DIARY FOR NOVEMBER.

1 SUN...22*nd Sunday after Trinity. All Saints.*
3 Tues...Primary examination of Law Students and Articled Clerks.
5 Thurs..Sir John A. Macdonald resigned, 1873. Battle of Inkerman, 1854.

8 SUN...23*rd Sunday after Trinity.*
9 Mon....H.R.H. the Prince of Wales born, 1841.
10 Tues...Last day for Clk. of P. to complete Jurors' book. (C. S. U. C. c. 31, s. 76.) Intermediate examination.
11 Wed...Battle of Chrysler's Farm, 1813.
12 Thurs..Last day for serv. for Co. Ct. Attys'. exam. Cands. for Call to pay fees and leave papers.
13 Fri.....Exam. for Call to the Bar.
14 Sat.....Exam. for Call with honours.

15 SUN...24*th Sunday after Trinity.*
16 Mon....Michaelmas Term beg. Certificates to be taken out.
20 Fri.....Paper Day, Q.B. New Trial Day, C.P.
21 Sat.....New Trial Day, Q.B. Paper Day, C.P.

22 SUN...25*th Sunday after Trinity.*
23 Mon....P.D., Q.B. N.T.D., C.P. Last d. to decl. for Co. Ct.
24 Tues....New Trial Day, Q.B. Paper Day, C.P.
25 Wed....P.D., Q.B. N.T.D., C.P. Last d. for set. dn. & givg. not.
26 Thurs..O. D., Q.B. O. D., C.P. Schol. Ex. of re-h. in Chy.
27 Fri.....Scholarship Exam. N. T. D., Q.B. Open D., C.P. Last d. to give not. trial in Co. Ct. of Sup. Ct. case.
28 Sat.....Open Day, Q.B. and C.P.

29 SUN...*Advent Sunday.*
30 Mon....*St. Andrew.* Paper Day, Q.B. New Trial Day, C.P.

CONTENTS.

EDITORIALS: PAGE.

English Chamber Sittings 301
Nova Scotia Election Court Reports 301
Public Delivery of Judgments 302
Revision of United States Statutes 302
Relative Importance of Case-Law 302

SELECTIONS:

Testamentary Powers of Sale 303
Irish Juries 308
Railway Unpunctuality 311
Dogs in Court 311
Landlord and Tenant 312
Codification of the Laws 313

CANADA REPORTS:

ONTARIO:

Election Cases:

Cornwall Election Petition 313
Niagara Election Petition 317

County Court:

Corsant v. Taylor 320

UNITED STATES REPORTS:

Chapman v. Rose 321

DIGEST—NEW BRUNSWICK 323
FLOTSAM AND JETSAM 327
LAW SOCIETY OF UPPER CANADA 328

THE

Canada Law Journal.

Toronto, November, 1874.

It is stated that the Master of the Rolls and the Vice-Chancellors in England have completed arrangements by which, after the long vacation, one judge will sit in Chambers once a week. The change is very satisfactory to the profession. It is in fact the adoption of a practice which has been for some time in force in this Province.

We have received from two different sources the first number of Election Court Reports for Nova Scotia, compiled by Benjamin Russell, Esq., Barrister and Clerk of the Court. We may have occasion to refer to them more at length hereafter. In the meantime we thank our friends for their courtesy. The want of head notes to the cases takes away much from the practical utility of these reports.

It is laid down by the Privy Council in *Richer* v. *Tryer*, 22 W. R., 849, that the judges' reasons for their decision in the Canadian Court of Appeal ought to be stated publicly at the hearing below, and should not be reserved to influence the decision of the Court of Appeal. In the case referred to, (which was an appeal from Quebec) it appeared that one of the judges below had communicated the reasons of his judgment to the agents of the respondent's counsel, but the Lords of the Council refused to look at notes so irregularly communicated. The recommendation of the Privy Council as to public delivery of judgments is one which should be specially noted and observed by all judicial officers and courts from whom an appeal lies to a higher forum.

The last American Congress made a complete and authoritative revision of the statutes of the United States up to the year 1873. Some years ago the work of condensation was submitted to a commission of lawyers, and the result of their labours was laid before Congress. During last session, Congress delegated the whole matter to a committee composed of the lawyers and judges in the House and the Senate. This small professional body, with admirable zeal and patience, have taken the whole body of the statutory law of the States, and, in the language of Sir Francis Bacon, have "reduced the concurrent statutes, heaped one upon another, to one clear and uniform law." The whole of the revised statutes of the United States will now be given to the country in one or at most two volumes. We may well echo the language of the *Legal Gazette* of Philadelphia (from which our information is taken) and say "the importance of this work it is impossible to overrate."

RELATIVE IMPORTANCE OF CASE-LAW.

(*Continued from page* 274.)

Coming next to the considered decisions of Judges sitting in Banc or in Courts of first instance in Chancery, we find that the principles regulating the authority of such decisions are well settled. An erratic Judge will sometimes overleap the bounds imposed by the comity of Courts of co-ordinate jurisdiction, and run amuck against the decisions of other Judges of equal authority. But apart from this, it may be laid down as one of the rules observed by all Judges of first instance, that the latest decision upon a litigated question is the one followed in subsequent cases involving the same point. The language of Martin, B., in *Reg.* v. *Robinson*, L. R. 1 C. C. 80, indicates this general principle. He observes as follows: "When a point has once been distinctly raised and decided in a reported case, I, for my part, regret to find such a question criticised and disputed over again. When a point has once been clearly decided, I think it is far better to acquiesce in the decision, unless it can be brought for review before a higher Court." And this submission to a prior decision will in ordinary cases be observed, even though the Judge deciding the latter case does not approve of the case he follows, as was done by Lord Selborne, sitting for the Master of the Rolls, in *Pike* v. *Dickinson*, 21 W. R. 862.

If, however, the latest decision is at variance with earlier cases, and they are not cited or considered therein, then it very much affects the value of such a decision. Earlier conflicting decisions being thus overlooked, the Judges have generally felt themselves at liberty to disregard the later cases, if such earlier ones are more numerous or more satisfactory to their minds. Thus in *Gillan* v. *Taylor*, 21 W. R. 823 (a case of charitable gift), Wickens, V. C., remarks: "I have unwillingly come to the conclusion that I am bound by the case of the *Attorney General* v. *Price*, 17 N. S. 371, and *Isaac* v. *Dr. Friez*, Ambl. 575. It is remarkable that those cases were not considered by Vice-Chancellor Wigram in *Lily* v. *Hey*, 1 Hare, 580, and of course one must treat Vice-Chancellor Wigram's decision with the greatest respect. If the *Attorney General* v. *Price*, and the other cases I have mentioned, had been before Vice-Chancellor Wigram in *Lily* v. *Hey*, I should have followed the more recent decision. As it is, I am not entitled to dissent from authorities so much in point." See also for an application of the same holding *Coote* v. *Whittington*, 21 W. R., 837, and *Rowsell* v. *Morris*, 22 W. R., 67, where Sir George

Jessel, M. R., refused to follow *Coote* v. *Wittington*.

Malins, V. C., may not unfairly be classed as one of the erratic Judges above alluded to. He deals with the question we are considering in his own peculiar style, as reported in *Ferrier* v. *Jay*, 23 L. T. N. S., 302. "This point," he says, "has been before two learned Judges, whose decisions are in direct opposition to one another. On the bulk of the authorities, I am bound to follow the latter of the two decisions. Although all the authorities do not appear to have been cited in that case, I must assume that the Vice-Chancellor had them all in his mind when he made that decision."

Of the Irish Bench, Lord Justice Christian may be taken as one of the most illustrious types of the judicial Ishmaelite that the annals of the law can exhibit. His views upon this subject are given in *Re Tottenham's Estate*, Irish R. 3 Eq. 528: "When the decision of one Court is cited to another of co-ordinate authority, the latter has a right to regard it in a critical and even sceptical spirit; and while accepting the decision, to decline the reason of deciding, if a better one can be assigned. But I confess, I think that when an inferior Court (I mean inferior in the sense of curial procedure) has before it the decision of its non-appellate tribunal, it is the duty to conform itself frankly and loyally to the reason of the decision, and not merely to its letter."

The decision of a co-ordinate branch of the Court, or of a Court of co-ordinate jurisdiction, will be followed till reversed on appeal, in order to avoid an unseemly conflict of decisions: Per James, V. C. in *Re Times Assurance Co.*, 18 W. R. 404, and see also *Re Hotchkiss's Trusts*, L. R. 8 Eq. 643. In *Boon* v. *Howard*, 22 W. R. 541, Keating, J., is reported to say, "There is no positive rule which precludes the Court from examining its previous decisions, though those are to be departed from only on the strongest grounds. The Court ought to respect its own decisions and those of other Courts."

In *Owen* v. *London R. Company*, 17 L. T. N. S. 210, Cockburn, C. J., held, that as the authorities were somewhat divided, the Courts were entitled to exercise their own independent judgment on the question to be decided. In such a conflict of authority, the earlier decision was followed by Romilly, M. R., in *Hall* v. *Bushill*, 12 Jur., N. S. 243. But in making a choice among conflicting decisions, the considerations which ought to influence the Court are well expressed by Mr. Justice Jebb in *Loveland Coyne* v. *Bartley*, Alc. & Nap. 308, "When the Court is obliged to decide upon conflicting decisions, and one of them is of late date, of unquestionable authority, and is adopted by compilers, and text and elementary writers of character, and is also in accordance with the opinions of the Bar, so far as we can collect it from a series of authorities and precedents, we should not be warranted in making a decision contrary to that opinion."

(*To be continued*)

SELECTIONS.

TESTAMENTARY POWERS OF SALE.

There is, perhaps, no class of instruments which come under the cognizance of the law, where the intention of the parties is to form an element of consideration, in which greater difficulty arises in ascertaining that intention and enforcing it in accordance with the rules of law, than in wills; and in no branch of the construction of wills have the courts been driven to a greater nicety than in the interpretation of powers and trusts, and the discrimination between these two. To add to the inherent difficulties of the subject, the department of trusts is of later origin, or rather development, than the general rules of real property, and the enunciation of these by the elder authorities of the common law; and these latter,

with the decisions founded on them, present quite as much conflict *inter se* as assistance towards forming a coherent or symmetrical system of the principles of this topic of the law.

In recurring, therefore, to the older authorities, great discrimination must be exercised in referring to cases, as support can readily be drawn from them for opposite sides of almost every question which arises in this department; and the true rule is rather to eliminate from than attempt to harmonize the various decisions and propositions of the text writers when determining what are powers and what trusts, and who are authorized to execute the former.

In *Tainter* v. *Clark*,* which may be regarded as a leading case in this commonwealth, the court decided that an administrator *de bonis non cum testamento annexo* could not execute a power given by the will to the executor, to sell such of the testator's real estate as in his judgment was best to raise the money necessary to pay testator's debts and certain pecuniary legacies given by the will. The power in question was not coupled with an interest, but was united with a trust to dispose of the proceeds as executor, *i. e.*, to pay debts and legacies, and was given in the same clause in which the executor was appointed, and immediately following the mention of his name. It was also left to his judgment what parcel to sell, but a sale was imperative. The court rely upon the authority of Coke,† that a power given to "executors" to sell may be executed even though one dies, "because the plural number remaine;" but otherwise, if it had been given to "I. S., I. N., &c., his executors," "because the words of the testator would not be satisfied;" and also refer with approval to the distinctions laid down by Mr. Sugden:‡ (1) that a power to two or more *nominatim* will not survive without express words; (2) where it is given not *nominatim*, but to two or more generally, it will survive while the plural number remains; (3) where it is given to "executors" merely, even a single executor may execute it; but (4) if to executors by name, it is at least doubtful if it will survive.

It will be perceived that these authorities were not expressly upon the point in issue in the principal case. They applied, however, to the general question of the transmission or survivorship of powers, and were considered decisive of the incapacity of the power in question to survive, because it was considered a bare discretionary power. But the court also place their decision on a second ground, derivative though distinct from the first, namely, that the administrator cannot succeed to powers as to realty reposed in the executor; relying upon the authority of *Wills* v. *Cowper* § and *Conklin* v. *Egerton*,‖ and cf a case in the Year Books.

To take in their order the two grounds herein relied upon, and which broadly present the two leading questions arising in reference to testamentary powers, it is apparent that the first goes upon the principle that where a testator has confided a power it must be exercised by, and only by, the person or persons selected; and second, upon the collateral ground that an administrator, though clothed with the representative capacity, is not in the confidence of the testator, and cannot act as the testator's grantee, unless expressly named.

