerr, Q.C., for plaintiff.

Osler for defendant.

Galt, J.] [March 12.

TAYLOR v. PARNELL.

Work and labour—Infancy—Statute of limitations.

The plaintiff declared on the common indebitatus counts.

Plea that the alleged cause of action did not accrue within six years.

Replication that the plaintiff was an infant when the cause of action accrued, and he brought his action within six years after coming to full age.

Rejoinder that plaintiff, when he entered into the contract and performed the work, &c., was over sixteen years of age, and did not reside with his parent or guardian, and that under the Act as to apprentices and minors, Rev. Stat. (Ont.), chap. 135, s. 5, he could sue in the same manner as if he were of legal age.

To this rejoinder the plaintiff demurred, on the ground that the fact that the plaintiff was entitled to sue before he came of age did not deprive him of the benefit of the Statute of Limitations, and that he had, after coming to the age of twenty-one years, a further period of six years within which to bring his action.

Held, that the object of the Revised Statute, chap. 135, s. 5, clearly was to make the infant liable on the contract without the intervention of his parent or guardian: that the statute did not extend further or remove altogether the disability of infancy, or prevent the Statute of Limitations applying in favour of the infant, and that the six years were counted, not from the accruing of the cause of action, but from the attainment by the infant of the age of twenty-one years.

Judgment for plaintiff on demurrer.

S. R. Clarke for the demurrer.

McMichael, Q.C., *contra*.

IN BANCO—HILARY TERM.

MARCH 15.

RE RUEBOTTOM V. NORTHUMBERLAND ET AL.

The judgment herein, of which a note was published at page 82 of this volume, adopted and affirmed.

H. Cameron, Q.C., for applicant.

Bethune, Q.C., and *Osler*, *contra*.

FORD V. GOURLAY.

Seduction—Action by master.

Held, in an action by a master for the seduction of his servant, whose parents were dead or out of the country, that the masters' damages were not restricted to actual loss proved, but that the jury might look at the circumstances, the effect on the master's family, &c., and give exemplary damages.

Durand for plaintiff.

J. K. Kerr, Q.C., for defendant.

COMMON PLEAS.

IN BANCO—HILARY TERM.

MARCH 9.

THE BANK OF OTTAWA V. HARRINGTON.

Promissory note—President of club—Liability.

The first count of the declaration was against defendant as maker of a promissory note, as follows:—Two months after date the Carleton Club promise to pay to the order of B., at the Ontario Bank, Ottawa, $497.66, for value received. There were two other counts on similar promissory notes. The fourth count alleged that defendant promised and undertook with the plaintiffs that he had authority from the members of the Carleton Club to make, sign and deliver the said several notes, and that if plaintiff would discount them they would be fully paid and satisfied by said members, with averments that the members never authorized defendant by by-law, resolution or otherwise, to make the notes for or on their behalf, and such members have refused to pay or be held responsible for the same.

The learned Judge, at the trial, found that the defendant was not liable on the first three counts as maker of the notes, and this was not moved against.

Held, that defendant was not liable under the fourth count: that, as a mere conclusion of fact, the evidence failed to establish the allegations therein; that a liability could only arise as a legal conclusion from the fact, as was contended by the plaintiffs, of 37 Vic., ch. 34, O., under which the Carleton Club was incorporated, not authorizing the making of notes; but this being a matter equally known to the plaintiffs as to defendant, and upon which they could exercise their judgment, no liability would arise; that even if the legal effect of defendant's act was to warrant that he had the members' authority to make the notes, the evidence rather shewed that such authority had never been disputed or repudiated.

Bethune, Q.C., for the plaintiff.

Robinson, Q.C., for the defendant.

CLOSE ET AL. V. BEATTY ET AL.

Carriers by water—Delivery of goods—Liability—Pleading.

Action to recover the value of certain goods shipped on board defendant's steamer to be carried to the port of Thunder Bay, on Lake Superior, and there delivered to the plaintiff's or their assigns, averring non-delivery.

