The Legal News.

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ENGLISH BANKRUPTCY CASES.

Creditors in England do not seem to be much more fortunate than those in a similar position elsewhere. A correspondent communicates to *Truth*, an English journal, a printed list of the results of twenty-four bankruptcies, which, he says, "are in no way exceptional." If not exceptional, they are nevertheless not a little remarkable. Altogether the estates in these cases realized £56,917 10s. 9d. Out of this the "trustees" managed to appropriate £15,586 17s. 4½d; £11,415 3s. 3d. went to the creditors, while £2,763 10s. 2d. represented the balance, probably never to be distributed, remaining in the hands of the trustees at the time of the last audit. "The facts of one of the twenty-four cases," says the writer, "are peculiarly instructive. In it the committee of inspection was a firm of London solicitors, the trustee an accountant having offices in the same building, and the only assets were sold by an auctioneer, whose charges for so doing were £90 3s. 1d. The sale realized £599 15s. 7d., which was thus divided: The committee of inspection voted the solicitors of the trustee (themselves, doubtless) £173 2s. 5d., and awarded the trustees £172 17s. 9d.; but the creditors did not get a single farthing, the rest of the funds being pocketed for incidental expenses. In another case the trustee was a solicitor and the registrar of a county court, and knowing that his official position prevented him charging extravagantly, he did next to nothing and took £39 17s. 6d. for his services; but he so managed that his solicitor's costs amounted to £1293 18s. 7d. The creditors only got £839 8s. 9d. between them."

STENOGRAPHERS' FEES.

An order has been made by the Superior Court at Montreal, fixing the rate to be allowed in future to stenographers taking notes of evidence in the Court, at twenty cents per hundred words, and the prothonotary has been instructed not to employ any who do not consent to accept this rate. It is hardly within our province to discuss the question of fees here. It may be observed, however, that the duty of taking a correct note of evidence is a responsible and onerous one, and the work, if stenographers were paid by a salary, ought at least to be as well remunerated as that of a deputy prothonotary. It is obvious, where accuracy is essential, that incompetent or careless writers ought to be excluded, and that the scale of remuneration should be sufficient to secure the best men. We have some doubt whether the new rule will do this. For instance, stenographers engaged by Parliamentary committees, are paid thirty cents per hundred words, and five dollars additional for attendance at each sitting of a committee—in some instances, ten dollars a day for a morning and afternoon sitting. Even at these rates it has been found difficult at times to secure a sufficient number of competent writers. It is also a fact that the *Hansard* contractors, themselves short hand writers and fully acquainted with the value of the work, find it necessary to offer from three to four hundred dollars per month for competent assistants. While the employment of stenographers under the present system, in consequence of the needless redundancy of evidence, involves enormous charges on suitors, it is extremely problematical, in view of the above facts, whether the system will give greater satisfaction when the fees are cut down to a point which may lead competent stenographers to betake themselves elsewhere.

THE INNS OF COURT.

Around these famous edifices are gathered associations which possess more than mere professional interest. In a learned Inn, wrote Thackeray, "men are contented to sleep in dingy closets, and to pay for sitting-room and the cupboard, which is their dormitory, the price of a good villa and garden in the suburbs, or of a roomy house in the neglected square of the town. Nevertheless those venerable Inns which have the lamb and flag and the winged horse for their signs, have attraction for the persons who inhabit them, and a share of rough comfort and freedom, which men always rem-

ember with pleasure. I don't know whether the student of law permits himself the refreshment of enthusiasm, or indulges in poetical reminiscences as he passes by historical chambers and says, 'Yonder Eldon lived—upon this side Coke mused upon Littleton—here Chitty toiled — here Barnwall and Alderson joined in their famous labors — here Byles composed his great work upon Bills, and Smith compiled his immortal Leading Cases — here Gustavus still toils, with Solomon to aid him'; but the man of letters can't but love the place which has been inhabited by so many of his brethren, or peopled by their creations as real to us at this day as the authors whose children they were—and Sir Roger de Coverly walking in the Temple Garden, and discoursing with Mr. Spectator about the beauties in hoops and patches who are sauntering over the grass, is just as lively a figure to me as old Samuel Johnson rolling through the fog with the Scotch gentleman at his heels on their way to Dr. Goldsmith's Chambers in Brick Court; or Henry Fielding, with inked ruffles, and a wet towel round his head, dashing off articles at midnight for the Covent Garden Journal, while the printer's boy is asleep in the passage."

Judge Dillon, an intelligent observer from this side of the Atlantic, not long ago spent several weeks in and about these Inns and Westminster Hall, and in a very able address recently delivered before a bar association, gave the result of his observations. The subject, we believe, possesses sufficient interest to justify us in presenting our readers with the Judge's paper in a somewhat abridged form.

JUDICIAL APPOINTMENTS IN ONTARIO.

The death of Chief Justice Harrison of the Court of Queen's Bench has led to the following changes and appointments. Chief Justice Hagarty, of the Court of Common Pleas, takes the Chief Justiceship of the Queen's Bench, and becomes Chief Justice of Ontario. Mr. Justice Adam Wilson is appointed to the Chief Justiceship of the Common Pleas, and the Hon. M. C. Cameron, who has held the position of leader of the opposition in the Local House, is appointed to the Queen's Bench in the stead of Mr. Justice Wilson. These are appointments which commend themselves at once to the legal profession and the public. The reputation of Chief Justice Hagarty is thoroughly established; Chief Justice Wilson is also known as an able judge; and the Hon. Mr. Cameron has been long distinguished at the bar for keen intellect and sound judgment.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, Nov. 4, 1878.