In regard to the first of these positions, to which the court in their judgment suggest no exception or modification directly, we must refer to the rules cited from Lord Coke and Mr. Sugden, to see what qualifications the court are disposed to admit. Now it is evident that in neither of these are any further departures from the testator's literal directions approved of, except in two cases, one of which is suggested by both these authorities, the latter only by Mr. Sugden. The first is, that where the power is limited to be exercised by executors generally, it may be executed while a plural number remains; and the second is Mr. Sugden's extension of this, to allow even one executor to sell where the power was merely given *ratione officii*, not *nominatim*.

It is, of course, to be borne in mind that the case above stated, as well as the rules just referred to, related only to what were viewed—whether correctly or not, we shall inquire further on—as mere powers. The distinction, which we main-

* 13 Mete. 220.
† Co. Litt. 112 *b*, 113 *a*.
‡ 2 Sugd. Pow. (1st ed.) 165.

§ 2 Ham. 134.
‖ 21 Wend. 480.

tain was not properly kept in view in these authorities, was that between a bare power and a power coupled with a trust. A bare power is necessarily a discretionary one, and precisely to the extent to which it is a power merely, must be limited to the donee or donees, and cannot in any way be transferred or pass to any other person. It may be either a legal or an equitable power. But the distinction between these two classes is foreign to the point under consideration; for an equitable power may be one that equity will interfere to compel the exercise of, and so take it from the domain of the donee's discretion, and replace that by the discretion of the court of equity. But equity will do this only on the ground that, and to the extent to which, there is an interest vested in some person in the execution of the power, and which equity is bound to enforce; in other words, that the power is coupled with a trust.

This is the first distinction which is to be maintained in order to a correct view of the position of the authorities on this subject; and it will be seen, therefore, that our whole inquiry to ascertain the survivorship or not of any power resolves itself into the question whether the power is wholly discretional throughout, or whether any part of it is compulsory, because a third person has an interest in its exercise, not dependent for its existence on the discretion of the donee of the power.

A second distinction, quite diverse in its nature from the one just commented on, is between bare powers and powers coupled with an interest. The latter phrase is often broadly employed to include every case where an interest is to vest by the exercise of the power. It is conceived that this is incorrect, and that the true meaning is, that an interest vests in the donees of the power, which is to be enlarged by the exercise of the power, or out of which the power is to take effect, as in case of a power of sale attached to a mortgage.*

The cases which turn on this latter distinction rest on a very different principle from those of the first class. The limitation of an interest, whether legal or equitable in its nature with a power appended, enables the grantee to deal with the power as he does with the estate; and if the latter is capable of being assigned, the power will also pass to the assignees, even without words of limitation to them in the original grant of the power. If such words are inserted, then the power can be exercised without the intervention of a court of equity; and if not, then at least with such intervention.

It is, however, evident, from an examination of the early cases, especially those of or anterior to the time of Lord Coke, that the full conception of the distinction first stated did not then exist in any proper sense, and that the only distinction established or even recognized was the second one, *i. e.*, between bare powers and powers coupled with an interest. With the then partially developed jurisdiction of the court of equity, the existence of a duty in the nature of a trust underlying a power was not recognized as a ground for equitable interference.† The settled distinction was, that if an estate was devised to several executors or trustees in trust to sell, here the power would survive as coupled with an interest; but if devised in trust that the executors, &c., should sell, then it would not survive. Thus in *Atwaters* v. *Birt*,‡ on a feoffment to four to uses, there was a proviso that the uses should cease on (*inter alia*) the assent of the feoffees. One of the feoffees dying, the donor, with the assent of the other three feoffees, revoked the uses; but it was held void, Popham, C. J., saying that "before the statute of 21 Hen. 8, c. 4, the common law was, that if one devised his land to four to sell, and one of them dies, the survivors, because they have an interest, may sell; but if he had devised that three should sell the land, and one of them dies, the survivors, because they have but a mere authority, cannot sell." As authority, an anonymous case, some forty years earlier,§ is referred to. Here, after a devise by a *cestui que use* that A, B and C, the feoffees to uses, should sell to pay legacies, &c., A, one of the feoffees, died. It was questioned whether B and C could sell; "and it seemed not, and so it was ruled; but *quære*, if they had not been named A, B, and C, but feoffees only." So in the case of *Butler* v. *May*,‖ on a devise to

* *Hind* v. *Poole*, 1 K. & J. 383.

† Lewin, Trusts, 430 *et seq.*
‡ Cro. Eliz. 856.
§ 4 Dyer, 177.
‖ Dyer, 189, 190.

the use of such wife as the testator's son should marry, upon the nomination of four persons named, and one of these four subsequently died, it was held that the uses failed, because the power of nomination could not be executed by the survivors. Dyer and Browne, J. J., dissented, because they thought that the donees had by the grant an interest in the marriage as a feudal incident.

Where a power was not coupled with an interest, it seems, therefore, at this time merely regarded as a bare power or authority; and the only two cases in which others than the first donees of the power could exercise it were where, by the general terms in which they were described, it might be considered as not restricted to the individuals named, but to pass to two, or even a singie survivor; or secondly, where there was no one named as donee of the power, that even a single survivor might execute it.

Thus, under this latter exception, in a case in 2 Leon. 220, where a mrn devised land to his wife for her life, and directed that after her death the lands should be sold, and the proceeds paid out to his next of kin, and made two executors, who both proved the will, after which one died; it was held that no one being named to execute the power, it went to the executors *virtute officii*, and the survivor might sell; and similar decisions were made in many other cases.

Yet though this rule obtained where no one was named to take the power, it was adjudged from even an earlier period that where the testator directed his lands to be sold by his executors, if one or more resigned, the accepting or qualifying executors alone could not sell, because the executors were in the nature of grantees, and must all act notwithstanding their resignation, as "a will of lands is not a testamentary matter;" * and in like manner the power of a survivor to sell seemed to be limited to the case where the co-executor had deceased prior to the vesting of the power.† The case of *Bonifant* v. *Greenfield*,‡ cited by the court in a recent case in this State,§ to show that a power could be executed by the continuing executors, was not the case of a bare power, but was a devise to executors to sell, which, as we have before intimated, was regarded as giving a power coupled with an interest which, as a joint estate, could well survive.

To enable the continuing executors to exercise such a bare power, the statute of 21 Hen. 8, c. 4, was passed, which authorized even a single qualifying executor to sell, but made no mention of the case of survivorship upon decease. The law upon this point seems to have been at that time that where the donees of a power not coupled with an interest were mentioned *nominatim*, the power could not survive; where, on the contrary, they were referred to generally, it would, at least while a plural number continued, and in some cases even to a single survivor. Thus, in the anonymous case above referred to, reported by Dyer,* it seemed that if the donees were described as "feofees," their survivor could well sell. So in *Lee* v. *Vincent*,† on a devise that testator's "sons-in-law" should sell, a sale by the survivors after one had deceased was held good: "it was adjudged a good sale, because he named them not by their proper names." So Perkins‡ lays down the law that one executor may sell where the will is that the executors shall sell and one refuses to intermeddle; and in the later case of *Hoiell* v. *Barnes*,§ one executor, the survivor of two, was allowed to execute a power of sale. The case of *Danne* v. *Annas* || is sometimes referred to as an authority to the contrary ¶; but this is an error, and it will be found on examination to turn on quite a different ground. The case was a devise that executors, of whom there were two, should sell with the assent of A. B. A. B. and one executor died, and a sale was then made, and held not good. But no reason is given by the court; and it was the well-settled rule that such assent as was here required was a prerequisite or condition precedent to the exercise of the power, and even the decease of one of those named to give such assent would defeat the power. **

* 15 Hen. 7, 11.
† Co. Litt. 113 *a*.
‡ 4 Cro. Car. 80.
§ *Gould* v. *Mather*, 104 Mass. 283, 290.

* Dyer, 177.
† Cro. Eliz. 26.
‡ § 545.
§ Cro. Car. 382.
|| Dyer, 219 *a*.
¶ *Per Curiam*, in *Chandler* v. *Rider*, 102 Mass. 268, 270.
** *Atwaters* v. *Birt*, Cro. Eliz. 856.

Yet it is quite apparent, as we have said, from all the cases at this time, even those upholding the right of a single surviving executor to exercise a power not coupled with an interest, that the first distinction stated in this paper, namely, between bare powers and powers coupled with a trust, was hardly taken into consideration, and that whatever duty attached to the disposition of the proceeds of the sale, or whatever purpose the testator contemplated should be accomplished with them, no trust was considered to attach to compel or authorize the execution of the power, or enable it to survive, but it fell with the decease or incapacity of any one of those to whose exclusive discretion, by a strict literal construction, it was held to have been confided. *Qui hæret in litera hæret in cortice.*

It is true that, in the case above cited from Leonard's reports, * the court say that the sale, under the power, was good, "for the moneys coming of the sale are to be distributed by the executors as legacies, and it appertains to the executors to pay the legacies, and therefore they shall sell." But this language was used, not as a reason why the power survived, but as a reason why the executors should have the power at all, and it survived under the same principle as was enforced in *Houell* v. *Barnes.*

We have gone somewhat into detail in discussing the older authorities, because, apart from their intrinsic value from their age, they are generally referred to in support of the rules regulating powers, as enunciated by court and text writers since.

As a consequence of disregarding the substantial intention of the testator as to the disposition of the avails of the sale, in a blind literal adherence to the confidence supposed to be had in the persons named as donees of the power, the courts were driven to great nicety and inevitable conflict in determining when the power was general and when such confidence was expressed. It is, perhaps, unnecessary to recur to the cases in detail, for their number is so great as to make a complete examination of them altogether beyond our limits of space. † It may be sufficient to refer, as an illustration, to Mr. Sugden's fourth rule, above cited, ‡ where it is left quite doubtful whether a power given to executors, but by their proper names though as executors, would survive the death of one.

Thus, suppose the ordinary case that a testator appoints A., B., and C. his executors, bequeaths divers pecuniary legacies, and then says, I direct my said executors to sell whatever land may be necessary for the payment of said legacies; this, according to Mr. Sugden's rule, would be a case where a *nominatim* power was conferred, and the right to its exercise would be defeated by the death of A. For it is considered as much a *nominatim* appointment of the donees of the power to couple their names with the gift of the power by the word "said," as if they were named in the gift of the power. But if, on the other hand, after, or before a similar appointment of executors, the clause giving the power had run simply, to "my executors," here the power would survive, being given generally.

It is, moreover, apparent, from the tenor of the rules laid down by Mr. Sugden, and by the approval of them by the court in *Tainter* v. *Clark*, that a distinction is drawn between executors and other persons in a fiduciary position, and the capacity of a power given to the latter to survive to a single person seems to be denied. Stress is laid on the so-called "office" of the executor, as if those who occupied this position had something of a *quasi* corporate nature, which did not extend to trustees generally. And this view is confirmed by the language of the text-books. In a recent able treatise on real estate* it is said: "Where the power is to several persons having a trust capacity, or an office in its nature like that of the executors of a will, susceptible of survivorship, and any of them die, the power will survive, unless it is given to them *nominatim*, as to A. B. and C. D., naming them. In the latter case, the power would not survive unless it was coupled with an interest in the donees of the power." It will be observed here that the only distinction suggested in this passage is that already referred to, between powers coupled with an interest and bare powers, and that the latter cannot survive even if given to executors, if these are mentioned by name. But it

* *Ante*, p. 673.
† See Perry, Trustees, § 492 *et seq.*
‡ *Ante*, p. 670.

* 2 Washburn, R. P., 322 (1st ed).

is further inferrible from the author's language that, if there is no interest to which the power is annexed, it is necessary to survivorship that the donees should hold an office like that of executors; and the case of *Tainter* v. *Clark*, and Sugden's rule, before cited, are expressly referred to and relied upon.