Plea: That defendants carried the goods to Thunder Bay, and there being no person there on the plaintiffs' behalf to receive the goods or to whom notice of their arrival could be given, and no means of notifying plaintiffs who resided at a certain distance from Thunder Bay, the defendants, after waiting a considerable time, landed the goods at the only wharf at Thunder Bay, they having no wharf or warehouse of their own, nor was there any other warehouse where they could store the goods: that they were placed under the charge of the person having charge of the wharf so far as he would consent to take charge.

Held, affirming the judgment of Armour, J., that the plea afforded no defence to the action.

Robinson, Q. C., and *Biggar* for the plaintiffs.

McMichael, Q. C., for the defendants.

JOHNSTON V. WILSON.

Agreement—Statute of frauds—Sale of goodwill of hotel and furniture.

The plaintiff was the lessee of an hotel in the Village of Wingham, and had a license to sell liquors, and was owner of the furniture therein. In April, 1876, defendant came to Wingham and examined the premises, and negotiated as to the purchase of the plaintiff's lease goodwill, license, &c., and the furniture at a valuation; but nothing was done, and defendant left, promising to write. On the 2nd of May he wrote plaintiff, offering $600 for plaintiff's right, and would take stuff at a valuation, and would pay $1,500 down; or if plaintiff greatly claims it $2,000. On May 4th, he again wrote, offering $700 for right, including license, and would pay $2,000 down, and balance in October, when certain notes he held would fall due. On the same day plaintiff telegraphed defendant that he would take $700 for his right, $2,500 down, and time for balance; but on May 8th he again telegraphed defendant that he would take $700 for his right, defendant paying license, $2,000 down, and time for balance. On the same day, defendant telegraphed in reply, "Yours received; will take it." The defendant having refused to carry out the agreement, plaintiff sold out his right, &c., which only brought $325, and also sold the furniture, &c., at valution.

Held, that there was a sufficient contract within the Statute of Frauds; that there was no uncertainty in the expression, "time for balance," as the previous correspondence shewed that October was intended; and that the parol evidence sufficiently shewed what was intended by the word "stuff." The plaintiff was, therefore, held entitled to recover $375, the difference between the $700 and the price for which the goods were sold, but not to any damages on the furniture, as it had been sold at a valuation.

Robinson, Q.C., for the plaintiff.

Osler for the defendant.

SAMIS V. IRELAND.

Mortgagor and mortgagee—Judgment recovered by mortgagee for mortgage debt—What saleable under fi. fa. lands.

Where a mortgagee recovered judgment against the mortgagor for the mortgage debt, and a *fi. fa.* lands issued thereon, under which not only the equity of redemption in the mortgaged lands consisting of 25 acres of a certain lot, but also the remaining 75 acres of the said lot belonging to the mortgagor were sold, the mortgagee being the purchaser, the only consideration being the mortgage debt.

Held, that the sale was void as to the 75 acres.

Bethune, Q. C., and *J. W. Kerr*, for the plaintiff.

Boyd, Q. C., for the defendant.

SYLVESTER ET AL. V. MCCUAIG.

Claims for wharfage—Agreement to take stock in projected company to acquire vessel—Effect of.

The defendant and one H. who were interested in an engine, for the purpose of utilizing it, agreed that a steam vessel should be built and a company formed under the Ontario Joint Stock Companies' Act of 1874, with a capital of $30,000 in shares of $100 each, of which this vessel was to be the property. The vessel was built at Mill Point and registered in defendant's name, and several mortgages were given by him upon her. In March 1876, while the vessel was being finished, the plaintiff, at the solicitation of defendant and H, agreed to become a stockholder in the projected company and take $500 stock upon their

agreement to use plaintiff's wharf for the vessel, the wharfage being fixed at $300, and plaintiffs' executed a document prepared for execution by intending stockholders, and gave two notes for $250 each, at three and six months, the first of which plaintiffs' paid, but not the latter. The vessel was brought to Toronto and ran between Toronto and the Humber, using the plaintiffs' wharf as agreed upon. Some $9000 stock was subscribed, and a meeting of stockholders held and resolutions passed as to the formation of the company, and appointing defendant H. and one B. trustees to receive a conveyance of the vessel in trust for the company until formed. It was admitted that the Ontario Act did not authorise the formation of the company, which was never formed, nor was there any conveyance of the vessel to the trustees, in fact the whole project appeared to have been abandoned. The plaintiffs not having been paid the $300, being the wharfage for the season of 1876, which was charged against the vessel, sued defendant as registered owner.