TORRANCE, J.

SYMES et vir, v. VOLIGNY.

Dilatory Exception—Costs.

Held, that the costs on dilatory exceptions calling for power of attorney from the plaintiff, and for security for costs, must abide the final judgment in the cause.

TORRANCE, J., remarked that the settled practice of the Court in such cases is that the costs shall abide the final judgment.

Bethune & Bethune for plaintiffs.
A. Desjardins for defendant.

COURT OF QUEEN'S BENCH.

(CROWN SIDE.)

Montreal, October 31, 1878.

Present: RAMSAY, J.

THE QUEEN v. FORGET et al.

Elections Act—Prosecution for offence—Irregularity.

1. Sect. 114 applies to an accusation for an offence under sect. 68 of the Elections Act, Canada.

2. The failure of the returning officer to take the oath prescribed in such cases will not defeat a prosecution under the Act, the failure of the officer to be sworn not having the effect of annulling the election.

3. A return signed by the election clerk as returning officer is good, where it appeared that the Returning officer had declared himself unable to act, and had been represented throughout the election by the clerk.

The prosecution was against Forget and five others, for an offence under the Dominion Elections Act, commonly called "ballot stuffing."

The indictment against the defendants contained three counts. The first accused them of unlawfully putting into the ballot box in use at poll No. 2, Ste. Anne Bout de l'Isle, thirty-four false and forged ballot papers; the second count charged them with taking out of the same ballot box, at the same election, thirty-four ballots which had been properly put into the box by the electors on the occasion of that election; and the third count charged them with opening without due authority the ballot box at that election. The offences charged are the offences created by section 68 of the Electoral Act of 1874; and are misdemeanors subjecting the parties, should one of them be returning officer, deputy returning officer, or other officer engaged at the election, to a fine not exceeding $1,000, or, in default, imprisonment with or without hard labor, for any term less than two years, and if any other person, to a fine not exceeding $500, or, in default, imprisonment for not over six months, with or without hard labor.

Ramsay, J. The case for the prosecution being closed, it was suggested that there was no case to go to the jury, inasmuch as there was no proof to show that an election had taken place. It was argued firstly, that section 114 of the Dominion Elections Act, did not apply to the indictment now before this Court, but only to corrupt practices, and that the acts complained of were not corrupt practices, which were defined by section 98. It was further said, that if section 114 did apply to the offences under section 68, there should have been a certificate of the returning officer to show the due holding of the election. It was argued, secondly, that the whole return had been produced, and that it did not appear that Mr. Valois had been sworn, and that there were two oaths signed by Mr. Forget, but that the jurats were in blank, and that this omission was in no way covered. It was argued thirdly, that the return was by Mr. Ollivier, signing as returning officer, and who had acted since the 12th September, when Mr. Valois had declared himself unable to act, while the nomination of Mr. Forget was made by Mr. Valois who had ceased to be returning officer. It was said, either Mr. Forget was not duly authorized to act, or the return was bad.

For the prosecution it was contended that section 115 dispensed with the necessity of producing the writ of the election, or the return thereof, or the authority of the returning officer, but allowed general evidence of such facts. It was further said that section 2 allowed the Clerk of the returning officer to act instead of the returning officer, and that by his oath (form D) he swore to act faithfully in his capacity of returning officer if required to act as such, and that in any case irregularity occurring in the return could be no answer to an offence under the act.

The defence replied that the return made proof that there was no valid election.

With regard to the first point I think that an accusation under 68 is covered by section 114. Section 98 is not a definition of corrupt practices. It only enumerates certain offences, which shall be corrupt practices, and which are not so classed by their nature. But in any case, section 115 gets over the difficulty, for it applies to any suit or prosecution under this Act, and it allows general evidence to establish that an election was held, and the authority of the returning officer, without producing the writ on which that authority was founded, and the return. With regard to the second point to succeed, it would have been necessary for the defence to show that the failure of the returning officer to be sworn, or to swear one of his deputies, annulled the election. I don't believe any authority for such a proposition can be found. Were it otherwise, by neglecting a private act, of which the public has no means of knowing anything, it would be possible for the returning officer to destroy the effect of any election. I am clearly of opinion that the authority of the returning officer is founded on the writ and not on the oath, and that his not taking the oath has no other effect than to lay him open to the penalty of section 108. The case of *Rex* v. *Vaile* (6 Cox, page 470) only says that at common law the writ must be produced to show that an election was duly held. It has, therefore, no bearing upon this case. The general rule is not that elections are declared null because a statute has not been strictly followed. They are only nullified if there is reason to believe that the irregularity has affected or probably affected the result. But further than this, I don't think that the annulling of the election for lack of formality

would absolve those who had acted in violation of the law unless the election were radically null.

With regard to the third point, even if it were admitted, for the sake of argument, that the signature of Mr. Olivier, as returning officer, was a bad return, I do not see how it could affect the wrong doing during the election, more particularly as the fact of the election may be proved by general evidence. But on a close examination of the statute I think Mr. Olivier was right in continuing to consider Mr. Valois returning officer all through the election. I also think he was right in performing all the duties of the returning officer when he was disqualified or unable to perform them himself, or when he refused to perform them. Therefore the nomination of Mr. Forget by Mr. Valois was not unlawful, and the only question that remains is as to whether Mr. Olivier had a right to take the quality of returning officer. In face of the form of the oath it is impossible to say that he had not that "capacity," but probably a return taking the quality of "election clerk" or "election clerk" acting instead of the returning officer," would also be sufficient.