It is, however, difficult to see any force in this distinction between executors and other trustees or persons in a fiduciary capacity. It is true that executors are commonly said to have an office; but the source from which they derive their official capacity, namely, the Probate Court, is precisely that which can give them no capacity to take by survivorship discretionary powers conferred by will. Exactly in so far as they have an office they are the creatures of the Probate Court. But it is from the testator only that they receive the power or discretion; and in this respect they do in no whit differ from any other trustees. All are equally grantees from the testator, and grantees only. Their relation to the land upon which the power is to be exercised is like that of grantees *inter vivos*, excepting only that the death of the donor does not revoke their power, but is the point at which it is established. This is clear from the earliest authorities, which distinguished between the testamentary functions of an executor and his duties as a grantee; holding the former capable of passing to an administrator *de bonis non*, but the latter not even divested by the executor's renunciation of his office, as this was intended by the court to apply only to his testamentary duties strictly. Thus, in the case already referred to, * it was laid down "that if a man makes a will that his executors shall alien his lands, there, if the executors renounce administration of his goods, yet they may alien the land, for the will of the land is not a testamentary matter." Nor can it be said that this case applies only to absolute devises of the land, for here there was no devise of land, but only of a power. We shall, indeed, urge later that in this case such a power should pass to the administrator, wherever, at least, and to the extent that there was a trust imposed in regard to the disposition of the proceeds of a testamentary nature; as we have already suggested that the failure to enforce such a trust at this early period arose from the then undeveloped state of the powers of a court of equity; but the point we make is still clear, that no distinction was here drawn between executors and any other trustees, as to the status of a power to sell conferred upon them, or, consequently, its capacity to survive. The same principle appears also in the cases heretofore cited, of the survivorship of powers given to sons-in-law, † feoffees, ‡ and the like. § Indeed, in the modern and very exhaustive case of *Conklin* v. *Egerton*, ‖ the point was carried so far that such an administrator was held incapable to succeed to any powers involving a discretion conferred on the executor, although such succession had been conferred by statute; and this decision is cited and followed in *Tainter* v. *Clark*,¶ *Greenough* v. *Welles*,** and other recent cases. But the ground, and the only one, upon which these cases can proceed, is, that a broad line is to be drawn between the office of executor or administrator, which is conferred by the court, and the position of the executor as trustee, grantee, or donee under the will.

We regard, then, any reliance upon the "office" of executors to enable a power to survive to a single one as placed upon an unsound basis. On the contrary, we urge that there is no discrimination between executors and trustees in regard to powers, if these relate to testamentary duties; and that they will survive to a single trustee as well as to a single executor.

(*To be continued.*)

* 15 Henry 7, 11.

† *Ante*, p. 674.
‡ *Ibid.*
§ *Ante*, p. *ibid.*
‖ 21 Wend. 430; 25 id. 224, 232.
¶ 10 Cush. 671.
** 13 Metc. 220.

IRISH JURIES.

A blue book has just been issued which illustrates in a very striking and painful manner one of the great difficulties of Irish administration. There are some things which a Government can do for a country, and there are other things which the people alone can do for themselves. In the latter category must be placed trial by jury. A Government can supply judges, but the working of the jury system demands the loyal and intelligent co-operation of the people. If that is

wanting, the whole thing breaks down. It has been said that the object of the British Constitution is to bring twelve men into a box, and Ireland has enjoyed the application of this sacred principle. It is obvious, however, that the value of the system depends in a great degree on the conduct of the twelve men when they have thus been brought together. The theory of trial by jury assumes the competence and honesty of the persons who compose the jury; but even the most frantical idolater of the institution would scarcely deny that the consequences are likely to be disastrous if the jurors fall below the requisite standard of character and intelligence. It was held that the lower classes in Ireland could not be required to have confidence in the administration of justice unless they administered it themselves. This experiment has now been in force for a year or two, with the most deplorable, though most natural, results; and anybody who wishes to understand the paralysis and perversion of justice which at present prevails in Ireland cannot do better than study the Report of the Committee of the House of Commons on the Irish Jury System which has just been published.

The first witness examined was Mr. Hamilton, an Irish barrister, who has had great experience on the subject. He told the Committee that there was really no such thing as trial by jury in Ireland, and that even the fiction of it would disappear under the slightest strain. The last two years, he said, had been quiet, but "in case of any agitation or disturbance you would have to suspend trial by jury altogether." The result of the present system had been to put "a mass of prejudice, ignorance, and disaffection on the panel." In ordinary cases the juries simply did what the judge directed; but in cases where there was any agrarian or other disturbing element there was usually no finding. The lower class of jurors were either terrified by the Ribbonmen or were friendly to them; and there was "to a considerable extent a sympathy with crime" on the part of juries. Mr. W. Ormsby, sub-sheriff of the County and City of Dublin, gave similar evidence. Juries were hopelessly ignorant, and it would be better to abolish them altogether than go on with the present system. Mr. West, Chairman of Wexford County, pointed out that the tendency of the existing system was to introduce class feeling into the jury box. A gentleman in his county fired four pistol-shots at another, but the accused was represented as "a favourite of the people," and got off easily. His attorney said, "I put the frieze-coated gentlemen on the plaintiff, and made him consent to a plea of guilty for a common assault." In short, disagreements and acquittals in the teeth of evidence are of frequent occurrence. Mr. De Moleyns, Chairman of the County of Kilkenny, thought there was a feeling among the lower sort of jurors that "they were one class" with the prisoners, and that they had strong sympathies with them. He added that jurors were systematically canvassed by the friends of prisoners, and were "exposed to injuries in different ways which we hardly appreciate." Mr. Leahy, Chairman of the County of Limerick, stated that, with the new jurors, there was the greatest difficulty even in the clearest cases in getting a verdict at all. They made all sorts of excuses for disagreeing—that nobody actually saw the crime committed, that there was only one witness, and that was not enough, and so on. In one case a juror sent a doctor's certificate of his inability to attend, but he afterwards turned up because he had been canvassed by the friends of a prisoner to try to get him off. Mr. Bolton, Crown Solicitor for Tipperary, mentioned a case in which one of the jurors was drunk, and another was found to have come home from seven years' penal servitude for cattle-stealing. He also confirmed other witnesses as to the frequency of bad acquittals—"sixteen at Clonmel, and fourteen of them as bad acquittals as could be pronounced." Cases of murderous violence were frequently reduced by juries to mere ordinary assaults. The common cry to jurors on going into the box was, "Go in and free the boys." The practice of canvassing jurors was "becoming quite alarming in Tipperary," and persons supposed to have influence were taken on cars round the country canvassing jurors. Mr. Boyd, another Crown Solicitor in Tipperary, reported that canvassing was very largely practised there, and "very extraordinary" verdicts were often given. In Kildare a juror declared that he could not find a prisoner guilty under any circumstances, because

"he might himself be guilty of the same to-morrow." In Ennis there was a case of shooting with intent to murder. The blunderbuss exploded, and the assassin's hand was blown off, and was produced in evidence. The man was acquitted by a jury, many of whom "had come twenty miles to try the boy," and who immediately adjourned with his friends to a public-house to celebrate the event. The prisoner himself is said to have asked for his hand back, and the judges remarked that he might as well have it.

Mr. Murphy, Senior Crown Prosecutor, Dublin, stated that, as far as his experience went, in any case of agrarian outrage, faction fight, or serious assault between farmers or farmers' sons, and so on, there was very little use in prosecuting in a great part of the South of Ireland at the present time. At New Pallas, in the County of Limerick, for instance, the population is divided by an old feud about the age of a bull into what are called factions of "Three-year-olds" and "Four-year olds;" and "terrible crimes, not merely savage assaults, but brutal murders, have occurred, and very recently." Yet there is a difficulty in repressing these outrages, because juries will not convict. Perhaps the strongest evidence as to the incapacity of the Irish Juries is that given by Baron Deasy. In Sligo, he said, there was a case of ejectment on notice to quit; the notice was the only point in the case, and was, in fact, admitted. But the counsel for the defendant got up and implored the jury to stand between an oppressive landlord and the widow and orphans; and the consequence was a verdict for the defendant, in opposition to the direction from the judge. The "poor widow" in this case was a lady of large fortune, with a town-house in Merrion Square, and another house in the country, and the oppressive landlord was merely trying to get back his own property. In Galway the state of things is said to be truly deplorable. Out of a panel of 265 jurors, "not one-fifth were capable of trying any case whatever, civil or criminal." In a case of sheep-stealing, the prisoner's counsel challenged every man who was decently dressed and seemed intelligent; the Crown objected to the ragamuffins; and the result was that we went through the whole of the 265 names without being able to get a jury." Ultimately some "set asides" were taken in, but a verdict could not be got after all. In an action for trespass, as to the facts of which there was no dispute, the jury would not agree to find any damages; "perhaps," says Baron Deasy, "because they thought that the plaintiff, being an hotel-keeper, had no right to have land at all." In another case a son had murdered his father and signed a confession, but his counsel argued that the confession was dictated by a sentiment which especially animates the Irish breast, a sense of filial affection, and that he had made it to screen his mother, an old woman aged eighty, who was too feeble to lift her hand. The prisoner was acquitted.

It is clear from this evidence that a very great mistake was committed in introducing a lower class of jurors into the box. It is not merely that many of these men are too ignorant and stupid to understand the nature of the cases which they have to try, but that they act under the impression that they have been brought there to take care of themselves as a class, and to see that "poor men" come to no harm. Mr. Serjeant Armstrong defended the change in the system on the ground that "he would do anything to satisfy the men in the dock that they were to get a fair trial;" and he drew a touching picture of a jury, "with not so much as a necktie, hardly a shirt" among them, trying a prisoner of the same rank, but "dressed up a little for the occasion." He had observed, he said, the good moral effect of a verdict found by such men, who were really the peers of the prisoner. "A general sigh goes through the gallery when they find that peasant has convicted peasant." There is no doubt a certain amount of truth in this, and it is of the utmost importance that men of the lower classes should be convinced that they have the same chance of being fairly tried as other people. But it is rather a dangerous experiment to put into the hands of the lower classes, especially when they are so ignorant and prejudiced as those of Ireland, the power of thwarting the efforts of justice to reach criminals in their own rank of life; and it is evident that this is the use which a great many of the new jurors have made of their privilege. The question is, what is to be done when peasant will not convict peasant, or give

a verdict against one in a civil suit when his antagonist belongs to a higher class? In addition to the case of the poor widow with a town and country house, Baron Deasy mentioned three similar cases which were called before him, but very soon after the jury was sworn the landlords compromised with their tenants rather than go on; and he added that he thought it not improbable that this was on account of the appearance of the jury. It is not surprising that, after hearing this testimony, the Select Committee should have arrived at the conclusion that the qualification of Irish jurors was too low, and that the system required amendment. It is possible that some of the alterations proposed may have a good effect; but in the meantime a vast amount of mischief has been done, and it is to be feared that any attempt thoroughly to reform the system will be keenly resisted—*Saturday Review.*

RAILWAY UNPUNCTUALITY.

At the Manchester County Court (Mr. J. A. Russell, Q.C., judge) an action was brought by Mr. Becker, teacher of music, to recover a sum of 5s. from the London and Northwestern Railway Company. The plaintiff, on Friday in Whitsun-week last, left Victoria Station by one of the defendants' trains for Golburn, near Warrington. The train was timed to arrive at Newton Bridge at five minutes to twelve, allowing the plaintiff twenty-seven minutes to catch the train which left that place for Golburn. The train, however, did not arrive at Newton Bridge until twenty-five minutes past twelve o'clock, and the plaintiff, in consequence, was unable to catch his train. The next train leaving for Golburn was not until twenty-five minutes past two o'clock, and as this was too late to enable the plaintiff to keep an engagement, he took a cab to Golburn. For this he had to pay 5s., which he now sought to recover. Mr. Kersley, who appeared for the railway company, put in their regulations, by which they stated that they did not undertake that trains should start and arrive at the specified times in the time-tables. His Honour ruled that these regulations only referred to ordinary risks, and did not apply to the case in question. Special notice ought to have been given that on that particular day passengers must use the train at their own risk. Passengers had a right to presume that special care would be taken to convey them during that week as at other periods. He desired it to be known that railway companies had no right to voluntarily overload their ordinary trains, and if they did the public had their remedy. A verdict was then entered for the plaintiff for the amount claimed, with costs.—*Law Journal.*

DOGS IN COURT.

