DIARY FOR NOVEMBER.

1. Sat. ..Chief Justice Harrison died, 1878.
2. Sun. ..21st Sunday after Trinity.
3. Mon....Chief Justice Draper died, 1877.
4. Tues...Primary examinations.
5. Wed...Primary examinations. Sir J. Colborne Lieutenant-Governor, 1828.
6. Thur..Primary examinations.
9. Sun. ..22nd Sunday after Trinity. Prince of Wales born, 1841.
11. Tues...Court of Appeal sits. 1st Intermediate examination.
12. Wed...2nd Intermediate examination.
13. Thur..Attorneys' examination.
14. Frid....Examination for call.
16. Sun. ..23rd Sunday after Trinity. A. Wilson sworn in Judge, Q.B., 1868. J. W. Gwynne, sworn in Judge, C.P., 1868.
17. Mon. ..Michaelmas Term begins. Convocation meets.
18. Tues...Convocation meets. Hagarty, C.J., C.P., sworn in C. J. of Q.B. Wilson, J., sworn in C.J. of C.P., 1878.
22. Sat. ..Convocation meets.
23. Sun. ..24th Sunday after Trinity.
25. Tues...Lord Lorne, Gov.-Gen., 1878.
27. Thur..Scholarship examinations. M. C. Cameron sworn in Judge, Q.B., 1878.
30. Sun. ..1st Sunday in Advent. St. Andrew's Day Moss, J., appointed C.J. of Appeal, 1877.

CONTENTS.

Canada Law Journal.

Toronto, November, 1879.

Sir Anthony Cleasby, late Baron of the Exchequer Division in England, died last month in his seventy-fifth year. He took high honours at Cambridge, having been third wrangler and first class man in classics. After his call to the Bar in 1828, he joined the Northern Circuit, and had a large practice. In 1868 he was made a judge, which position he occupied until his resignation last January.

The London *Times*, in a recent issue, calls attention to the case of *Weir* v. *Preedy*, which was argued recently in one of the English County Courts, and which it justly remarks involved questions of considerable importance as between landlords and tenants. The facts were as follows:—By an agreement, dated in 1876, the plaintiff let to the defendant a house in the Lambeth Road for three years, and the defendant thereby covenanted "to keep the premises in good and sufficient repair during the tenancy." The house was an old house, and the roof was in a leaky state at the date of the agreement and until March of the present year. The plaintiff having refused to repair it, the defendant, by tarring it and otherwise, partially stopped the leakage, and prevented any damage to the house. It, however, turned out that the rafters in the roof were completely decayed and had sunk, and in March, 1879, the plaintiff, on a requisition from his superior landlord, without any communication with the defendant, put new rafters to the roof, and, in fact, completely renovated it, and also effected certain other improvements, at a cost altogether of £33, which sum he sought to recover from the defendant. It appeared,

however, that the cost of repairing the roof alone would not have exceeded £10, and the plaintiff eventually limited his claim to that amount. His Honour, relying on the case of *Williams* v. *Williams*, L. R. 9 C. P. 639, decided that, even assuming that there had been a breach of covenant, the plaintiff could only recover nominal damages, because, in consequence of the repairs having been executed, although by the plaintiff himself, there was at the time when the action was brought no longer any injury to the reversion, which is the measure of damages in such cases. And on the remaining question, viz., as to whether or not there had been any breach of the defendant's covenants, His Honour decided there had not, and in support of his decision cited the case of *Gutteridge* v. *Mayard*, 7 C. & P., 129, in which Lord Chief-Justice Tindal held that "when an old house is demised with a covenant to repair it is not meant that the house is to be restored in an improved state, or that the consequences of the elements should be averted, but the tenant has only the duty of keeping the house in the same state in which it was at the time of the demise." The verdict was entered for the defendant with costs.

PROFESSIONAL ETHICS.

We have been requested, by a letter which appears in another place, to give our opinion upon a question of considerable importance to the profession. It appears that a Mr. Hutchison was, for some time, the solicitor of the London Loan Company of Canada, receiving fees for his services in the usual way. The Company, subsequently, determined to make a change in the mode of remunerating their solicitor, and passed a resolution to the effect that he should thenceforth be paid by salary in lieu of fees; that the salary should be his remuneration in full for all services including conveyancing, including defective titles, collections and other suits, etc.; and that the fees chargeable for such services should be received *by the Company for its own use.* Mr. Hutchison, on being notified of this change, stated that he could be no party to such an arrangement, and Mr. McNab, another solicitor, residing in the same city, was appointed in his place, the latter accepting the position on the terms proposed.