I am, therefore, of the opinion that the case must go the jury.

Kerr, Q. C. and *Chapleau, Q. C.* for the prosecution.

Carter, Q. C., Geoffrion and *St. Pierre* for the defendants.

Montreal, Nov. 8, 1878.

THE SAME v. THE SAME.

Indictment—Demurrer—Amendment.

1. The omission of a substantive averment in the indictment for an offence under the Elections Act, that an election was held, though a defect, is such as must be objected to by demurrer or motion to quash.

2. A count alleging that each of several defendants put illegal ballots in the box, which "the said deputy returning officer (one of them) had not a right to put in," is bad, as lacking precision.

The defendants, Forget, Pilon, Lamarche and Christin, in the above case, having been found guilty, *Carter, Q. C.*, made the following motion:

Motion on the part of Adelard P. Forget, Isaie Pilon, Adolphe Lamarche and Adolphe Christin, defendants upon the said indictment, that the judgment of this honorable Court upon the verdict of guilty rendered against them upon the trial of said indictment, be arrested for the following amongst other reasons:—

1st. Because the said indictment is wholly illegal, informal and insufficient to sustain the said verdict or to warrant the conviction of said defendants, inasmuch as said indictment does not allege, by introductory averment or otherwise, the issuing of a writ of election for the purpose of electing a member of the House of Commons of Canada for the electoral district of Jacques Cartier, nor does it allege that an election was duly holden for the purpose aforesaid, but merely in the description of Adelard P. Forget, one of the said defendants, describes him as being deputy returning officer at a certain poll for the purpose of the election, then being held of a member of the House of Commons of Canada for the electoral district of Jacques Cartier.

2nd. Because in the first count of the said indictment, the offences therein referred to could apply only to persons having authority to put ballot papers into the ballot box, and the indictment does not allege that any of the defendants aforesaid had any such authority, nor does the said indictment allege that they were deputy returning officers acting at an election duly holden for the purpose aforesaid.

3rd. Because it is not alleged in the first count of the indictment that the papers alleged to have been put into the ballot box purported to be ballot papers containing the votes of electors, and by reason of such omission the first count fails to set forth with certainty and precision, in legal terms, the offence.

4th. Because the second count of the indictment does not allege that the ballot papers fraudulently and unlawfully destroyed as therein and thereby alleged, were ballot papers containing votes of electors.

5th. Because the said Adelard P. Forget is alleged in the third count of the said indictment to have been Deputy Returning Officer, and by law, as such Deputy Returning Officer, he had authority to open the ballot-box, and there are no special circumstances set forth in the said indictment to show that the alleged opening of the said ballot-box was fraudulent, unlawful, and without due authority.

6th. Because it is not alleged in any of the

counts of the said indictment that the ballot-box therein referred to was the property of Her Majesty, or that it was a ballot box legally provided for the purpose of the election therein referred to.

7th. Because the said indictment and the several counts thereof are illegal, informal, insufficient and do not disclose or set forth with precision and certainty any crime or offence.

RAMSAY, J. (Nov. 8). A motion in arrest of judgment raising several objections to the indictment was made to this Court yesterday morning. All but two of these objections were disposed of at the argument, and I have to deal with the remaining two. The first objection was that there was no substantive allegation in the indictment that an election had been duly held; and that the fact was only averred in a narrative form. This is certainly a defect in the indictment, and one which formerly would have been fatal to the whole proceedings, but now we have the 32nd section of the Criminal Procedure Act, which is in these words:—

Every objection to any indictment for any defect apparent on the face thereof, must be taken by demurrer or motion to quash the indictment, before the defendant has pleaded, and not afterwards; and every court before which any such objection is taken, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, by some officer of the Court or other person, and thereupon the trial shall proceed as if no such defects had appeared: and no motion in arrest of judgment shall be allowed for any defect in the indictment which might have been taken advantage of by demurrer, or amended under the authority of this Act.

Now this is plainly a defect on the face of the indictment which might have been raised by demurrer or motion to quash. This has not been done, and I am positively prohibited by the section of the statute just cited to entertain a motion to quash. Of course if the indictment were wholly bad I might, on the suggestion of the motion, reserve the point. But no reservation would be of any use, for the defect is evidently amendable. Nothing can be more formal than this objection. It amounts to this, that common law requires all the allegations of the indictment to be in the present tense and not to be set forth in the present participle. Grammatically there is no reason for this. A fact is as explicitly set forth in the one way as in the other. If one says: "Walking in the street I met A" he asserts the fact as completely as if he said "I walked in the street and while I so walked I met A." Nevertheless as the practice is to require the latter form I should have held the indictment bad if the objection had been taken at the proper time; but I should have allowed it to be amended as it is precisely a defect that could not have affected the defendants injuriously, and that is the real test of what is amendable. I therefore think the conviction is good. The other point only affects the first count of the indictment. The subsection under which it is drawn is thus worded:—

"No person shall * * * fraudulently put into any ballot-box any paper other than the ballot paper, which he is authorized by law to put in."

Mr. Carter argued that this offence can only be committed by an officer, because he only is authorized to put in a ballot paper. I cannot go so far. I think any one can commit the offence, and so the law says. The only difference is that an officer may have an excuse for putting in a ballot paper; no other person can have such excuse. But there is still a difficulty. The indictment says that each of these persons did put in ballot papers, which the said deputy returning officer (one of them) had not a right to put in. This lacks the precision required in criminal pleading, and I must therefore hold the count to be bad.

Kerr, Q. C., said it might be good for Forget.