The dog has often been called the friend of man, but he might more justly be termed the friend of the lawyers. There has really been an extraordinary amount of litigation about the dog. Some few years ago the head-note to the report of a dog-biting case in a legal contemporary formed the subject of mirth throughout the Temple and Westminster Hall. We will not trouble our readers with a *réchauffé* of *Smith* v. *The Great Eastern Railway Company*, because we do not wish to enter upon an inquiry as to the gender of the plaintiff, the dog, or the cat in that case, or who it was that was waiting for the train, or whether the porter kicked the plaintiff, the dog, or the cat out of the signal box. Before and since our contemporary thus immortalized himself, the judges in Westminster Hall have been worried and bothered as to the *scienter* in actions brought to recover damages for canine assaults In *Stokes* v. *The Cardiff Steam Navigation Company*, 33 Law J. Rep. N. S. 2 Q. B. 310, the dog had previously bitten a person in the presence of some of the servants of the company; but, as none of those persons had the control or care of the dog or of the premises in which the dog was, or of the defendants' premises, the court held that there was no evidence that the defendants knew of the character and disposition of the dog. In *Gladman* v. *Johnstone*, 36 Law J. Rep. N. S. C. P. 150, it was proved that the wife of the defendant occasionally assisted in her husband's business; that the business was carried on upon the premises where the dog was kept; and that a formal complaint as to the mischievous character of the dog had been made to the

defendant's wife, for the purpose of being communicated by her to her husband. The court held that there was evidence in this case to go to the jury of the defendant's knowledge of the character of his dog. In *Baldwin* v. *Cassella*, 41 Law J. Rep. N. S. Exch. 167, the guilty dog was kept at the stables of the defendant, under the care and control of the defendant's coachman; the defendant supposed the dog to be harmless, but the coachman knew that the dog was of a mischievous nature. The court held that knowledge on the part of such a servant was enough to fix his master's liability. Last week, in the case of *Appleby* v. *Percy*, in the Court of Common Pleas, the defendant was a licensed victualler, and kept the dog which bit the plaintiff on the premises where the defendant carried on business. On two former occasions the dog had flown at customers, who had complained of its conduct to the waiters at the bar of the public-house. The question for the court was whether these complaints were sufficient to prove the defendant's knowledge of the character of the dog. At *nisi prius*, Mr. Justice Honyman had directed a nonsuit, and this ruling was upheld by Mr. Justice Brett. On the other hand, Lord Coleridge and Mr. Justice Keating thought that there was evidence of the *scienter* to go to the jury. Thus we find that, after repeated discussions in courts of law, eminent judges are at variance upon what seems to be a very simple point, and so we are induced to suppose that this difference of judicial opinion is rather the result of external causes than of the intrinsic difficulty of the matter itself. The fact is, that the injustice of a law which refuses to a plaintiff a remedy for a wrong unless he can show that somebody else has previously been the victim of a similar wrong, insensibly inclines the minds of judges to relax the rule. Surely the time has arrived when the legislature should be asked to class human beings with cattle and sheep, and to protect "person" to the same extent as it does "property." By 28 and 59 Vict., chap. 60, the owner of every dog is liable in damages for injury done to any cattle (including horses, *Wright* v. *Pearson*, 38 L. J. Rep. N. S., Q. B. 312) or sheep by his dog, and it is not necessary for the party seeking such damages to prove a previous mischievous propensity in such dog, or the owner's knowledge of such previous propensity. No one has ever attempted to show that this Act has been burdensome or unfair to owners of dogs; and, if we may judge from the rarity of actions under this statute, the effect of it has been to induce owners of dogs of doubtful character to put an end to the possibility of the dogs doing harm. If the Act were extended in the way we have suggested, all dogs of a spiteful, snapping or biting disposition would either be kept under the control of collar and chain, or be deemed to be no longer worth the animal tax. The indignant words of the Lord Chief Justice, uttered on Monday last in the case of *Hockaday* v. *Wheeler* —"What business had a man to keep a savage brute like this? he might as well keep a lion"—would then acquire real potency. As it is, people seem to be utterly indifferent as to the safety of their neighbours; and whenever a plaintiff seeks damages for the bite of a dog, the defendant strains every nerve to prove that, while the whole neighborhood knew the dog to be an awkward customer, the defendant supposed the dog to be as harmless as a lamb. Meanwhile, lawyers are frightened by mad dogs in Fleet Street, while in Westminster Hall almost as much confusion is created by eminent judges differing on the simplest and most threadbare question known to the law.—*Law Journal.*

In *Leonard* v. *Stover* the Supreme Judicial Court of Massachusetts has recently decided that the owner of a building with a roof so constructed that snow and ice collecting on it from natural causes will naturally and probably fall into the adjoining highway, is not liable to a person injured by such a fall upon him, while travelling upon the highway, provided the entire building is at the time let to a tenant who has covenanted to make "all needful and proper repairs, internal and external." The same court decided in *Shepley* v. *Fifty Associates*, 101 Mass. 251; 3 Am. Rep. 346 and 106 Mass. 194; 8 Am. Rep. 318, that if the owner of the building has control of the roof he is liable.—*Albany Law Journal.*

CODIFICATION OF THE LAW OF NATIONS.

Since our last issue we have received the *Continental Herald*, containing the first day's proceedings of the International Association for the Reform and Codification of the Law of Nations. Among the members present from the United States were: Mr. David Dudley Field, Hon. Charles P. Daly, Judge Peabody, Dr. J. B. Thompson and Dr. Miles; while from England and Continental Europe were present a number of well-known publicists; and even Japan had one representative. The members of the Association were welcomed by the President of the Conseil d'Etat in a very admirable little speech, which was responded to by Mr. Field, the President of the Association. Aside from the report of the secretary, there was little done beside a considerable, apparently, desultory talk. A goodly amount of solid work was however planned for the session, and we hope it was accomplished, for however sceptical we may be about the attainment of the ultimate object in view, there can be no doubt that the two associations, whose meetings have been held this year at Geneva, are doing a good work. As was said by M. Carteret, the Cantonal President: "Whatever difficulties there may be in drawing up a good code of International Law, and above all in securing its vitality and advancement, there is room to entertain legitimate hopes in this respect. From every quarter there is something of this sort expected, and—sign of approaching moral conquests—from different quarters and under divers forms, individual or collective efforts are being made at the present moment tending in the same direction: that is to say, that law should replace force in international relationships." — *Albany Law Journal.*

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

Cornwall Election Petition.

D. Bergin, *Petitioner;* v. A. F. Macdonald, *Respondent.*

Common Law of Parliament.—The Common Law of England relating to Parliamentary elections is in force in this Province.

Agency.—What acts constitute a person an agent in a Parliamentary election, considered. — Canvassing combined with other acts. — An accumulation of trifling acts.—Attendance at meetings.—Entrusting a person with money for election purposes.—Canvassing in company with candidate.

Sub-agents.—When a large and general authority is given to an agent, the candidate will be held responsible for the acts of sub-agents of such person.

Corrupt practices. — Rule when there appears to have been general corruption, or only isolated cases of bribery.—Money given to sub-agents to expend without accompanying directions.—Colourable purchases.—Colourable charity and liberality.—Loans of money.—Hiring conveyances to take voters to poll.

Costs.—Costs should follow event, although the personal charges against the respondent fail, unless put in wantonly, or unless expense of trial has been thereby increased.

[Cornwall, Sept. 3-7, 1874.—Spragge, C.]

The petition contained the usual charges, but the seat was not claimed by the petitioner, who was the unsuccessful candidate. The case was tried at Cornwall before the Chancellor.

James Bethune and *McIntyre* appeared for the petitioner.

Harrison, Q. C., *D. B. Maclennan* and *H. S. Macdonald*, for the respondent.

Spragge, C.—The enquiry divided itself into two branches. 1st. That relating to the question of agency. 2nd. That relating to the commission of corrupt practices.

With reference to the question of agency, the contention of the Counsel for the respondent, that what was known as the

Common Law of Parliament does not apply to elections to the House of Commons, can not, in my opinion, be supported. It would be more accurate to refer to this law as the Common Law of England relating to Parliamentary elections, and in the absence of any expressed intention to the contrary, it must be held to come within the Provincial enactments introducing generally the Common Law of England. *Reg.* v. *Gamble & Boulton*, 9 U. C. Q. B. 546, is an authority in support of this view.

The law of agency as regards Parliamentary elections is not the ordinary law of agency, but a special law. The usual rule is, that where an agent acts contrary to his instructions, the principal is not bound; but in Parliamentary agency it is different, for there the principal is liable for all acts of the agent whatsoever, even though they be done contrary to his express instructions. (His Lordship referred to the remarks of Blackburn, J., in the *Bewdley Case*, 1 O'M. & H. 16.)

As to the evidence of agency, mere canvassing of itself does not prove agency, but it tends to prove it. An act, however trifling in itself, may be evidence of agency,—and a number of acts, no one of which might in itself be conclusive evidence, may together amount to proof. It is hardly necessary to observe that an agent need not be a paid agent.

In this case Mr. D. B. Maclennan was an agent for whose acts the respondent was responsible. Mr. Maclennan was instrumental in overcoming the reluctance of the respondent to become a candidate. He acted with the respondent in various matters connected with the election; went to the factories at Cornwall with him; canvassed part of the town; went to the meetings at St. Andrews with the respondent; held meetings for the promotion of the election at his office, at which the respondent personally attended. It was a clear case of agency. Even two or three of these circumstances alone, perhaps even one, without the others, would establish agency clearly. There was no authority from the respondent to Maclennan to corrupt the constituency, but there was no necessity for this authority in order to render the respondent liable for corrupt acts done by Maclennan.

The entrusting of large sums of money, as has been done in some cases in England, is only one of the modes of appointing a chief agent, and is not essential to such appointment.

Henry Sandfield Macdonald must also be considered as an agent of the respondent. He canvassed the township with the approbation of the respondent. He drove the respondent through the township and introduced him to voters, and he did not on these occasions accompany the respondent as a mere driver, for the respondent on two or three occasions waited for his convenience, showing that his personal attendance was considered desirable. He took so active a part in the election that he considered himself justified in calling the meetings at St. Andrews. At the first meeting he suggested to those present what should be done to further the election; at the second he examined the results of the canvass. The evidence of agency was very cogent.

I think the general authority given to D. B. Maclennan and H. Sandfield Macdonald empowered them to employ sub-agents, for whose acts the respondent would be liable in like manner as for their own acts.

Besides Mr. D. B. Maclennan and Mr. Henry Sandfield Macdonald, the sub-agents appointed by them, and those who were appointed canvassers at the meetings in St. Andrews and in town must also be considered agents for whom the respondent is answerable.

With reference to the first meeting at St. Andrews, it has been said that it was not regularly convened. Certainly there was less regularity and formality about its calling than is usual in such cases. But this regularity or formality is by no means necessary. If the meeting assembles, and has the sanction of the candidate, this is sufficient to render the candidate liable for its acts, and those of agents appointed by it. The object of the meetings at St. Andrews was to secure a canvass of the township, not merely to discuss election matters.

Where the number of those present at a meeting is very large, that is a reason why all present should not be considered as being appointed agents. It is clear in this case that the whole 150 or 200 present at the meeting were not appointed agents; certain of them only were requested to canvass their neighbourhoods, and, to use the words of a witness, "to interest themselves in the election." It is these persons alone who can be considered as agents. It is immaterial whether a committee be formally or informally appointed. It is sufficient if certain duties be assigned to its members and the candidate sanction this assignment of duties. Here the respondent drove out to the meetings with Mr. D. B. Maclennan, one of his chief agents. He was present during the meetings, and was there undoubtedly to further his own election. He cannot be considered as a mere spectator. Being present

at the meetings, he must be presumed to have been cognizant of all that was done, and therefore must be considered as having acquiesced in all that was done. Even if the respondent had not been present himself, the presence of his chief agents, Maclennan and Henry Sandfield Macdonald, would have rendered him liable for the action of the meeting. We must not look at the form but at the substance of what took place. And I think that the canvassers appointed at the St. Andrews meetings must be considered as agents for whom the respondent is responsible. The *Westminster Case*, 1 O'M. & H., 89, and the *Wigan Case*, ib., 188, do not apply. In those cases the associations were without doubt voluntary.

As to the meetings at Maclennan & Macdonald's office in Cornwall, the persons who attended those meetings must be deemed agents of the respondent. These persons examined the voters' lists, appointed canvassers, and received reports of his canvass. The usual formalities, as to calling together the meetings, and the transaction of business, appear to have been observed, but this was unnecessary. The respondent acquiesced in the acts done. (His Lordship here read the remarks of Blackburn, J., on the definitions of agency in the *Taunton Case*, 1 O'M. & H., 185-6 ; also the remarks of Willes J., as to the responsibility of a candidate for the acts of his agents in the *Coventry Case*, ib., 107.)

As to the second branch of the case, namely, that relating to the commission of corrupt practices, these consist principally of acts of bribery. Bribery is not confined to the actual *giving* of money. Being an unlawful act, it is to be expected that attempts will be made to conceal it from the light of day. The Courts, therefore, have always examined the various acts connected with the transaction, to see whether there is a corrupt motive. Where a grossly inadequate price has been paid for work, or for an article, it is clearly bribery. And in the present case several instances of such bribery occur. In considering the question of corrupt practices as affecting any particular election, we should also examine the whole evidence carefully to ascertain the mode and spirit in which the election contest has been carried on ; whether it has been on the whole pure and free from corruption, or whether there has been a general laxity of principle and evident disregard of the law. When the corrupt acts are isolated much greater strictness of proof will be required.

One thing that strikes me in this case is the large sum expended by the two chief agents of the respondent, a sum averaging about $3 a head for the votes polled for the respondent.

Large amounts were also paid without any express directions as to their application, amounts which would not be required for any legitimate use. In the case of Donald Miles McMillan, for example, the words used upon the money being handed to him were "Here, you may require it." If this money were applied improperly, it must be considered that it was intended so to be applied.