Mr. Hutchison's reasons for refusing these terms were, as appears from a printed circular addressed by him to the shareholders, because he considered the arrangement "illegal and unprofessional, and, at the same time, detrimental to the interests of the Company." As to the latter proposition, neither we nor our readers are particularly concerned. If, however, the former be correct, namely, that the bargain is illegal, it is quite possible that many shareholders may decline to risk their money in a company managed by directors who do illegal acts with their eyes open. This, however, is for them to consider and not for us to enlarge upon.

If a legal journal, which assumes to be the mouthpiece of an honourable profession, has one duty more than another to perform, it is to take notice of matters affecting the standing of its members, and we have not failed, when circumstances required it, fearlessly to state our conviction, and we now feel called upon to do so in the case presented to us.

We regret that this matter necessarily assumes the form of an enquiry, not so much as to whether Mr. Hutchison could honourably have done otherwise than he did, but whether the solicitor, who accepted the position refused by the former, acted illegally or unprofessionally in so doing. If he has so acted, Mr.

Hutchison will at least have the satisfaction of knowing that he has made, though to his own detriment, a protest in favour of the honour and independence of his profession, which deserves the thanks of his brethren.

It is fortunately not necessary in this case for us to do more than to turn to our own reports to satisfy ourselves as to the legality or illegality of the alleged arrangement, for we find that the question has already been pronounced upon, incidentally it is true, but in unmistakable language, by no less an authority than the late Chief Justice Draper, whose dictum on such a matter is quite sufficient, we should suppose, to settle any possible doubt on the subject. In *Jarvis* v. *The Great Western R. W. Co.*, 8 C. P., it was held that as the costs of a suit are in all cases the money of the client, an attorney who receives from his client an annual salary in lieu of costs, is not entitled to tax, as against the other party to the suit, more than such items as he is entitled to tax against his client under his arrangement with the latter, which, in this case were disbursements only. The remarks in the judgment referred to, which are applicable to the question before us, are as follows : (Draper C. J., delivering the judgment of the Court) " If this case had depended merely on the question which was advanced and relied on when I granted the summons originally, viz., whether under the circumstances the defendants (the Company with whom the arrangement as to salary was made) were seeking unlawfully to realize a profit by the services of their attorney, I should have no difficulty in saying that the rule should be discharged." And again : " If what was suggested when the summons was originally moved, namely, that the defendants sought unlawfully to realize a profit out of the professional services of their attorney were true, I suppose the taxation would be prevented; for it would, in principle, amount to allowing suits to be carried on in the name of an attorney for the profit of an uncertificated person."

In that case "it was unequivocally asserted that though, as between the defendants and their attorney, he had been paid for these services, yet the costs which the plaintiff was liable to pay did not belong to the defendants." But in the case now drawn to our attention, the very vice that the Chief Justice speaks of, namely, the client making a profit out of the professional services of the attorney, is the very essence of the arrangement.

This high authority, therefore, pronounces such a bargain to be unlawful, or in other words, illegal, and if illegal, it must of course be unprofessional on the part of any professional man who is a party to it.

The conclusion would seem, therefore, to be obvious, that Mr. Hutchison took the only course open to him by declining to accept the proposed terms. We regret that another solicitor should have thought proper to accede to them. We trust the latter will, upon further consideration, see the matter in the same light as must, we believe, the great majority of those whose opinion is worth having.

THE LETELLIER DESPATCH.

We print below in full this important constitutional document, which will, probably, be known to posterity by the above title. Viewing it, not as a party men, but merely as loyal and patriotic Canadians, it is impossible to regard it with altogether unmixed feelings. Whether or not the Governor-General acted in strict accordance with constitutional usage in referring the matter to Downing Street, or

whether the manner of so doing was judicious, or whether it would not have been well if he had made himself familiar with the subject before coming to this country, knowing that the question had already been raised—one thing is certain, that it was very desirable that so grave a precedent should not have been established without full consideration, and upon the advice of the Home Government.