RAMSAY, J. I can't take back the judgment. This distinction was not raised, and it is of no importance, as the judgment will go on the two other counts.

The Judge then addressed Mr. Forget as the principal offender. He was an official, and bound to protect the integrity of the election. He had joined really in a conspiracy to defeat it. The prosecution should not have been charged with persecution, for the very lightest charge had been framed. If there had been an indictment for conspiracy it might have embraced others, perhaps, more guilty than those convicted. If such a charge had been proved, he would have sent them all to goal. But the Court had to deal with the case before it, and with the inconvenient form of penalty by fine. A fine of $1,000 might be nothing to one man and ruin to another. The Court had no opportunity of judging of the means of the

defendants, and it would, therefore, impose fines which might appear to many too light, and, perhaps, to a few too heavy. The Court had, however, fixed the fine on Mr. Forget at $200, and in default of payment three months' imprisonment without hard labor. On Mr. Christin, a fine of $100, or a similar imprisonment for 55 days. On Lamarche, a similar fine, or imprisonment; and on Pilon—as he was recommended to the mercy of the Court—only $50, or a similar imprisonment of 30 days. In conclusion, the Court remarked that, if it had not appeared that Mr. Forget was not sworn, the full fine would have been imposed on him; but the not taking of the oath showed that, although prepared to commit an electoral fraud, he was not prepared to add to this offence the crime of perjury.

COURT OF REVIEW.

Montreal, Oct. 31, 1878.

MACKAY, TORRANCE, JETTÉ, JJ.

[From S. C. Montreal.

SAUVÉ v. SAUVÉ et al.

Sale of Succession — Registration — Signification.

A deed of sale or cession of *droits de succession* duly enregistered, does not require signification. An *acte sous seing privé* subsequently passed between the parties, purporting to annul and set aside the deed of cession, but which *acte sous seing privé* has been neither registered nor signified, does not give the *cédant* a right of action.

The defendants inscribed in review from the judgment noted *ante*, p. 387, contending that the deed of cession was really a sale, and being duly registered, did not require signification. The Court of Review reversed the judgment, the *considérants* being as follows:

"The Court, etc.,

"Considering the judgment *a quo* erroneous in holding unfounded the defendants' exception founded on the plaintiff's cession referred to in it, and in holding signification to have been required of the said deed of cession;

"Considering the character of the deed of cession referred to, the Court here holds that it, registered as it was, did not require signification, as in cases of *simples transports* signification used to be required, and is still required;

"Considering Art. 1225 of the Civil Code, this Court holds that the private writing purporting to annul the deed of cession referred to, the said writing unregistered, and not in any way known to the defendants till long after they had pleaded to this action, ought not to have had weight given to it to destroy defendants' exception;

"Doth, revising said judgment, cass and reverse the same, etc."

St. Pierre & Scallon for plaintiff.

Doutre & Co. for defendants.

THE INNS OF COURT AND WESTMINSTER HALL.

The Inns of Court and Westminster Hall are the well-springs and fountains of English, and derivatively of American, Jurisprudence. Neither the history of the English nation, nor the special history of the English law, can ever fail to be of surpassing interest to the statesmen, the legislators, the judges, the lawyers and the people of this country. In a general view, the history of England "during the last six centuries, is the history of the progress of a great people towards liberty"; and *Magna Charta* and the Petition and Bill of Rights are the basis and palladium of American, as well as English, liberty.

There are now, and for centuries have been, four great Inns of Court; Lincoln's Inn, Gray's Inn, the Inner Temple, and the Middle Temple. With these are, or have been, connected about ten smaller Inns, known as the Inns of Chancery, subordinate to, and under the government of, the particular Inn of Court to which they severally belong.

The Inns of Court, including under the general name the dependent Inns of Chancery, are amongst the most remarkable antiquities of London. They are interesting to all, but profoundly so to the English and American lawyer.

The legal antiquary can not fix upon the exact time of the origin and foundation of these Inns, but the period of their original establishment can be nearly approximated.* They

* "*The original institution* of the Inns of Court nowhere precisely appears. * * They are voluntary societies which have *for ages* submitted to government analogous to that of the seminaries of learning."—*Lord Mansfield in Hart's case*, 1 Douglas, 353.

carry the mind back to the depths of the Middle Ages. They antedate the discovery and settlement of this country. They touch upon the borders of *Magna Charta* and the Crusades. King John lodged at the new Temple previously to signing the *Magna Charta*, and pending the negotiation with his barons which had its glorious issue at Runnemede (A. D. 1215). The Temple society of lawyers afterward inherited the name, and, what was more important to it, succeeded to the property of the Knights Templars, which it still continues to own.

In the quaint and curious edifices known as the Inns of Court, the lawyers and judges of England have been trained and educated for centuries. Changes, replacements and additions have been made in the buildings from time to time, and the present structures, as a whole, notwithstanding the admiration with which they are regarded by their members, offer to the eye no imposing presence, and no striking architectural beauty: quite the reverse. The interest is historical and intellectual. The chambers are dismal and dingy, but they are associated with the lives and names of great sages in the law who have conferred glory and renown upon our profession, and advanced our law to its present height and proportions.

More than six centuries have elapsed since the Inns of Court were founded, and Westminster Hall was at that time more than a century old. What educated or thoughtful lawyer can survey them with indifference?