Again, when Henry Sandfield Macdonald, having "heard that the North West Corner was corrupt," gave $140 or $150 to George McDonald, of Molinette, to expend there without any directions as to the mode of expenditure, the only inference must be that it was to be expended in order to corrupt. This inference is supported by the statement of George McDonald, who, on being asked why he accepted the money, replied that he was apprehensive "that the other side were going to bribe," which implies that he considered his side should do so as well.

There were many similar cases in which considerable sums of money were paid without directions as to the application, but it is unnecessary to dwell upon these further than for the purpose of showing the general spirit in which the contest was carried on on behalf of the respondent. In the case of Gilbert Runnions bribery with the knowledge and consent of Henry Sandfield Macdonald, one of the chief agents of the respondent, is proved.

Henry Sandfield Macdonald, when he handed the money to George McDonald, named Runnions as a person to whom money should be given. And the money was paid to Runnions by G. McDonald, as Runnions admits. This is the same as if H. S. Macdonald gave it himself.

The evidence of George McDonald and that of Runnions differs as to the amount paid, but this is immaterial—money was paid.

In other cases Henry Sandfield Macdonald left the giving of the money to George McDonald "on discretion." This was a direct appointment of George McDonald as agent. And in exercise of this discretion, George McDonald bribed Cannon and the two Worleys.

The payments by Donald Miles McMillan to the Clines and to Murray are other instances of bribery. In the case of the Clines, McMillan paid money to them, or as he afterwards says to one of them, nominally for the purchase of oats, but at the time of the alleged purchase no quantity of oats was named, no time for deli-

very was specified, no receipt for the money was taken, and no oats have as a matter of fact been delivered; the alleged purchase was undoubtedly a mere colourable proceeding. The fact that the Clines and Murray declared their intention to vote for the respondent does not affect the case.

Again, the payment of $10 to Alguire by Henry Sandfield Macdonald falls within the rule of inordinate and excessive payment. Where $4 or $5 would have been sufficient, the excess must be considered as given for some other purpose, which purpose was "corrupt."

The payment of $50 to the Rev. Mr. Smith, I think, falls within the rule as to "colourable charity," or "colourable liberality," referred to in the cases, and was therefore given with a corrupt motive.

With reference to the loans of small sums to various persons, we must of course take into consideration that the firm of Maclennan & Macdonald was in the habit of lending small sums. But the lending of various sums amounting to $210 at 6 per cent., is certainly suspicious, since it is admitted by Mr. Macdonald that the current rate was 8 per cent., and no reason is given why 6 per cent. only was asked. I think the reasonable inference must be that the loans were made with a view to the election. It is not necessary, however, to lay much stress upon these transactions.

The loan of $150 to Depuis is very clearly a case of bribery by Duncan G. McDonald, a sub-agent. The loan was for two years, without interest, a note being given to secure re-payment. The note was originally drawn payable with interest, but this was changed. Depuis says in his evidence that McDonald "got nothing but my vote for the money." Is not this a stipulation that Depuis should have the loan without interest if he would vote? Was it not a present of the two years' interest?

Again, Morrisette was an active agent. He attended the meetings at Maclennan & Macdonald's office in Cornwall. He examined the voters' lists. He had $140 entrusted to him. As to the disposition of this money he gives a very confused account, but the promise of $15 to Fitzpatrick's daughter was clearly an offer of a bribe. He said he would give the money if she got her father to vote, and the offer of a bribe is equivalent to a bribe, although it requires clearer and stronger evidence to support it.

The payment of money by Wood to Aaron Walsh was also illegal. Here the note endorsed by Walsh was paid by him 25 years ago. He considered the payment a hardship, but he does not deny his liability. The fact that the money paid by Wood was not furnished by the respondent or either of his chief agents, makes no difference. The endeavour by Wood to restore friendship was undoubtedly done to influence the vote.

In the case of Alexander McDonald, the exercise of forbearance in pressing the judgment in the hands of Maclennan & Macdonald was evidently with the view of influencing the vote.

These cases of bribery are sufficient to render the election of the respondent void, and I shall only make a few remarks on the other circumstances disclosed in evidence.

The treatment of Heath was a gross wrong, and one of those stratagems inexplicable to right thinking men. The case of Charles Mullins was also a very gross case. A stratagem was used in inducing him to get into the sleigh driven by Grant, and in spite of his remonstrances he was driven into the country and thereby prevented from voting. I consider the conduct of Donald McMillan, a justice of the peace, who was present, and knew that an outrage was about to be committed, and yet did not interfere, as deserving of the strongest censure. The case is as gross a one as can well be conceived.

As to the hiring of the special train, I think there was no personal impropriety in the case. A mere hiring of a conveyance to carry voters is not an act wrong in itself, and would not be so at all but for the express provisions of the law. And I am inclined to think that the hiring in this instance does not fall within the meaning of the law, and that it is the same as the case of one sending his own carriage.

I am not required in this case to say whether the corruption was so general as that the election should on that account be set aside, but an election may undoubtedly be void on that ground: *Bradford Case*, 1 O'M. & H. 40.

I exonerate the respondent personally from any complicity in the corrupt acts committed, but I think that it is my duty to say that I can scarcely conceive that Mr. D. B. Maclennan and Mr. H. S. Macdonald would have acted in the manner in which they appear to have acted at this election if they had appreciated the gravity of the acts committed by them.

My judgment, therefore, is that the election is void. Costs to be paid by the respondent.

I do not think that the fact that the personal charges against the respondent have failed should alter the usual rule that costs follow the event. The expense of the trial has not

been increased by these personal charges, and they have not been put in wantonly, in order to wound the feelings of the respondent; if they had been, that might have altered the case. These charges also are usual, and are excusable on the ground that the opposite party is generally ignorant of what is done by the respondent, and in order that evidence affecting the candidate personally may be given these charges must be made in the petition. In thus deciding as to costs, I am following a principle laid down by me in a case of *Ashworth* v. *Ashworth*, which came before me in Chancery.

Election set aside.

Niagara Election Petition.

Neil Black et al., *Petitioners*, v. J. B. Plumb, *Respondent*.

Agency—Sub-agency—To what extent—Costs.

Held that a candidate is responsible for the corrupt acts of sub-agents and persons acting under them.

Semble, that no limit can be placed to the number of parties through whom the sub-agency may extend, even though the chain is not purposely lengthened.

The learned Judge declined to decide what witness fees should be paid by the respondent, thinking it to be the province of the taxing master on taxation, after hearing both parties, to decide what witnesses to allow or disallow, as in ordinary cases.

[Niagara, Oct. 20-22, 1874.—Hagarty, C. J. C. P.]

The respondent placed a sum of money in the hands of one Gunn, who was the Secretary of a Manufacturing Company, of which the respondent was President, to be used as might be required for the expenses of the election as well as for the use of the Company and for that of the respondent's household, should it be required for the latter purposes, whilst the respondent was engaged in the contest, which occupied all his attention. There was no Bank agency in the neighborhood. Gunn, being a stranger in the locality, and having had no experience in election matters, handed $1,200 of the sum he so received to one Wilson, who was pointed out to him as a strong friend of the respondent, and who bore a high character, with instructions that the money was to be used for the legitimate expenses of the election. The respondent was not aware that this money had been given to Wilson, or of how he had disposed of it, until long after the election. Wilson distributed part of the money in large sums among active political friends of the respondent, but he did not direct them as to how the money was to be spent. With the rest he paid various election expenses and returned a balance to Gunn. The respondent had repeatedly urged upon his friends his desire that no money should be spent improperly.

No acts of bribery sufficient to avoid the election were proved, except a few cases by some of the parties to whom Wilson had given money, but these persons were not agents except they became so through the acts of Gunn and Wilson.

Hodgins, Q.C., and *J. G. Currie* appeared for the petitioners.

C. Robinson, Q.C., and *O'Brien* for the respondent.

It was admitted that if the respondent was responsible for the acts of the parties who had received money from Wilson, and had been guilty of bribery, the election must be set aside; and the arguments were mainly directed to this point.

C. Robinson, Q.C. There is no evidence of wide-spread corruption here, nor under the circumstances has the expenditure been large, and everything negatives any improper acts or motives on the part of the respondent, or any suspicion that money was being spent improperly. The money was given Gunn in good faith, and he in like manner gave part of it to Wilson. There is no authority for making a respondent liable for the acts of the agent of a sub-agent. The *Bewdley Case*, 1 O'M. & H. 16, does not go that length, nor the *Cornwall Case*, (*infra.*) If so responsible, where is the limit to his liability? It might be different if it were shown that the sub-agency had been extended purposely, but that was not the case here.

Hodgins, Q.C. The placing a large sum of money in the hands of Gunn without overlooking its expenditure, was an act of carelessness which was evidence of wilful blindness on the part of the respondent. Gunn was only the conduit pipe through whom the money went to Wilson, who was in effect the agent, and his sub-agents committed acts of bribery for which respondent was responsible to the extent of his seat.

Hagarty, C. J. C. P.—This constituency consists of the town and township of Niagara. Six hundred and forty-two persons voted, and the respondent had a majority of thirty. The respondent agreed to come forward on the 12th January, the polling took place on the 29th of January. The respondent is Chairman of the Steel Works Company, of which Mr. Gunn is Secretary, and acts as local Treasurer. He was appointed on the 1st of January, and only

came to reside in Niagara on the 15th of January last. There is no bank agency or express office here.

On the 26th January respondent sent Gunn to Toronto with a letter to Mr. Gzowski, a stockholder and director of the Company. Respondent told Gunn that money would be wanted for the general purposes of the election, and also for his own purposes and for the Steel Works. He had men then at work on his own premises. Gunn presented the letter to Mr. Gzowski, who went with him to the Montreal Bank and spoke to the manager, who then gave Gunn $1,992.50, and he informed respondent thereof. The latter authorized Gunn to disburse money required for the election, cautioning him distinctly to see that none of the money was used for anything but perfectly lawful purposes, and on several subsequent occasions said the same thing.

The respondent was very busy about the election, and nothing whatever seems to have taken place between them as to the subsequent expenditure. Gunn knew hardly any one in Niagara, and next day, at the suggestion of one Burk, and others, handed $1,200 of this money to Dr. Wilson, a well-known physician here, and respondent's medical adviser, thinking he was the proper person to deposit it with for lawful expenses, taking no receipt. Gunn says he had no idea or intention that the money should be improperly spent. He afterwards paid several hundred dollars more for various expenses—printing, and some very heavy livery bills. He gave $100 back to respondent, and after paying all the calls upon him had a balance of over $100 on hand, which he applied to other matters not connected with the election.

Dr. Wilson admits the receipt of this money, understanding that it was to be used for election purposes, not unlawfully; and he says he did not know whose money it was. The Doctor sent $250 of this money to one Lowry, in the St. David's division, sending it in an envelope by one Murphy without any letter or message, simply addressed to Lowry. Murphy swears he gave it to Lowry, not knowing there was money in it. Wilson also gave $250 to Thomas Hiscott, in the division of Virgil, without any instructions; and also $200 to Longhurst, in the remaining, Queenston, division. He also paid $100 to Thos. Burk, $40 to J. T. Kirby, for expenses, and small sums to others. One Kennell, a non-elector, was paid $100 for services, and Wilson returned $28 or $29 to Gunn.

Dr. Wilson says he did not intend to use the money for improper purposes, as he is opposed to such. He thought the parties to whom he paid it were responsible persons. He gave no instructions to the persons to whom he gave the money, how they were to use it, nor did he ask how it was used. With the money so received, Longhurst, as his evidence shows, committed several clear acts of bribery, and disposed of some of the money in a most suspicious way, giving his nephew, a voter, $60 of it, telling him to do as he liked with it, meaning about the election; and $70 to another man, much in the same way, never asking any account of it.

Out of this $250 given to Lowry he returns $85. He says he paid one Stuart, after the election, for lawful expenses, horse hire, lights and fuel, $130, but he can tell nothing about whether the claim was real or false, or anything about this man Stuart. Lowry, in my judgment, committed at least one act amounting to bribery in Mrs. Hanniwell's case.

In the third case, that of the money given to Hiscott, for the Virgil division, one Walter Thompson says that he found $250 in an open box in his stable. Just before he saw Hiscott standing in the road, and no doubt the latter placed it there. This money Thompson divided among five or six people the night before the polling, telling them to go to work at once. He made no inquiry how it was spent, nor was any attempt made to prove that it was spent honestly.

Bribery was also committed by Robert Best to the extent of $40, but I do not consider that the respondent was in any way affected by it.

The respondent was examined and gave a full account of his candidature. He said from the beginning he was determined to make or sanction no illegal expenditure, and repeatedly announced this his resolution both publicly and privately (in this he is fully corroborated); that this was his first experience in elections, and he had no idea of the costs. There were certain charges made against him as to transactions in Albany, which he found it absolutely necessary to refute publicly before the electors, and in the short space before the polling he spent three days in the United States getting evidence, and had to spend a great deal in printing. There was no local paper or printing office, which caused more expense. His whole expenses, he said, were between $2,000 and $2,100, $1,800 being spent through Gunn. He himself paid a St. Catharines paper for

printing in April last $100, a shorthand reporter $50, and necessary telegraphing from $75 to $100. His personal expenses were under $5.