The *Times*, in a thoughtful and impartial leading article on the subject, calls attention to some grave considerations. It is, of course, written from an Imperial point of view, and from that point of view it must be judged. The writer remarks that the Governor in every Colony is looked upon as something more than the passive exponent of the views of its Parliamentary Ministers. He is accepted as the delegate of the Sovereign, as the confidential emissary of the Home Government, to which, as well as to the Colonial Government, he owes a responsibility; but "the moral that Colonial Governors will draw from the despatch is that of unconditional obedience, while a hundred signs warn us of the necessity of directing the attention of Colonial Governors to the times and circumstances when they should resist the counsels of their ordinary advisers."

The *Times* maintains that Lord Lorne was right in his reading of the Dominion Act, and that the plain meaning is that while a Governor-General appointed a Lieutenant-Governor, on the advice of his Ministers, the removal of such a subordinate lay within his personal responsibility. "The Viceroy was intended to be a screen sheltering Provincial Governments and Governors, from being continually affected by the political vicissitudes of the central Government. Henceforth, however, the Dominion Act must be read as if a Lieutenant-Governor must be removed as he is appointed by the Governor-General in Council." The *Times* especially censures Sir Michael Hicks-Beach, for not suggesting to Lord Lorne the prudence of testing the electors on the issues raised.

For ourselves, our task is not to express either praise or blame in any quarter, but simply to point out the constitutional importance of the despatch. Yet the words of Mr. Baden Powell, in a recent article on Reform in Victoria, in the *Fortnightly Review* for June last, occur to our minds:

"The great material good of a continued citizenship in a British Empire, is held to be that its component parts will thereby be enabled to steer clear of the rocks and shoals of a too energetic, too full-blooded political life, on which have been ship-wrecked the States of South America, as were those of Mediæval Italy and Ancient Greece. Our colonies are young as yet in political life, and no doubt the substantial and assured progress of the British Colony, as compared with that of any other nation—no doubt the fact that British Colonies have never afforded an instance of civil or intercolonial war—is largely, if not entirely due to the circumstance, that the energetic first flush of political life called out by the inauguration of self-government in new and young communities, is advised and controlled by means of the Governor, the Colonial office, and in the last instance, appeal to the Imperial Parliament, that is, by all the legislative and administrative experiences of the very home of Parliamentary Government."

The following is the despatch addressed to Lord Lorne:—

"Downing-street, July 3rd, 1879.

"My Lord,—Her Majesty's Government have given their attentive consideration to your request, for their instructions with reference to the recommendation made by your Ministers, that Mr. Letellier, the Lieutenant-Governor of Quebec should be removed from his office. It will not have escaped your observation, in making this request, that the constitutional question to