Held, that they were entitled to recover: that plaintiffs by their subscription for stock, under the circumstances, could not be deemed to be joint owners or co-partners in the vessel; nor could defendant set off the amount of plaintiffs' stock note, for not only had the consideration for it wholly failed; but that it would be a matter alone between the plaintiffs and the company, if formed.

Maclennan, Q. C., and *Biggar*, for the plaintiffs.

Robertson, Q. C., for the defendant.

Bunker v. Emmany.

Chattel mortgage—Verbal assent of mortgagee to parting with goods—Effect of in equity—Absence of redemise clause.

The plaintiff, J. B., executed a chattel mortgage to H. B., of certain goods stated to be in the mortgagor's possession, with defeazance on payment within a year, but without a redemise clause. It contained the covenants as to payment, entry on non-payment, or in case the mortgagor should attempt to sell or dispose of or in any way part with the possession of the goods or any of them or remove the same, &c., without the written assent of the mortgagee first had and obtained. The usual statement as to putting the mortgagee in possession was struck out. H. B. assigned to the defendant. Subsequently J. B. claiming to have the defendant's verbal assent sold some of the goods to H. B., when the defendant entered and took the goods. In an action by the mortgagor for such taking,

Held, that defendant was entitled to the goods: that even if in equity a verbal assent is sufficient when it is admitted or clearly proved to have been given and acted upon, the evidence here failed to clearly establish that such assent was ever given.

Held also, that even if the plaintiff were entitled to recover, it could only be to the extent of his interest in the goods.

Quære, as to the effect of the absence of the redemise clause on the particular form of this mortgage.

M. C. Cameron, Q. C., for the plaintiff.

Hector Cameron, Q. C., for the defendant.

Bickford v. The Great Western Railway Company.

Contract—Performance—Evidence.

The plaintiff sued the defendants on an alleged contract between the plaintiff and defendants under which the plaintiff was to deliver to the defendants 540 tons of new steel rails in exchange for 2970 tons of old iron of specified description; alleging that the plaintiff had delivered to the defendants the new rails, but that the defendants had not delivered to the plaintiff old iron in accordance with the contract, but of an inferior quality, whereby &c.,

It was *held* that the plaintiff could not recover; that the evidence showed that the only contract upon which defendants could be held liable, and which was contained in a letter written by defendants' managing director, had been fully performed, while a different contract attempted to be set up by the plaintiff, and contained in his reply to the above letter, had never been accepted by defendants.

Hector Cameron, Q. C., and *G. D'Arcy Boulton*, for the plaintiff.

Robinson, Q. C., and *McMichael*, Q. C., for the defendants.

Jenkins v. Strong.

Title by possession of part of adjoining lot—Estoppel by acts and conduct from setting up title against purchaser of adjoining lot.

In 1836, the plaintiff became the owner of lot 22, in the fourth concession of Verulam, and occupied by mistake as part of lot 22, the land now in question, being part of lot 23, and

containing about 4 acres. In 1838, he cleared and fenced it as part of lot 22. In 1868, defendant's son purchased lot 23, and in 1875, sold it to defendant, the land in question still continuing, and for a long time thereafter, within the plaintiff's fence.

Held, Gwynne, J., doubting, that there was nothing in the evidence, as set out in the case, to shew that plaintiff by his acts or conduct had ever led to the belief that he did not intend to assert his possessory title to the land in question or that he had abandoned it so as to estop him in equity from afterwards claiming it.

M. C. Cameron, Q. C., for the plaintiff,

Hector Cameron, Q. C., and *J. Barron* for the defendant.

THE MERCHANTS' BANK v. BOSTWICK.

Promissory notes—Mortgage as collateral security for mortgagor's indebtedness—Liability.