He denied any act of bribery, direct or indirect, or any knowledge thereof, and as to treating he only spent 70 or 80 cents, and that I think was not for any purpose or motive connected with the election. No attempt was made to prove any personal knowledge on his part of any of the specific wrongful acts or payments. He says that until quite lately, in fact the last week or two, he did not believe the petition would be proceeded with, and never, till he found it was really coming to trial did he make any enquiry as to the charges. He and Gunn both state that it was only within this period that he was made aware how Gunn had disposed of his money. He never suspected or knew that these sums were paid to Dr. Wilson, or disposed of by him as proved. He accounts for his ignorance by stating that he had perfect confidence in Gunn's intelligence and integrity, and having given Gunn explicit instructions not to spend any money illegally he did not think that anything was wrong; that his cash transactions were very large, and that his general habit was not to close up or balance his accounts till the end of each year, and so he had not yet examined how the cash stood with Gunn. When he discovered the amount that had actually been expended he says he was much surprised, and thought it was altogether too large.

I think the respondent, under the peculiar circumstances of his canvass, has satisfactorily accounted for his not having personally superintended Gunn's expenditure during the election.

On a review of the whole evidence, I see no reason to doubt the respondent's very emphatic denial of any corrupt motive or intention. I accept his declaration that he entered into the contest intending to spend no money illegally, and that he was in no way cognizant of any illegal act.

It remains to be considered whether his election is to be avoided for the undoubtedly corrupt acts of some of his friends.

Assuming for argument's sake that neither Gunn nor Wilson actually intended to violate the law, I cannot conceive how they could have taken any course so calculated to arouse suspicion and to make what they say was meant to be right appear to be wrong as the course they did adopt. The respondent trusts Gunn with the disbursing of his moneys. The latter, on somebody's suggestion, hands $1,200 of it to Dr. Wilson in the vaguest manner, giving no directions, and never enquiring as to its employment. If he made Wilson the paymaster, it is not easy to see why he did not refer parties coming with claims for lawful expenses to Wilson. He paid them himself without enquiring whether the large sum given to Wilson was or was not exhausted. He never asked for an account from Wilson, but let him do as he pleased. I look upon the relation of both Gunn and Wilson to the respondent in the same light, and I think the latter is as clearly responsible for what Wilson did as if Gunn had done the same act—when Wilson gives to Longhurst (for example) $200 to use as he might please, about the election, of course in the promotion of respondent's interests. With part of this money Longhurst commits several clear acts of bribery.

My strong impression is that the agency continues under these circumstances, and the respondent's election must be affected thereby. The same might be said in Lowry's case and in Hiscott's, whom Dr. Wilson was pleased to trust with $250 for the Virgil division, to be expended as he pleased. The placing of it in Thompson's stable to be found by the latter can hardly be referable to a transaction intended to be honest, and the subsequent distribution of it by Thompson raises the gravest suspicion that the whole proceeding was intended to be an evasion of the law, and resulted in an illegal expenditure.

If I do not hold the agency to continue in the case, I think I would be as far as in me lies rendering a wholesome law inoperative and opening a wide door to corrupt acts.

The *Bewdley Case*, 1 O'Malley & Hardcastle, 18, I think strongly supports this view. Sir Colin Blackburn's judgment is very explicit. There the respondent deposited a large sum in the hands of one Pardoe, directing him in his letter to apply the money honestly, but not exercising, either personally or otherwise, any control over the manner in which this money was spent, etc., not in fact knowing how it was spent. He then says, "I can come to no other conclusion than that the respondent made Pardoe his agent for the election, to almost the fullest extent to which agency can be given. A person proved to be an agent to this extent is not only himself an agent for the candidate, but also makes those agents whom he employs. * * * An agent employed so extensively as is shown here makes the candidate

responsible not only for his own acts, but also for the acts of those whom he, the agent, did so employ"; "even though they are persons whom the candidate might not know, or be brought into personal contact with. The analogy that I put in the course of the case is a strong one. I mean that of the liability of the sheriff for the under sheriff, where he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under sheriff employs is not only responsible for the acts done by virtue of the mandate, but also for the acts done under colour of the mandate, matters which have been carried very far indeed in relation to the sheriff. I think these principles must govern this case."

I do not think that bribery prevailed extensively; most likely large portions of the money proved to have been paid to certain individuals did not go beyond the payees. I shall report that the respondent was not duly elected, and that his election is void, and that he must pay the costs of the petition; that no corrupt practices took place with his assent or knowledge; and that corrupt acts were committed by Wm. Longhurst, and David Lowry, and Robert Best. I am inclined to look leniently on the loans made by Best. He very frankly told his story, and honestly put the worst construction on what he did, although many others would probably have insisted it was all right. After much consideration, I have decided not to report Walter Thompson or Murray Fields, but I think the disposition of the money they received was most reprehensible.

It was urged upon me by Mr. Robinson that I should make some special order as to the costs of certain witnesses said to have been subpœnaed for to be in court, but who were not called by the petitioners. I do not see that I have any material before me to warrant my making any order now beyond directing, as I do direct, that no costs be allowed petitioners for any witnesses summoned or in attendance, respecting any charge of undue influence, threatening with loss of office, salary or income, or the opening or supporting houses of entertainment for the accommodation or treating of electors, as I consider that the case disclosed no such practice, and that such charges were unwarranted. In my view of the law, I think it is in the province of the taxing master, after hearing both parties, to decide what witnesses to allow or disallow. Such is his duty, I think, in ordinary cases. It does not follow because a party is successful and entitled to the general costs of the cause, that he is entitled to the costs of all the witnesses he may subpœna; nor is the fact of their being called, or not called, the test of their being reasonably taxable.

I cannot conclude without expressing my strong sense of the admirable manner in which the case has been conducted on both sides, and the total absence of all irrevelant statements and of any undue waste of the public time.

Election set aside.

IN THE COUNTY COURT OF THE COUNTY OF MIDDLESEX.

Corsant *qui tam* v. Taylor.

Action for not returning conviction.—Division Court jurisdiction.—Tort.

Held.—That Division Courts are by virtue of 32 Vict., cap. 23, sec. 1, O., courts of record.

2. That a penal action for not returning a conviction is founded on *tort*, and for that reason cannot be brought in a Division Court.

[London,—Sept. 10, 1874.]

Action against a magistrate for non-return of convictions pursuant to C. S. U. C., cap. 124, sec. 2—Verdict for penalty $80, at Middlesex spring assizes, before Mr. Justice Morrison. A certificate for full costs was asked for by the plaintiff, thinking it might be necessary, but the learned Judge declined to decide the point. Plaintiff, however, signed judgment and taxed full County Court costs.

Edmund Meredith, defendant's attorney, took out summons calling on plaintiff to show cause why taxation should not be reviewed, on the ground that the action was within the competence of the Division Court, which was a Court of Record.

W. H. Bartram showed cause. The opinion of Mr. Justice Morrison, in *Re Judge of County of York*, 31 U. C. Q. B. 270, that Division Courts are courts of record, was not necessary for the decision of the case, and the point was apparently not argued by counsel. 32 Vict. (Ont.), cap. 23 sec. 1, does not necessarily make a Division Court a court of record. It merely affects the proceedings of the court after judgment. The enactment seems to refer to the limitation of 20 years. See *McDonald* v. *McKinnon*, in note on p. 275 O'Brien's Division Court Manual. A number of courts in the United States are courts of record for some and not for other purposes; and see Bouvier's Law Dictionary; Dwarris on Stat. 342. But even if Division Courts be courts of record, this action is for a *tort*, and be-

yond its jurisdiction. *Drake qui tam* v. *Preston*, 34 U. C. Q. B. 264 and cases there cited, and sub-section 1, sec. 55, cap. 19 Con. Stat. U. C., cap. 19, sec. 55, sub-section 1. And lastly, the statute gives the penalty, together with *full* costs of suit recoverable in *any* court of record. The full costs are part of the penalty.

R. M. Meredith supported the summons, relying on *Re Judge of County of York supra.* The action is in form for debt, and is within sub-sec. 2, sec. 55, cap. 19, Con. Stat. U. C.

ELLIOT, CO. J.—In considering this matter the first question is as to whether the Division Court is a court of record. The 32nd Vict. provides that judgments in the Division Courts shall have the same force and effect as judgments of courts of record. Now if these judgments have all the qualities of records they must be records, and a definition of a court of record is, I believe, a court where judgments are finally enrolled as records. One would suppose that if the Legislature had intended them to be such, it would have plainly stated that they were courts of record, instead of merely providing that their judgments should have the same effect as if of courts of record. But to hold that they are not courts of record would, it seems to me, involve a contradiction. Mr. Justice Morrison, in *Re Judge of York*, cited in the argument, expresses his opinion that this language constitutes Division Courts courts of record, and I accordingly conclude that they are, and being such this action could have been brought there, provided there is no other reason to the contrary.

This brings me to the second question, namely, the verdict being $80, is this action within the jurisdiction of the Division Court? That court has jurisdiction in all claims and demands of debt where the amount claimed does not exceed $100. Now it is true the action is in form for a debt, but I think it is really founded on a *tort*: Chitty on Pleading, 7 ed. vol. I. p. 52; *Bastard* v. *Hancock*, Carth. 361; *Barnard* v. *Jostling*, 2 East 569; a proposition which is further supported by *Drake qui tam* v. *Preston*, cited by plaintiff. Then this action, being *ex delicto*, is beyond the jurisdiction of the Division Court, which is limited in such cases to $40 by sub-sec. 1, sec. 55, cap. 19, Con. Stat. U. C. Upon this ground I have, therefore, come to the conclusion that the plaintiff is entitled to full County Court costs.

Summons discharged.

UNITED STATES REPORTS.

NEW YORK COURT OF APPEALS.

ALPHEUS CHAPMAN v. SILAS ROSE.

Negotiable instruments—Effect of signatures fraudulently obtained.

If a person *negligently* signs a negotiable instrument, relying upon the representations of another as to its contents, whereby he is fraudulently induced to sign a different instrument from the one he had engaged to sign, he can not resist payment of the same when in the hands of a *bona fide* holder for value.

This was an action on a promissory note, brought by Chapman against Rose, and tried at the Circuit Court at Newburgh, in November, 1871, before a jury, Hon. Joseph F. Barnard presiding.

On the trial it appeared that on the first day of February, 1871, a person, representing himself as Alfred E. Miller, came to the defendant, a farmer, at his barn in the town of Warwick, and asked him to take an agency for the sale of a patent hay-fork, which defendant finally consented to do. Miller then requested him to sign an agreement creating and accepting the agency, and also a printed order for one hay-fork, which order was attached at the bottom. He also requested defendant to execute a duplicate of the agreement and order, which he did; and Miller took the one and defendant kept the other. It was understood that defendant was not to pay for any forks until he had actually sold them. This was all that passed between them. About seven months afterwards the defendant was notified by the plaintiff in this suit to pay a promissory note, purporting to be made by the defendant Feb. 1 1871, for $270, payable to Alfred E. Miller or bearer, seven months after date, and transferred to the plaintiff before maturity. Defendant, although conceding that the signature looked like his, denied that he ever made the note, and the plaintiff brought this suit on it. The charge of the trial court, which is the ground assigned as error, is stated in the opinion. The verdict and judgment were for the defendant, and the plaintiff appealed. The judgment was affirmed at General Term (44 Howard's Practice Reports, 364), and the plaintiff again appealed.

W. Vanamee and *Charles H. Winfield* for plaintiff.

W. J. Groo for defendant.

JOHNSON, J.—The judge charged the jury that if the paper sued upon was never delivered as a note, the plaintiff must fail in the action, and that even if it was delivered and the plaintiff neglected to make proper inquiry as to its origin, he was not a *bona fide* holder and could not recover.

The exception to the charge was general, but if both propositions were erroneous the error can be reached and corrected, especially as the attention of the judge appears to have been called by request to charge to the precise grounds on which the charge is now claimed to be erroneous. The latter branch of the charge presents the question of notice to put a party on inquiry as affecting his right to be regarded as a *bona fide* holder. It is now, however, the settled law, that mere negligence, however gross, is not sufficient to deprive a party of the character of a *bona fide* holder. There must be proof of bad faith. That alone will deprive him of that character: *Welch* v. *Sage*, 47 N. Y. 143; *Seybel* v. *National Currency Bank*, Comm. of Appeals, 1873, MS.; *Murray* v. *Lardner*, 2 Wall, 110; *Goodman* v. *Simonds*, 20 How, 343. This part of the charge, therefore, can not be sustained. If, then, the appellant can maintain the position that the other branch of the charge is also erroneous, he will be entitled to a reversal of the judgment, notwithstanding the generality of the exception.