which it relates is one affecting the internal affairs of the Dominion, and belongs to a class of subjects with which the Government and Parliament of Canada are fully competent to deal. I notice with satisfaction that, owing to the ability and patience with which the new Constitution has been made by the Canadian people to fulfil the objects with which it was framed, it has very rarely been found necessary to resort to the Imperial authority for assistance in any of those complications which might have been expected to arise during the first years of the Dominion; and I need not point out to you that such reference should only be made in circumstances of a very exceptional nature. I readily admit, however, that the principles involved in the particular case now before me are of more than ordinary importance. The true effect and intent of those sections of the British North America Act, 1867, which apply to it have been much discussed, and as this is the first case which has occurred under those sections, there is no precedent for your guidance. For this reason, though regretting that any cause should have arisen for the reference now made to them, Her Majesty's Government approve the course which you have taken, on the responsibility and with the consent of your Ministers, and I will now proceed to convey to you the views which they have formed on the question submitted for their consideration. The several circumstances affecting the particular case of Mr. Letellier have been fully stated in Sir J. A. Macdonald's memorandum of April 14, in Lieutenant-Governor Letellier's letter of April 18, and in communications which I have since received from Mr. Langevin, who, accompanied by Mr. Abbot, has come to this country for the purpose of supporting the advice given by the Government of which he is a member, and from Mr. Joly, who was similarly empowered to offer any explanations that might be required on the part of Mr. Letellier. If it had been the duty of Her Majesty's Government to decide whether Mr. Letellier ought or ought not to be removed, the reasons in favour of and against his removal would, I am confident, have been very ably and thoroughly put before them by Messrs Langevin and Abbot, and by Mr. Joly. I have not, however, had occasion to call for any arguments from either side on the merits of Mr. Letellier's case. The law does not empower Her Majesty's Government to decide it, and they do not therefore propose to express any opinion with regard to it. You are aware that the powers given by the British North America Act, 1867, with respect to the removal of a Lieutenant-Governor from office, are vested, not in Her Majesty's Government, but in the Governor-General; and I understand that it is merely in view of the important precedent which you consider may be established by your action in this instance, and the doubts which you entertain as to the meaning of the statute, that you have asked for an authoritative expression of the opinion of Her Majesty's Government on the abstract question of the responsibilities and functions of the Governor-General, in relation to the Lieutenant-Governor of a Province under the British North America Act, 1867. The main principles determining the position of the Lieutenant-Governor of a Province, in the matter now under consideration are plain. There can be no doubt that he has an unquestionable constitutional right to dismiss his Provincial Ministers, if from any cause he feels it incumbent upon him to do so. In the exercise of this right, as of any other of his functions, he should, of course, maintain the impartiality towards rival political parties which is essential to the proper performance of the duties of his office; and for any action he may take, he is, under the 59th section of the Act, directly responsible to the Governor-General. This brings me at once to the point with which alone I have now to deal—namely, whether in deciding, whether the conduct of a Lieutenant-Governor merits removal from office, it would be right and sufficient for the Governor-General, as in any ordinary matter of administration, simply to follow the advice of his Ministers, or whether he is placed by the special provisions of the statute under an obligation to act upon his own individual judgment. With reference to this question it has been noticed that while under section

58 of the Act, the appointment of the Lieutenant-Governor is to be made 'by the Governor-General in Council, by instrument under the Great Seal of Canada,' section 59 provides that 'a Lieutenant-Governor shall hold office during the pleasure of the Governor-General:' and much stress has been laid upon the supposed intention of the Legislature, in thus varying the language of these sections. But it must be remembered that other powers vested in a similar way by the statute in the Governor-General were clearly intended to be, and in practice are, exercised by and with the advice of his Ministers; and though the position of a Governor-General would entitle his views on such a subject as that now under consideration to peculiar weight, yet Her Majesty's Government do not find anything in the circumstances which would justify him in departing in this instance from the general rule, and declining to follow the decided and sustained opinion of his Ministers, who are responsible for the peace and good government of the whole Dominion to the Parliament to which, according to the 59th section of the statute, the cause assigned for the removal of a Lieutenant-Governor must be communicated. Her Majesty's Government therefore can only desire you to request your Ministers again to consider the action to be taken in the case of Mr. Letellier. It will be proper that you should, in the first instance, invite them to inform you whether the views, as expressed in Sir J. A. Macdonald's memorandum, are in any way modified after perusal of this despatch, and after examination of the circumstances now existing, which since the date of that memorandum may have so materially changed as to make it in their opinion no longer necessarily for the advantage, good government, or contentment of the Province that so serious a step should be taken as the removal of a Lieutenant-Governor from office. It will, I am confident be clearly borne in mind that it was the spirit and intention of the British North America Act, 1867, that the tenure of the high office of Lieutenant-Governor should, as a rule, endure for the term of years specially mentioned, and that not only should the power of removal never be exercised, except for grave cause, but that the fact that the political opinion of a Lieutenant-Governor had not been, during his former career, in accordance with those held by any Dominion Ministry, who might happen to succeed to power during his term of office, would afford no reason for its exercise. The political antecedents and present position of nearly all the Lieutenant-Governors now holding office, prove that the correctness of this view has been hitherto recognised in practice; and I cannot doubt that your advisers, from the opinions they have expressed, would be equally ready with the late Government to appreciate the objections to any action which might tend to weaken its influence in the future. I have directed your attention particularly to this point, because it appears to me to be important that, in considering a case which may be referred to hereafter as a precedent, the true constitutional position of a Lieutenant-Governor should be defined. The whole subject may, I am satisfied, now be once more reviewed with advantage, and I cannot but think that the interval which has elapsed (and which has from various causes been unavoidable) may have been useful in affording means for a thorough comprehension of a very complicated question, and in allowing time for the strong feelings on both sides, which, I regret to observe, have been often too bitterly expressed, to subside.