Dr. Johnson in a familiar passage respecting famous places, finely observes "that to abstract the mind from all *local emotion* would be impossible, if it were endeavoured, and would be foolish, if it were possible. Whatever withdraws us from the power of our senses—whatever makes the past, the distant or the future, predominate over the present, advances us in the dignity of thinking beings. Far from me, and from my friends, be such frigid philosophy, as may conduct us unmoved, over any ground which has been dignified by wisdom, bravery, or virtue. That man is little to be envied, whose patriotism would not gain force upon the plain of Marathon, or whose piety would not grow warmer among the ruins of Iona."

As little to be envied is the lawyer whose enthusiasm and love for his noble profession are not quickened into new life by the view and contemplation of these venerable Inns and this illustrious Hall.

The Inns of Court were originally provided for the use and accommodation of lawyers and students at law, and they have maintained that character to the present time. By a clause in *Magna Charta*, dated June 15, A. D. 1215, it was ordained, to redress the grievance of compelling suitors to attend the sovereign wherever he might chance to be, that the Court of "Common Pleas should not thenceforth follow the Court [the King,] but be held in some certain place." This certain place was established in Westminster Hall, which then distinctively became, and has since remained, the principal seat of the Judicial Courts. The fixed location of this important court, called by Sir Edward Coke, "the lock and key of the common law," had another consequence. It drew the lawyers together from all parts of the kingdom and formed them into one body, who to the great advantage of the law henceforth gave themselves wholly to its study and practice. Such was the origin of the Inns of Court.

The Inns with their adjacent gardens are now in the heart of London. All is quiet within the close, but the swelling tide of life and business rolls tumultuously along the adjacent strand and on the bordering Thames. But when the sites of the Inns were chosen they were in the suburbs between the place where the King's Courts were held at Westminster and the city of London; thus enabling the members conveniently to attend the one and draw their supplies of provisions from the other.*

*1 Blacks.Com., 23. Sir John Fortescue (De Laudibus Legum Angliæ) more than four hundred years ago, thus sets forth the reasons for the location of the Inns. The sites of the Inns were chosen, not "within the city where the confluence of people might disturb the quietness of the students, but somewhat several in the suburbs of the same city, and nigher to the King's Courts, that the students may dayly at their pleasure have access and recourse without weariness." "For this place of study is situate nie to the King's Court, where the same laws are pleaded and argued, and judgments on the same given by judges, men of gravity, ancient in years, perfect and graduate in the same laws; wherefore every day in court the students in those laws resort by great numbers into those Courts, wherein the same laws are read and taught, as it were in common schools." The river Fleet—whence the celebrated street and prison of that name—flowing past the foot of Holborn Hill, separated the Inns of Court from the city.

The Inner and Middle Temple were located on the Thames, and near three hundred years ago were alluded to in the "Færie Queene" as

——"Those bricky towers
The which on Themmes brode aged back doe ride,
Where now the studious lawyers have their bowers;
There whilom wont the Templar Knights to bide,
Till they decayed through pride."

Standing to-day in the gardens of the Temple the eye takes in the Thames and its bridges, and stretches from Lambeth Palace and Westminster Abbey on the west to the cathedral of St. Paul on the east. Gray's Inn, near by, is on higher ground, and while it lacked a view of the Thames it was originally compensated by its fine prospect of the Hills of Hampstead and Highgate.

Lincoln's Inn and Fields, in the same neighborhood, are also finely situated, and the gardens of the Temple and of Gray's and Lincoln's Inn and the ground known as Lincoln's Inn Fields, (which it has required the highest exertion of the royal power to prevent being encroached upon by the advancing tides of population), are among the most attractive portions of the great Metropolis. Lord Bacon belonged to Gray's Inn, and he so enjoyed the quiet of its gardens and prospect it afforded that he built therein a summer house for study and contemplation. The records of the Society show that "the summe of £7 15s 4d laid out for planting Elm trees" in these gardens was also allowed to Mr. Bacon; and his Essays, the most delightful of all his writings, are dated from "his Chamber in "Graie's Inn." The trees which Bacon planted in the gardens of the Inn he loved so well, grew with his rise and lofty advancement, survived his inglorious, though possibly unjust, fall, and while they yet live to delight the beholder, such is the indestructible nature of the works of genius that his fame which he confidently committed to an indulgent posterity, will long outlive the Elms he planted and watered and enjoyed. The works of our hands are perishable: only the creations of the intellect have the heritage of immortality. Bacon died leaving a tarnished fame, but Lord William Russell was beheaded in Lincoln'sInn Fields, a martyr to the eternal cause of human liberty, leaving to the world, for all coming time, the legacy of a spotless life and the unfading record of a high and heroic example.

We possess but little accurate and definite information of the Inns of Court and Chancery until the time of Henry VI., (A. D. 1422-1461). Sir John Fortescue was his chancellor, and in his Panegyric on the Laws of England we have a sketch of the Inns as they then existed. This was over four hundred years ago. He describes them as composed of four large Inns having about two hundred students each, and ten lesser Inns called Inns of Chancery, having about one hundred students each, about 1800 in all, and situate in the suburbs of the city. The students were chiefly young men of birth, many of them being attended with servants, and although he mentions that it was costly to live at them he does not give the order or course of instruction or study. More than a century later, in the reign of Queen Elizabeth, A. D. 1558— 1603, Lord Coke gives a full account of the Inns of Court at that time, their names, constitution, readings, moots &c., and he describes the Inner Temple, Gray's Inn, Lincoln's Inn and the Middle Temple, as the "foure famous and renowned Colleges or houses of Court." "All these" with the Sergeant's Inn and the Inns of Chancery, are, he adds, "not farre distant one from another, and altogether doe make the most famous Universitie for profession of law, onely, or of any one humane science, that is in the world and advanceth itself above all others. In which houses of Court and Chancery, the readings and other exercises of the lawes therein continually used are most excellent and behoovefull for attaining to the knowledge of these lawes." * I can not enter upon the details of the student's life. He had his chambers or residence in the Inn. The mode of instruction was principally readings and mootings. Minute regulations as to dress and discipline were ordained and attendance on religious services was made compulsory.