In May, 1873, a firm of H. & B. being indebted to plaintiffs' bank to $60,000, and requiring security therefor, B. executed a mortgage on his real estate for that amount, the mortgage reciting that it was for money lent on notes made by B., and endorsed by defendant and Mrs. P. In October, the indebtedness having increased to $90,000, the bank required further security, and notified defendant and Mrs. P. of the fact, valuing B.'s mortgage at $40,000. It appeared that B. had been signing defendant's and Mrs. P.'s name as endorsers to the notes, as he stated, with their consent, which defendant denied, stating that the notice from the bank was his first intimation of it. The bank required a mortgage from defendant for $25,000, as also from Mrs. P. for the same amount, which they agreed to give. The defendant's mortgage was dated 8th October, reciting that the firm were indebted to the bank in a sum exceeding $25,000 for moneys theretofore lent and advanced by the bank to them on promissory notes made by B. and endorsed by the firm, and by defendant and Mrs. P., and that defendant had agreed to give the mortgage as a collateral security for said sum of $25,000, part of said indebtedness, whether represented by the notes then discounted or by renewals or substitutions therefor, and similarly made and endorsed. There was a covenant by the defendant that he or B., or the firm or Mrs. P., would pay, &c., all the said indebtedness represented by said notes when due, or by any renewals or substituted notes. To prevent the bank noticing the difference in the signatures, B. signed the defendant's name to the mortgage, which defendant afterwards acknowledged to be his signature. At the same time, a mortgage for a like sum from Mrs. P. was drawn up, B. likewise signing her name, and she acknowledging it to be her signature. After the mortgage was executed, the notes were from time to time renewed, down to the firm's insolvency, in 1877, by notes similarly endorsed—namely, by B. writing defendant's and Mrs. P.'s names as endorsers, with, as he stated, their consent, which defendant denied. The defendant stated that when the mortgage was executed he believed, and was so told by B., that the indebtedness was only $60,000, but evidence was given to shew that defendant knew, or must be presumed to know, that it was the larger sum. The plaintiffs sued defendant in the first seven counts of the declaration as endorser of their notes, and in the eighth count on the covenant in the mortgage. After action commenced the bank realized on B.'s mortgage $35,000, and received from the the firm's estate $6,300. The jury found for the defendant on the first seven counts, but for the plaintiffs on the eighth.

The Court refused to interfere with the plaintiffs' verdict on the eighth count, holding that there was no evidence of payment thereto; that the defendant knew, or must be presumed to know, that when the mortgage was paid there was still an existing indebtedness of $50,000 to which the covenant would apply; that defendant's and Mrs. P.'s mortgages were for the several sums of $25,000 each, and not joint securities for that amount. The Court granted the plaintiffs a new trial on the first seven counts, with a direction to be given to the jury that the bank, under the circumstances, might be warranted in accepting paper similarly endorsed, &c., but if the new trial was accepted the whole case was to be reopened.

There was a similar action against defendant as executor of Mrs. P., who had since died, and a like verdict. The Court, on the same grounds as above, sustained verdict on the 8th count, but held that there could be no liability on the other counts, for he could not be assumed as executor to have authorized the use of his name as executor so as to bind Mrs. P.'s estate.

M. C. Cameron, Q.C., and *Robinson*, Q.C., for the plaintiffs.

Richards, Q.C., and *Bethune*, Q.C., for the defendant.

Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 41ST VICTORIA.

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

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

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

DANIEL O'CONNOR.
JOSEPH BAWDEN.

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

Graduates.

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

Matriculants.

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

Junior Class.

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

Articled Clerk.

HENRY WHITE.

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

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

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

CLASSICS.

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

MATHEMATICS.

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

ENGLISH.

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

History and Geography.

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

Optional Subjects instead of Greek:

French.

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

Or German.

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

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

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

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

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

INTERMEDIATE EXAMINATIONS.

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

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

FINAL EXAMINATIONS.

For Call.

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

For Call, with Honours.

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

For Certificate of Fitness.

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

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

SCHOLARSHIPS.

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

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

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

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

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