"I have, &c.,

"M. E. Hicks-Beach.

"The Right Hon. the Marquis of Lorne."

NOTES OF CASES.

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

CHANCERY.

Proudfoot, V. C.] [June 10.

London Can. L. & A. Co. v. Palford.

Trade fixtures as between mortgagor and mortgagee—Subsequent incumbrancers—Proper parties in Master's office.

Certain machinery was placed in a factory

on the premises in question, some before and some after the execution of the mortgage to the plaintiffs in 1874. The mortgagor (the defendant) had no interest in any of the machinery at the date of the mortgage to the plaintiffs, having previously sold out to one Abel; but afterwards he became solely entitled to all of it, and he then executed a chattel mortgage of the same to the Parry Sound Lumber Company. On the reference under decree obtained by plaintiffs, the Master made the Lumber Company parties as subsequent encumbrancer.

Held (assuming the machinery or some portion of it to be trade fixtures, removable as between landlord and tenant), that the machinery (or such portion aforesaid) when acquired by the mortgagor, would go to increase the plaintiffs security, and that therefore the Master was right in making the Lumber Company parties as subsequent encumbrancers.

Further, that there appeared no good reason why the plaintiffs, having purchased and taken an assignment of a mortgage made by defendant in 1869, were not entitled, under that, to have the greater part, if not all the machinery added to their security.

Proudfoot, V.C.] [June 10.

FISKEN v. INCE ET AL.

Revivor order—Discharge of—Practice.

An order of revivor was obtained in the cause on the ground that the plaintiff had assigned all his interest, &c., to one Close.

The plaintiff applied to the Court by petition to set aside the order, disputing the assignment on the allegation of which the order was obtained.

PROUDFOOT, V. C., discharged the order of revivor with costs.

CAMPBELL v. THE NORTHERN RAILWAY CO.

V. C. Blake.] [Sept. 31.

Power of Railways to arrange with each other — Competing lines.

The Railway Act of 1868 enacts that "The directors of any railway company may at any time make agreements or arrangements with any other company, either in Canada or elsewhere, for the regulation or interchange of traffic to or from their railways, and for the working of the traffic over the said railways respectively, or for either of those objects separately, and for the division and apportionment of tolls, rates, and charges in respect of such traffic, and generally in relation to the management and working of the railways or any of them, or any part thereof, and of any railway or railways in connection therewith, for any term not exceeding twenty-one years, and to provide either by proxy or otherwise for the appointment of a committee or committees for the better carrying into effect any such agreement or arrangement, with such powers and functions as may be necessary or expedient, subject to the consent of two-thirds of the stockholders voting in person or by proxy;" the word "traffic" being interpreted by the Act as meaning "not only passengers and their baggage, goods, animals, and things conveyed by railways, but also cars, trucks, and vehicles of any description adapted for running over any railway."

Held, That the powers of a Railway Company to make such arrangements were not controlled by a subsequent Act, which conferred similar powers with others, and "provided also that the powers hereby granted shall not extend to the right of making such agreements with respect to any competing lines of railways," although one of the termini of both roads was the same, it being shown that the arrangement entered into was for the mutual advantage of both companies.

M'NEIL v. THE RELIANCE MUTUAL FIRE INSURANCE COMPANY.

V. C. Blake.] [Oct. 6.

Insolvent Act—Insolvent Company—Jurisdiction—Demurrer.

The object of the Legislature in creating the Insolvent Court is for the purpose of administering the estates of insolvents, and this Court will not, unless in a very exceptional case, interfere with the jurisdiction thus created. Therefore, where a bill was filed for the purpose of winding-up the affairs of an insolvent Insurance Company,

a demurrer thereto for want of equity was allowed, although the bill prayed, amongst other things, for the appointment of a receiver to get in the assets and wind up the affairs of the company.

QUEEN'S BENCH.

Osler, J.] [Oct. 10.

In Re Sarnia and Point Edward.

Separation of municipalities—Liability for Government drainage—Arbitration—Practice.