In this connection it is proper to remind you that there are *three ranks or degrees* among the members of the Inns of Court. 1. Benchers, or the governing body. 2. Barristers, *i. e.*, persons actually called to the bar. 3. Stu-

* In A. D. 1568, in the various Inns of Court and Chancery, the number of students in term was 1703, and out of term was 642; as appears from a MS. in Lord Burghley's collection.—*Pearce, p.* 79.

dents, *i. e.*, members keeping their terms at the Inns with a view to being called to the bar.

The degrees of legal precedence among the members of the bar are these: 1. The highest in rank is the *Queen's Counsel*—the words of appointment in the patent being "one of our council learned in the law." 2. The degree of *Sergeant-at-law*, the most ancient, and formerly the highest, rank at the bar. He is required by the King's writ to take the office, the admission to which was formerly attended with expensive ceremonies, of which only one remains, that of presenting gold rings with mottoes to the Sovereign, the Lord Chancellor, the Judges and others. * I believe that the new Judicature Act provides that no more sergeants shall be created; and Mr. Sergeant Sleigh, the one who most recently took the coif, alluding to this, pleasantly said to me, "Behold the last Sergeant, or as you would say in your country, 'I am the last of the Mohicans.'" 3. The *ordinary Barrister*-at-law, or Counselor.

Attorneys, special pleaders, and conveyancers, constitute, as is well known, a distinct branch of the profession, and have no right to practice in the courts. Each of the Inns has numerous buildings of its own, consisting of chambers or rooms let for hire, mainly to the barristers and students; and belonging to each Inn is a large library hall and spacious kitchen, and also a commodious and beautiful hall, used for readings, dining, etc., and a chapel for religious service. The Inner Temple owns and uses for this purpose the exquisite Temple Church built by the Knights Templars, (in imitation of a temple near the Holy sepulchre,) and which was dedicated in A. D., 1185, nearly 700 years ago. In the Chapels and the Temple Church many of the most eloquent and pious of the English divines have exercised their sacred office, among whom may be mentioned as familiar to us the names of Tillotson, Heber, and Warburton.

From the first institution of the Inns down to about the period of the civil disturbances of 1640, the exercise of Readings was the principal mode of legal instruction therein. The Inns were mainly established for this purpose, but provision was made only for instruction in the common law. The instruction so far as given in the Inns was mainly Readings and Mootings. The ancient readings continued only about "three weeks in every Lent and every August of each year," until they fell off in consequence of the excessive and sumptuous practices which will be referred to presently. Mootings were arguments of put cases or doubtful questions in the law, between Benchers and Barristers in the hall of the Inn, in the presence of the students.

The Reader was annually elected by the Benchers from the most eminent or ablest of the Barristers, and the office was considered one of great distinction. The readings consisted of the analysis and exposition of some leading statute, or important section of a statute, in the light of the common law and the adjudged cases. Many of these readings, relating "to the grounds and originals of the law," extending back to the time of Edward VI., are still extant, and the more important of them have been published. We owe to this exercise twenty-three readings on *Fines*, (27 Edw. I., c. 1), by Sir Edward Coke, Reader of the Inner Temple, temp. Elizabeth; a reading on *Sewers*, (23 Henry VIII., c. 5), by Robert Callis, Reader of Gray's Inn A.D., 1622, republished as late as 1824, and known as Callis on Sewers; on the "Statute of Uses," (27 Henry VIII., c. 3), by Sir Francis Bacon, also Reader at Gray's Inn (temp. Elizabeth), and many other readings by such lawyers as Littleton, Dyer, Plowden, Fitzherbert, and Finch. Many of these readings are still regarded with great, and often with authoritative, respect in the court of Westminster Hall.

The original object of the readings and the kindred exercises of mootings was instruction; but in the course of time the readings were attended with expensive entertainments given

* In Modern Rep. 9, the following curious circumstance relating to the *rings* given by Sergeants on their call is recorded: "Seventeen Sergeants being made, November 4th, (21 Car., 11), Sergeant Powis, one of the new made Sergeants, coming a day or two after to the King's Bench bar, Chief Justice Keeling told him he had something to say to him, viz; that the rings which he and the rest of his brethren had been given weighed but 18*s* apiece; whereas, Fortescue says (*De Laudibus*), that the rings given to the Chief Justices and Chief Baron ought to weigh 20*s* apiece; and that he spoke not this, expecting a recompense, but that it might not be drawn into a precedent, and that the young gentlemen there might take notice of it."

to the nobility, judges and gentry of the kingdom; the expenses fell upon the Reader, and often amounted to £1,000 in the course of two or three weeks—a sum equal in value to two or three times that amount in our day. This expensive honor finally caused the disuse of readings. During the period when these sumptuous entertainments were given by the Readers, the Inns of Court were at certain seasons the scene of fantastic plays and masques, and riotous revels, which were likewise conducted on an extravagant scale, and were scarcely consistent with the purpose of the Inns as seminaries of legal learning. These were often attended by the sovereign, the court and the nobility, and reached their height in the reign of Elizabeth. They continued until the rebellion of 1640, but when the spirit of the puritan obtained ascendency, entertainments of this character were denounced by acts of Parliament, as "the very pompes of the Divell."*

As legal colleges or universities it would appear that the Inns of Court were chiefly deficient in the want of a general, comprehensive and systematic course of instruction. The course was essentially practical—exclusively and distinctively English. The main purpose was instruction in the common law and its statutable modifications and additions. It must have been contemplated that much the greater part of a legal education should be acquired in other modes than from the brief readings and occasional mootings. Accordingly, the custom of reading in attorney's offices or with a barrister or private tutor has long prevailed in England. It is called by Lord Campbell "the pupilising system," which is much the same as reading in lawyers' offices in this country, although the pupil is in chambers at one of the Inns of the Court.