The evidence tended very strongly to show that the signature of the defendant to the note sued upon was obtained from him through a very gross and fraudulent imposition perpetrated upon him by one Miller; that when he signed it he supposed he was signing a paper of a very different character, and not an engagement to pay money absolutely. He had just before signed an order for the delivery to himself of a hay-fork and two grappling-pulleys, amounting together in price to nine dollars, for which he engaged to pay, and this paper now in suit was presented to him as a duplicate of that order, and was signed as such without examination or reading it, upon the statement of Miller, with whom he was dealing, that such was its character. There does not appear to have been any physical obstacle to the defendant's reading the paper before he signed it. He understood that he was signing a paper by which he was about to incur an obligation of some sort, and he abstained from reading it. He had the power to know with certainty the exact obligation he was assuming, and chose to trust the integrity of the person with whom he was dealing instead of exercising his own power to protect himself. It turns out that he signed a promissory note, and that it is now in the hands of a holder in good faith for value. The question which arises on the branch of the charge now under consideration is whether it is enough as against a *bona fide* holder to show that he did not know or suppose that he was signing a note, unless it also appears that he was guilty of no laches or negligence in signing the instrument. To that inquiry the attention of the judge at the trial was distinctly called, and the instruction which he gave and which was excepted to did not submit, but excluded the consideration of it from the jury. It is quite plain that if the law is that no such inquiry is admissible, a serious blow will have fallen upon the negotiability of paper —it will be a premium offered to negligence. To insure irresponsibility, only the utmost carelessness, coupled with a little friendly fraud, will be essential. Paper in abundance will be found afloat, the makers of which will have no idea they were signing notes, and will have trusted readily to the assurance of whoever procured it that it created no obligation. To avoid such evils it is necessary at least to hold firmly to the doctrine that he who by his carelessness or undue confidence has enabled another to obtain the money of an innocent person shall answer the loss. If it be objected that there must be a duty of care in order to found an allegation of negligence upon the neglect of it, it must be answered that every man is bound to know that he may be deceived in respect to the contents of a paper which he signs without reading. When he signs an obligation without ascertaining its character and extent, which he has the means to do, upon the representation of another, he puts confidence in that person, and if injury ensues to an innocent third person by reason of that confidence, his act is the means of the injury, and he ought to answer to it.

In *Foster* v. *MacKinnon*, L. R. 4 C. P. 704, the action was upon an endorsement of a bill of exchange, and the evidence was that the defendant endorsed it believing it to be a guarantee, that being represented to him as its nature by a person in whom he put confidence.

The judge charged the jury that if the defendant signed it not knowing it to be a bill, and believing it to be a guarantee, in consequence of a fraudulent representation as to its character, and if he was not guilty of any negligence or laches in signing it, he was not bound. The jury found for the defendant. Upon a review of the decision, and after a very full and able discussion of the questions involved, the court held the direction at the trial to have been right. But a new trial was granted upon the ground that they were not

satisfied with the finding of the jury on the question of fact, as I understand it, in respect to the question of negligence.

In *Whitney* v. *Snyder*, 2 Lansing, 477, evidence had been refused that the defendant was unable to read, and that the note which he had in fact signed was represented to him to be an instrument of a different character and was signed by him under such a belief. The court held that the evidence ought to have been received, principally upon the grounds and authority of the case last cited, approving both branches of the rule as stated in that case, and adding that the case then in judgment was stronger for the defendant on the question of negligence than was *Foster* v. *MacKinnon*. This was clearly so, for in *Whitney* v. *Snyder* it appeared that the defendant could not read, and he was, therefore, compelled to put confidence in some one as to the contents of any paper which he might be called upon to sign. Indeed, the same exception in respect to negligence is recognized as a necessary element in the decision at General Term in this case. The difficulty is that at the trial the judge rejected that qualification of the rule, and held that if the party did not intend to make a promissory note he could not be held bound even in favor of a *bona fide* holder for value. The principle involved is recognized and in substance decided in *Putnam* v. *Sullivan*, 3 Mass. 45. In that case the defendants had left with a clerk some signatures on blank pieces of paper intended to be used as notes or endorsements, according to specific instructions. The clerk was induced by fraud to part with one of these blank signatures and it was filled up as a note, leaving the signature to appear as that of a payee and endorsee. The action was by a holder in good faith, and the court giving judgment, by PARSONS, C. J., said: "The counsel make a distinction between the cases where the endorser, through fraudulent pretences, has been induced to endorse the note he is called upon to pay, and where he never intended to endorse a note of that description, but a different note and for a different purpose. Perhaps there may be cases in which this distinction ought to prevail: as, if a Chinaman had a note falsely and fraudulently read to him, and he endorsed it, supposing it to be the note read to him. But we are satisfied that an endorser can not avail himself of this distinction, but in cases where he is not chargeable with any laches or neglect, or misplaced confidence in others. Here one or two innocent parties must suffer. The loss has been occasioned by the misplaced confidence of the endorsers in a clerk too young or too inexperienced to guard against the act of the promissors." Upon those grounds the endorsers were held liable.

In *Douglass* v. *Matting*, 29 Iowa, 498, the judge says: "It is better that the defendant and others who so carelessly affix their names to papers, the contents of which are unknown to them, should suffer from the fraud their recklessness invites, than that the character of commercial paper should be impaired, and the business of the country thus interfered with and unsettled."

In all these cases the real ground of decision is not that the party meant to make a promissory note, but that, meaning to make an obligation in writing, and which was put in writing, that it might of itself import both the fact and the form and the measure of the obligation, he trusted another to fix that form and measure without exercising that supervision which was in his power, and by which perfect protection was possible. In such cases the rule is, that he is bound by the act of him who has been trusted, in favor of a holder in good faith.

The judgment must be reversed and a new trial granted, costs to abide the event.

JOHNSON, J., reads for reversal and new trial. All concur.

Judgment reversed.

—*Central Law Journal.*

NEW BRUNSWICK.

DIGEST OF CASES DETERMINED BY THE SUPREME COURT OF NEW BRUNSWICK, IN EASTER AND TRINITY TERMS, 1874.

(*From Pugsley's Reports, Vol. II. No.* 3.)

Abatement—Non-Joinder of Defendant—Evidence—Pleading.

The plaintiffs contracted with "C. C. & Co." to do certain work. An action having been brought against C. C. and A. S. and W. S. to recover for work done on the contract and damages for breach of it by the defendants, the latter pleaded in abatement the non-joinder of W., who, they alleged, composed the "Co." with A. S. and W. S.

Held, that the plaintiffs having had reasonable grounds for believing that the three defendants alone composed the firm of "C. C. & Co.," it was sufficient to join them as defendants.

Where evidence in reply is pressed in against the opinion of the Judge a new trial may be granted; but whether it will be granted, or not, must depend upon the circumstances of each case.

Where a special contract is set out in the declaration, and the plaintiffs obtain judgment by default, or on demurrer, the contract is admitted as stated in the declaration, and evidence which would have been admissible under the general issue will not be received on an enquiry to assess the damages.—*McDonald* v. *Cummings*. 283.

Construction of contract—Where it is susceptible of two meanings—Misdirection.

Where an instrument is susceptible of two meanings, one of which is reasonable and probable, and the other altogether improbable, it ought to be construed in the former sense, unless it is clear that the other construction was intended.

J. agreed to deliver to M. a quantity of lumber. At the time of entering into the contract, the former signed a writing as follows:—"When the season's shipments are over, if M. cannot turn out -8 for lumber as paid J., J. will take off 25 cents of each superficial, or the loss if any."

Held, that this meant that the deduction of 25 cents was intended to be a maximum sum, and that the words "loss if any" would only apply in the event of the loss being less than 25 cents per thousand.

Where the substantial question in this case was whether a sum of money was paid as a settlement of accounts, the Court refused a new trial moved for on the ground of misdirection, in the Judge leaving to the jury whether a draft for the amount was a settlement, no draft being in evidence—it being quite immaterial whether the money was paid by means of a draft or not.—*Jones* v. *McIntosh*. 343.

Carrier—Damage for breach of contract—Loss of baggage—Detention and expense.

The plaintiff, being a passenger on the defendants' railway, gave his baggage in charge of their servants. The baggage having been lost, the plaintiff sued for the value of the articles, and damage sustained in consequence of such loss, both in expense incurred thereby and loss of time.

Held, that the damage must be confined to reasonable expenses of searching for the baggage, such as telegraphing, cab-hire in going to the defendants' office, &c.—*Morrison* v. *E. & N. A. Railway Co.* 295.

Incorporated Company—Election of Directors—Proxy, voting by—Practice—Attorney—Defending action without authority—Setting aside appearance and staying proceedings.

At the annual meeting of the stockholders of the Albert Mining Company, held for the purpose of electing Directors, one of the stockholders moved that certain persons (naming them) be the Directors of the Company for the ensuing year.

Held, that in order to defeat their election, other parties must be nominated and elected by a majority of votes, and that it would not be sufficient for the majority merely to vote against the persons nominated, without voting for some one else.

Held, also, that to give a person the right to vote for another by virtue of a proxy, he must distinctly put forward his claim to do so, and must explicitly vote in the name and on behalf of the stockholder whose proxy he holds.

It was also held, in an action brought against the Company, that if the service was on, or the attorney entering appearance was authorized by, other than the duly qualified officers of the Company, the Court would stay proceedings without payment of costs.—*Spurr* v. *Albert Mining Co.* 260.

Trespass—Justice of the Peace—Want of jurisdiction—Reasonable and probable cause—Costs—Validity of Dominion Act 32 and 33 Vict. c. 29 § 134.

The defendant, a Justice of the Peace, issued a warrant to arrest the female plaintiff, on an information stating that she did "unlawfully take and carry away from his (the informant's) protection his daughter S. W." The Justice professed to act under the Dominion Statute 32 and 33 Vict., c. 20 § 56.

Held. in an action for assault and false imprisonment, that the defendant had no jurisdiction to issue a warrant on this information, and was liable to an action of trespass, and that the question of reasonable and probable cause can only arise where the Justice has jurisdiction over the matter.

Stiles v. *Brewster* (4 Allen 414) discussed. *Quære*, whether the Dominion Act 32 and 33 Vict., c. 29, § 134, relating to costs in actions against Justices, is not *ultra vires* the Federal Parliament?—*Whittier* v. *Diblee*. 243.

Trespass—Justice of the Peace—Action against for false imprisonment—Irregularity—Commitment of prisoner to "safe custody" other than common gaol or prison.

Information having been laid on oath before the defendant, a Justice of the Peace, against the plaintiff, he issued a summons and copy, but the copy was defective in not containing the return day. The constable made oath before the Justice that he had served a true copy of the summons, whereupon, the plaintiff not appearing at the return, the defendant issued a warrant for the plaintiff's arrest. On being brought before the defendant, the plaintiff refused to enter into a recognizance, and was thereupon remanded to the "common gaol at Kingston," King's County, for five days, from which he was discharged by a Judge's order. An Act had just been passed, not known to the defendant, removing the shire town from Kingston, and making the common gaol of St. John or Westmoreland the common gaol of King's.

An action for false imprisonment having been brought against the Justice,

Held, 1. That as the defendant had jurisdiction over the subject matter of the complaint, and, when the constable made the affidavit of service of the summons, also over the plaintiff's person, trespass would not lie without malice or want of reasonable and probable cause.

2. That the plaintiff's imprisonment at Kingston being only a remand for safe custody until the complaint could be heard, it was legal, though the building was not the common gaol of the county—the power being given by 32 & 33 Vict. c. 31 § 33 Statutes of Canada.—*Birch* v. *Perkins*. 327.

Insolvent Act of 1869—*Privileged creditor—Arrears of wages—Daily laborer—Where servant leaves employ of insolvent before assignment—Waiver—Section* 67.

C assigned under the Insolvent Act of 1869, on the 14th November, 1872, being indebted at the time to N. in the sum of $945. Part of this sum was for wages due the claimant as a shipwright in the employ of the insolvent at daily wages. The whole was settled with the insolvent on the 28th October, 1872, the claimant taking four notes payable in 1, 3, 6 and 9 months respectively. The last work done by the claimant was on the 8th August, 1872, after which time he continued boarding the insolvent's men up to the 24th October. The claimant swore that the sole reason he left his employ was because he would not pay him.

Held, that, in the position in which the claimant placed himself, he could not be considered in the employ of the insolvent, and was not entitled to be preferred as a privileged creditor under the 67th section of the Act.—*Ex parte Napier*. 309.