Held, that in the case of the separation of part of a township from the main municipality, and its erection into an independent village, the assessment in respect of government drainage is not a matter to be arbitrated upon between the two corporations under the Municipal Act, as being a debt of the township to which the village ought to contribute, the liability of each corporation for its own proportion being fixed by the Ontario Drainage Act.

Semble, that the papers upon which the rule *nisi* (which was to refer back the award for reconsideration) was granted not being verified, and there being no affidavit as to the facts, would have been a fatal objection to the application.

eld, also, that the by-laws of the municipalities appointing the arbitrators or copies thereof, and the appointment of an additional arbitrator should also have been filed.

Bethune, Q. C., for applicants.

J. K. Kerr, Q.C., contra.

COMMON LAW CHAMBERS.

Lock v. Todd.

Mr. Dalton.] [June 13.

Notice to reply—Order for time to reply—Waiver.

The obtaining of an order for time to reply waives an objection that no notice to reply was served, and takes the place of such notice.

Flake v. Clapp.

Mr. Dalton.] [June 20.

Juror—Withdrawal of—Determination of cause.

The withdrawal of a juror at the trial has the effect of concluding the suit, and, with it, of determining the whole cause of action.

Davidson v. Cameron.

Mr. Dalton.] [June 20.

Foreign judgment—Liquidated amount—Costs.

The plaintiff sued the defendant on a foreign judgment for $240, and specially endorsed this amount upon the writ of summons. He obtained judgment in default of appearance.

Held, that the foreign judgment was not a liquidated or ascertained amount within the meaning of Revised Statutes, Ontario, chap. 50, sec. 153, and that the plaintiff was entitled to Superior Court costs.

Trust and Loan Company v. Jones.

Mr. Dalton.] [Aug. 27.

Ejectment—Service—Signing judgment.

The writ in ejectment was served upon the defendant's wife after he had left the country.

An order to sign judgment against the husband was granted in default of appearance.

Taylor v. Adam.

Mr. Dalton.] [Sept. 2.

Pleading—Trover—Uncertainty.

The plaintiff alleged in one count in trover that the defendant converted to his own use *or* wrongfully deprived the plaintiff, &c.

Held, over-ruling *Bain* v. *Mackay*, 5 Practice Reports, 471, that the count is not embarrassing.

Doyle v. The Owen Sound Printing Company.

Mr. Dalton.] [Sept. 11.

Pleading—Libel—Apology—Payment into Court.

In an action for libel the plea of *not guilty* was held inconsistent with a plea of apology and payment into Court, and was ordered to be struck out.

Mr. Dalton.] [Sept. 13.

ANGLO-CANADIAN MORTGAGE CO. v. COTTER.

Ejectment—Disclaimer—Possession—Defendants—Striking out.

An application by defendants in an action of ejectment to have their names struck out on the ground that they were not in possession at or subsequent to the issue of the writ, and disclaim any interest in the land, is regularly made before appearance, although the application would be entertained after appearance, should the justice of the case require it. But as the defendants applied after appearance to have their names struck out, and the Court, from the facts, entertained a doubt as to the good faith of these defendants, the application was dismissed with costs.

Mr. Dalton.] [Sept. 17.

GANNON v. GIBB.

Arbitration—Reference—Facts in dispute.

Held, on an application to refer to arbitration, that where a material question of fact was in dispute, the case was not a proper one in which to make an order for compulsory reference.

Osler, J.] [Oct. 8.

KING v. FARRELL.

Prohibition—Division Court—Cheque—Jurisdiction.

The defendant who resided within the the limits of the Tenth Division Court of York, drew a cheque in the plaintiff's favour, within the limits of the First Division Court of the same County, upon a bank in the Division in which defendant resided. The cheque being dishonoured, the plaintiff sued upon it in the First Division Court.

Held, that the action was improperly brought in the First Division Court, and that a summons for a prohibition thereto on the ground of want of jurisdiction must be made absolute.

Osler, J.] [Oct. 14.

MERCHANTS' BANK v. PIERSON.

Examination of party—Contempt.