The Inns of Court maintained their primary and leading character as mainly intended for legal instruction until the 15th century when they became, as we have said, places of gayety and revelry. Their efficiency as seminaries of instruction declined, and from the middle of the 17th century the instruction in them was nominal, the real instruction being chiefly conducted in private offices. It is only in our own time that the original function of the Inns, as a place of legal instruction, has been restored. In 1852 the four Inns acting in concert jointly established an uniform system for the legal education of the students, and to that end created five professorships, and students were required as a condition of eligibility to be called to the bar, to attend for one year the lectures of two of the readers, or if this were not done to pass a satisfactory public examination.* The readerships are filled by eminent jurists and the prescribed course of instruction is minute and comprehensive. It is gratifying to know that portions of the Commentaries of Chancellor Kent and Mr. Justice Story are among those works which the students are expected to read.

The legal character of the Inns of Court has been clearly ascertained by numerous decisions.† The adjudged cases establish the following points: The Inns are voluntary societies and not corporations; they have no charters, either from the Crown or Parliament. They are self-governed. The courts cannot interfere with the internal management of their affairs. In respect of their acts or orders affecting members they are not subject to the jurisdiction of the Courts of Westminster Hall proceeding according to the common law. They cannot be compelled by *mandamus* or otherwise to admit persons to become students or members of the society with the view of being called to the bar. This rests alone with the society.

* The Czar of Muscovy, Peter the Great, was present at the Christmas revels in the Temple, 1697-8. The last of the revels in the Inns of Court took place in the Inner Temple Hall, on the elevation of Mr. Talbot to the woolsack, in 1733."—*Pearce, p.* 128.

* In 1872 an enlarged and amended scheme of legal education was promulgated by the four Inns and is now being carried into execution.

† The principal cases concerning the legal constitution and powers of the Inns of Court and the extent of judicial control over them, are *Boorman's Case*, March Rep.; *Townshend's case*, 2 T. Raymond, 69; *Rakestraw* v. *Brewer*, Abridg. Cases in Equity, 162: *Hart's case*, (*Rex* v. *Gray's Inn*), 1 Douglas, 354: *Lord Rosslyn* v. *Jordell*, 4 Campbell, 305; 1 Starkie Rep., 148; *Wooler's case*, 4 Barn. & Cress., 855; *May* v. *Harvey*, 13 East., 197. In *Hart's case, supra*, the Judges sustained the Benchers of Gray's Inn in refusing to call Mr. Hart to the bar, for the reason, among others, that he had knowingly become security for money borrowed of others to a much greater amount than he was able to answer.

When admitted as members the visitorial power of the judges attaches, and the action of the society in refusing to call a member to the bar, or in expelling him from the society, or in depriving him of his gown, *i.e.*, disbarring him, may be reviewed by the judges on an *appeal*, but no other mode, against the orders complained of.

The power to call members to the bar seems not to be oppressively or illiberally exercised, since it appears that during a period of twenty years only three students had been refused admission to the bar by the Four Inns of Court.

The most important faculty which the Inns exercise is the *exclusive power*, as legal colleges,* *to confer the degree of Barrister-at-law* or Counselor, which is an indispensable qualification to practice in the courts of common law. A barrister can be created in no other way than by a call by one of the four Inns of Court. He cannot be created by letters patent, or admitted as with us, by the authority of the court. The Inns of Court are thus independent of royal or executive power, and no person called to the bar is indebted for the station to any authority except the governing body of the Inn of Court to which he belongs. To this cause has been attributed the spirit of independence, which in the history of constitutional liberty, has been so often displayed by the Inns of Court, and which has at all times characterized the members of the bar, in asserting legal rights committed to their advocacy or defence. "Rare Ben Jonson," who it is said assisted his step-father a bricklayer, in erecting, in the reign of Elizabeth, a wall for Lincoln's Inn, dedicated a play† "to the noblest nurseries of humanity and liberty, the Inns of Court."

A person who contemplates a call to the bar is required to be admitted as a student, that is, to become a member of one of the Four Inns, which any person of respectable character and attainments has no difficulty in doing, to dine in the common hall of the Inn a few days in the course of every term, that he may be seen and known; and if unfit the more readily detected before his final application to be called to the bar; to keep in this manner, ordinarily, twelve terms; and in addition, under regulations before mentioned, the lectures of the readers, or professors, in the Inn, or in lieu of such attendance, satisfactorily to pass a public examination. Having complied with these conditions, the student or member is eligible to be called, and unless some good reason appears, is called to the bar.