Frauds (Statute of)—Contract—Uncertainty.

The defendant undertook to give or procure for the plaintiff a situation as clerk or book-keeper at $1000 a year, in consideration for which the plaintiff was, for a certain sum agreed on, to give the defendant a deed of his interest in certain lands and to "use his influence with the other heirs" to procure deeds to the defendant. In an action brought against the defendant for breach of this agreement,

Held, 1. That the contract was not void for uncertainty.

2. That it was not void under the Statute of Frauds, as being a contract not to be performed within a year.—*Bennett* v. *Peck*. 316.

Insolvent Act of 1869, *sec.* 50—*Remedy against Assignee.*

The holder of a mortgage on personal property belonging to an insolvent having replevied it from the assignee,

Held, that the remedy by action was taken away by section 50 of the Insolvent Act, and that he should have applied to the Judge for an order under that section.

In a case of compulsory liquidation, the judgment of the County Court Judge adjudicating the party insolvent is *prima facie* evidence of his being a trader.—*McGuirk* v. *McLeod*. 323.

Insolvent Act of 1869—*Claim—Contestation of—Pleadings—Unpaid cheques—Notice of dishonour—Necessity of alleging damage for want of*

In resisting a claim filed against an insolvent's estate on cheques drawn by the insolvent and unpaid for want of funds, on the ground of want of presentment and notice, it is necessary to allege and show that, by reason of want of notice, the insolvent or his estate had sustained loss or injury.—*In re Oulton*. 333.

Insolvent Act of 1869—*Arrest after assignment by creditor who has proved claim—Discharge—Whether Court will set aside writ.*

Where an insolvent has been arrested after assignment by a creditor who has filed his claim under the Act and taken part in the proceedings, the Court will not set aside the writ and discharge the defendant out of custody, but will leave him to his relief under the 145th section of the Act, by application to the County Court Judge.—*Hegan* v. *Jones*. 290.

Replevin—Distress for rent—Where tenant has assigned under Insolvent Act of 1869—*Whether right of distress taken away.*

The estate of M. was put in compulsory liquidation under the Insolvent Act of 1869, and the plaintiff, who was the official assignee, took charge of the estate, including goods on the premises of the defendant, McGuirk, then held by M. as his tenant. A year's rent being in arrear, while the goods were still on the premises, though in the possession of the plaintiff as guardian under the Act, McGuirk distrained for rent.

Held, in an action of replevin brought by the plaintiff to recover possession of the goods, per Ritchie, C. J., and Allen, Weldon and Fisher, J. J. (Wetmore, J., *dissentiente*) that the landlord's common law remedy by distress is not taken away by the Insolvent Act of 1869.

Per Wetmore, J. That the landlord's right to a year's rent, to which his preferential lien is limited by the 81st section, can only be enforced by a summary application to a court or Judge under the 50th section of the Act.

Quære. Whether the clause in the 81st section of the Insolvent Act of 1869 restricting a landlord's preferential lien for rent to one year is not *ultra vires* the Dominion Parliament.—*McLeod* v. *McGuirk*. 248.

Replevin—Non tenuit—What can be given in evidence under plea of—Fraudulent conveyance—Landlord and tenant—Distress.

It is competent for an assignee of an insolvent, in an action brought to replevy goods distrained for rent, to show, under the plea of *non tenuit*, that the premises occupied by the insolvent, and for which the defendant claims rent, were conveyed by the insolvent to defendant, to defraud his creditors, and such fraud being shown, the relation of landlord and tenant would not exist between them so as to give effect to the conveyance as against the creditors.—*McLeod* v. *McGuirk*. 238.

Trustee — Revocation of authority of — Where binding arrangement made before revocation.

F. died in the latter part of August, 1870, intestate, having his life insured in the sum of $6000, "to be paid to E. (the plaintiff) his wife, if she should survive him ; if not, to the children of the assured, or their legal representatives." On the 13th September following, plaintiff gave defendant, in writing, authority to collect the insurance and use it for the purpose of paying the debts of her husband. Subsequently, on the 16th September, defendant not being satisfied with the previous authority, procured a deed poll, whereby the plaintiff assigned the policies to him in trust for payment of the balance of the debts due by F., or for the purchase of such debts, and for the payment of the remainder to plaintiff. Two creditors were about taking steps to attach the policies in the United States, when, being informed by the defendant of the assignment, they, at his request, took no further proceedings. On the 30th March, 1872, and before defendant had paid over any money in pursuance of the deed, plaintiff signed a revocation, and, through her solicitor, made a demand from the defendant of the amount received on the policies. Notwithstanding this, defendant distributed among the creditors what was necessary to discharge their claims. The plaintiff having sued defendant for the whole sum received from the Insurance Company,

Held, 1. That it was competent for the plaintiff to revoke the authority given to defendant so long as he had neither parted with the fund or entered into any binding obligation with the parties to whom the money was to be paid.

2. That, as there was no debt due from plaintiff to the creditors of her husband, nor any obligation on her part to discharge his indebtedness, the fact of defendant having communicated to F.'s creditors the authority to receive and pay over the money would not be sufficient to prevent the plaintiff from changing its disposition by revoking the authority.

3. (Per Ritchie, C. J., and Allen and Weldon, J. J., Wetmore, J., *dissentiente*.) That the engagement entered into with the creditors who were about attaching the policies was binding, and the plaintiff could not recover the amounts paid over to them.—*Frost* v. *Kerr*. 338.

Will — Construction of—Life estate — Power—Covenant—Estoppel—Evidence—Joinder.

K. devised as follows : "I give to my dear wife M. the possession, use and occupation of my moiety of the house in which I now reside, and also my moiety of the upland marsh * * * and also all the plate, linen, goods, chattels and effects, together with all the household furniture of which I shall be possessed at the time of my decease ; as also the rents and profits of all my other personal and real estate whatsoever, whether consisting of land, tenements, goods, chattels, debts, moneys or choses in action, including all that I may own in the world at the time of my death, for the support and maintenance of herself and such of my younger children as shall be living with her and still unmarried. * * * It is further my will that if the rents and profits of my real and personal estate be not sufficient for the maintenance and support of my said wife and younger children, she may from time to time employ such of the principal as may be necessary for that purpose. It is also my will, and I hereby direct that whatever of my real or personal estate may remain after the death of my said wife, and which has not been previously otherwise disposed of in this will, shall be equally divided, share and share alike, between my children."

After the testator's death, M. leased a portion of the property to the defendant, under a demise containing various covenants, for a term which extended beyond M.'s life. M. having died, the defendant refused to perform his covenants, alleging that the lease was determined by her death. In an action brought by the children of K., the remaindermen named in the will,

Held, 1. That M. only took a life estate under the will.

2. That she had the power of sale both of the real and personal estate, and, as included in this, also the power to lease.

3. That while it was open to the defendant to show that M. had only a life estate, by accepting the lease from her, and entering under it, and continuing in possession of the property, he was estopped from disputing that she had title to lease, either because the will did not authorize a lease under any circumstances, or because the power was only to be exercised in case the rents and profits of the property were insufficient for the maintenance of the family.

4. That in an action for rent which accrued due, or for any cause of action which arose after one of the remaindermen conveyed away his interest, he should not be a party.

Evidence of Commissioners of Sewers appointed under Act of Assembly, acting in that capacity, is *prima facie* sufficient.—*Knapp* v. *King*. 309.

FOTSAM AND JETSAM.

Some of our exchanges have adverted to the friendly passage at arms between the Albany *Law Journal* and ourselves with the observation that the solution of the difficulty between us hinges on the question whether "judicial" should be spelled with a capital letter, or "Her Majesty the Queen" with small initials. The idea of a "solution hinging on a question" is a striking figure of rhetoric, and is borrowed from a former Lord Dundreary of whom it was written:

> "As thou wouldst say, my guide and leader,
> In these gay metaphoric fringes :)
> I must *embark* into the *feature*,
> On which this question chiefly *hinges*."

"The last time I met Joaquin Miller, the American poet," says the London correspondent of a contemporary, "he spoke of himself as 'Judge' Miller. I expressed my delight and surprise. I had been unaware of his judicial dignities. Indeed, I did not even suspect that he knew any law. Upon my expressing my surprise, he replied calmly—'Yes, sir, for four years I administered law in Oregon—with the help of one law-book and two six-shooters.'" We suppose this one law-book was the immortal commentaries of Judge Blackstone. For does not a compatriot of the poet (who is also a poet) laud the great English legist, thus:

> "Where shall we look but to the great Creator,
> For one superior to our Commentator?"

The English *Law Journal*, after giving an account of a curious will of one Signor Ponti, containing various complex clauses which would probably result in the estate finding its way into the pockets of the lawyers, thus touchingly comments upon that happy finale: "After all, there is nothing to deplore or be ashamed of in these solutions of embarrassing wills, for it is certain that the proper support of the profession is a good thing, whereas the general advance of the human race by means of £150 prizes to essay writers, or travellers, or mechanical contrivers, is an absurd and impossible object. Besides this, we must remember that no testator since the foundation of the world has ever bequeathed anything directly to the lawyers, and therefore they are justified in the indirect reception of some small share of the wealth of dead men. We do not know whether these views are shared by our learned brethren in Italy, but we have no reason to imagine that they are less eager to promote the prosperity of their profession than the counsel or the solicitors who practice in the Probate Court or the High Court of Chancery."

Dr. Franklin thought that judges ought to be appointed by the lawyers, for, added he, in Scotland, where this practice prevails, they always select the ablest member of the profession, in order to get rid of him and share his practice themselves.—*Albany Law Journal.*

During the trial of a rather "demoralized" looking individual in Buffalo, not long since, one of the "lookers-on" at the bar, turning to another, and calling his attention to the jury, said, "How lucky it was that such men were created, for, without them, how could the benignant provisions of our glorious constitution be carried out, which guarantee to every man the right to be tried by his peers."

Somewhat better than this was the answer of a prisoner's counsel to the remark of the judge, that "the court and jury think the prisoner a knave and a fool." "The prisoner wishes me to say," responded the counsel, "that he is perfectly satisfied—he has been tried by his peers."—*Ib.*

Curran used to say (and we commend the saying to the careful consideration of advocates): "When I cannot talk sense I talk metaphor." Kenyon must have been doing the same thing when he once addressed the Bench: "Your lordships perceive that we stand here as our grandmother's administrator *de bonis non;* and really, my lords, it does strike me that it would be a monstrous thing to say that a party can now come in, in the very teeth of an Act of Parliament, and actually *turn us round*, under color of *hanging us* upon the *foot* of a contract *made behind our backs.*"—*Ib.*

A physician reproaching a lawyer with what Mr. Bentham would, perhaps, have called the "uncognoscibility" of legal nomenclature, said: "Now, for example, I never could comprehend what you lawyers mean by *docking an entail.*" "My dear doctor," replied the lawyer, "I don't wonder at it; but I will explain; it is what your profession never consent to—*suffering a recovery.*"—*Ib.*

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, (the names are given in the order in which the Candidates entered the Society, and not in the order of merit):

Angus M. Macdonald.
Frederick St. John.
John Ross.
Donald Greenfield McDonell.
David Hill Watt.
James Parkes.
Thomas B. Browning.
John Rice McLaurin (admitted and called.)
John Wright, under special Act " "

And the following gentlemen obtained Certificates of Fitness:

John Bruce.
James Parkes.
David Hill Watt.
Richard Dulmage.
John Ross.
George B. Philip.
Frederick St. John.
Thomas B. Browning
George R. Howard.

And on Tuesday, the 25th of August, the following gentlemen were admitted into the Society as Students-at-Law:

University Class.

Charles Wesley Peterson
John English.
George William Hewitt.
Duncan McTavish.
Donald Malcolm McIntyre.
Thomas Gibbs Blackstock.
William E. Hodgins.
Frederick Pimlott Betts.
Alfred Henry Marsh.

Junior Class.

Alexander Jackson.
Henry P. Sheppard.
Horace Comfort.
Bayard E. Sparham.
Archibald A. McNabb.
William Swayzie.
Albert O. Jeffery.
William F. Morphy.
Hamilton Ingersoll.
Albert John McGregor.
Robert D. Story.
Denis J. Downey.
Alfred Carss.
Alexander V. McCleneghan.
Charles E. Freeman.
John Hodgins.
Frederick Murphy.
George W. Hatton
Martin Scott Fraser.
Frederick W. A. G. Haultain.
William Pattison.
Roderick A. Matheson.
Charles E. S. Radcliff.

Articled Clerks.

Peter J. M. Anderson.
John H. Scougall.

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 Dominion, empowered to grant such degrees, shall be entitled to admission upon giving a Term's 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 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. S. 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 Vic. 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. S. 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. 1, and Vol. 2, 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