From this brief sketch, it will be perceived that the Inns of Court are *sui generis* in their character. Within them are collected the great body of the profession in England. The present membership of the four Inns is about 8,000, of whom 6,000 are barristers, and the rest students. This legal community in all its professional relations is governed by its own officers, laws and usages. The chambers are let to students and barristers. The latter have their offices in them. Unmarried members attended by servants frequently live within them, and at their option take their meals in the dining-hall of the Inn. Each inn has not only its kitchen,* but its chapel; not only a complete library, but

* Blackstone styles the Inns of Court as our Judicial University (1 Com., 23): and Lord Coke in a passage before quoted, styles them the "foure famous and renowned colleges or houses of Court," which "altogether doe make the most famous Universitie for the profession of law, onely, that is in the world, and advanceth itself above all others."

† "Every Man out of his Humour."

* "In all the Inns of Court and Chancery the important concern of eating and drinking seems to have occupied the most attention; instruction, such as it was, (consisting of public readings or lectures, and the mootings, or arguing of cases) was a secondary object." —*Herbert: Inns of Court, p.* 223.

"Another apartment [of Lincoln's Inn] forming an essential appendage to all collegiate establishments, and without which even the splendid Hall would be only suited for the imaginary feast of the Barmecide. is the kitchen—45 feet square and 20 feet high: and connected with the kitchen are cellars capable of holding upwards of one hundred pipes of wine, and above these, butlers' pantries," etc.—*Spilbury: Lincoln's Inn, p.* 120.

"In term-time Mr. Pen showed a most praiseworthy regularity in performing one part of the law student's course of duty, and eating his dinners in the Hall. Indeed, that Hall of the Upper Temple is a sight not uninteresting, and with the exception of some trifling improvements and anachronisms which have been introduced into the practice there, a man may sit down and fancy that he joins in a meal of the seventeenth centnry. The bar have their messes, the students their tables apart; the benchers sat on a high table on the raised platform, surrounded by pictures of judges of the law and portraits of royal personages who have honoured its festivities with their presence and patronage."—*Thackeray: Pendennis, Chap. XXIX.*

an ample dining-hall and elegant drawing-room, adorned with the busts and portraits of its eminent members. Each member is thus within the eye, and in a degree under the fraternal guardianship, of all the others; and heretofore, however it may be under recent regulations, Benchers, Barristers and Students have participated in the educational, as well as the social, life of the Inn.

Westminster Hall had been built by William Rufus, (A. D. 1087-1100) more than a century before the above-mentioned clause in *Magna Charta* required the court of common pleas to be held "in some certain place." It was originally built as an annex to the King's palace of Westminster, and its earlier uses seem to have been for royal ceremonies and festivities. Probably before *Magna Charta* the "*Aula Regia*" had its principal seat in Westminster Hall; but after *Magna Charta*, and probably in consequence of it, it is certain that Westminster Hall became the seat of the great judicial courts, including, for a long period, the Court of Chancery, after its establishment as a distinct jurisdiction. It has never wholly ceased to be used as the place where the coronation banquets of the English monarchs have been solemnized with the accustomed splendor, and as the place for the trial of peers, and of official personages charged with great crimes and misdemeanors. But its distinctive character has been acquired in consequence of having been for centuries the seat of the great courts of justice of the realm.

Among the most finished pieces of word-painting in the language, is Lord Macaulay's well known reference to the main hall as the place for the trial of the impeachment of Warren Hastings. You recall his words: "The place," he says, "was worthy of such a trial. It was the great hall of William Rufus, the hall which had resounded with acclamations at the inauguration of thirty Kings; the hall which had witnessed the just sentence of Bacon, and the just absolution of Somers; the hall where the eloquence of Stafford had for a moment awed and melted a victorious party inflamed with just resentment; the hall where Charles had confronted the high court of justice with the placid courage which has half redeemed his fame." The great Essayist by his love of dramatic effect, and by his immediate subject which was the trial of the extraordinary man to whose valor and genius Britain's monarch owes to-day, her title of "Empress of India," and her rule over the 275,000,000 of her Indian subjects, overlooked the less striking, but after all the chief glory of the place, as the source whence English justice for more than six centuries has gone forth in its silent but exhaustless flow, to the "business and bosoms" of men, throughout the entire realm, and whose principles are the rich inheritance of all English speaking people in every part of the globe.

When Westminster Hall is mentioned, the world thinks of it as the seat of the Judicial Courts and the fountain of English Justice. Its permanent glory is derived, not from coronation banquets or the imposing spectacle of an occasional State trial, but because it is indissolubly associated with the history and development of the English law, with the renown of great judges, with the fame of learned lawyers and eloquent advocates.

Peter the Great, visiting Westminster Hall in term time, was struck with the throng of men in wigs and gowns crowding the hall, and upon being informed that they were lawyers, exclaimed, "Lawyers! Why, I have only *two* in all my dominions, and believe I shall hang one of them the moment I get back." Lawyers and judges belong to a free people, and there was not then, and there is not now, in all the wide and barren expanse of despotism between the Crimea and Siberia, any such monument to the glory of the Russias as Westminster Hall.

GENERAL NOTES.

The oldest judge upon the English bench, Sir Fitzroy Kelly, completed his eighty-second year on Wednesday, October 9.

The mortality returns for England and Wales in the year 1876 record the death of 183 men and 409 women registered as 95 years old and upwards when they died. Fourteen of the men had reached 100 or upwards, and one who died at Mountain Ash, was 106. Forty-three of the women had completed a century of life or more, and one who died at Sedgefield, in Durham, was 108 years old. Their respective ages were:—Four men and twenty-one women, 100 years; two men and seven women, 101; five men and four women, 102; two men and three women, 103; two women, 104; three women, 105; one man and two women, 106; and one woman, 108. Six of the persons, one male and five females, who had reached 100 or upwards, died in the London districts.