The defendant having obtained the usual order to examine the manager of a branch of the plaintiffs' Bank, the order was served upon the manager with a notice to produce books, &c., in accordance with R. S. O., cap. 50, sec. 161. At this examination the manager refused to produce the books, and a summons was obtained to commit him for contempt.

Held, that the application to commit could not be entertained in chambers, but should be made before the Court.

MASTER'S OFFICE.

The Master.] [May 15.

TRUST AND LOAN COMPANY v. GALLAGHER.

Discharge of mortgage—Effect of before registry.

The plaintiffs, the Trust and Loan Company, advanced $2,000 on certain land, on condition that three encumbrances against it should be discharged out of the proceeds of their loan and otherwise. The first and third encumbrancers were paid off, and the former executed a statutory discharge of their mortgage, which was never registered. Subsequently the second encumbrancer, who had not been paid, claimed priority over the plaintiffs. They then obtained an assignment of the first mortgage.

Held, that the discharge of mortgage not having been registered, operated only as a receipt, and the amount paid the first encumbrancer being paid by the Trust and Loan Company, and not by the original mortgagor, that the plaintiff was entitled to priority to the extent of the first mortgage.

Marsh, for the plaintiffs.

Snelling, for the defendant, *Rocque*.

ELECTION CASES.

RE CORNWALL ELECTION PETITION.

Armour, J.] [Aug. 26.

Election petition—Commission to examine a witness.

Held, that in proceedings under a petition filed in accordance with the provisions of the Dominion Controverted Elections Act, 1874, a commission may be issued to examine a witness who resides in a foreign country.

CANADA REPORTS.

ONTARIO.

MARITIME COURT.

(*Reported for the* Law Journal *by* J. Bruce, *Esq., Registrar*).

Re The Tug "Kate Moffatt."

Jurisdiction.

Held, that the Maritime Court of Ontario has no jurisdiction in respect of claims that accrued before the proclamation bringing into force the Maritime Court of Ontario.

This was a cause of wages instituted in this court by John Hand against the American tug *Kate Moffatt*, to recover the sum of $568.15. The defence set up was, that a portion of the plaintiff's claim accrued before the issue of the proclamation bringing into force the Maritime Jurisdiction Act of Ontario.

Brough, for petitioner.

W. R. Muloch, for defendants.

Mackenzie, J. M. C. O. :—The Maritime Jurisdiction Act, 1877, received the Royal Assent on the 28th of April, 1877, and the Act came into full operation, under the authority of a proclamation of the Governor in Council, on the 18th of February, 1878. The plaintiff's claim accrued on the 6th of December, 1876. It has already been decided in this Court, in the cause of the *Edward Blake*, that a contract for wages entered into before the passing of the Maritime Jurisdiction Act, but not completed until after the passing of the Act, came within the jurisdiction of the Court, and that the balance of wages then due formed a maritime lien on the ship; a similar doctrine was recognised by the English Court of Chancery, in *Page* v. *Bennet*, 29 L. J. Ch. 398. But a balance of wages falling due a year and a half before the passing of the Act and the formation of the Court itself is a very different thing. Mr. Brough contended that the Maritime Jurisdiction Act was a remedial statute, and was retrospective in its operation, and cited Maxwell on Statutes, pp. 199 and 202, the case of the *Alexander Larsen*, 1 Robinson A. R. 288, and the case of the *Ironsides*, 31 L. J. N. S. P. M. & A. cases, 129, and other authorities. The jurisdiction of this Court rests upon the 1st section of 40 Vict. chap. 21, which enacts that, "save as by this Act excepted, all persons shall, after this Act comes into force, have in the Province of Ontario the like rights and remedies, including cases of contract and tort, and proceedings *in rem* and *in personam*, arising out of or connected with navigation, shipping, trade or commerce, on any river, lake, canal, or inland water of which the whole or part is in the Province of Ontario, as such person would have in any existing British Vice-Admiralty Court if the process of such Court extended to the said Province." By section 2 it is enacted, "For the enforcement of such rights and remedies the Maritime Court is constituted, and shall have, as to the matters aforesaid, all such jurisdiction as belongs in similar matters within the reach of its process to any existing British Vice-Admiralty Court." By section 21, "so much as relates to the appointment of the Judge, Surrogate Judges and Officers, and the making of general rules and tariffs, shall come in force on a day to be appointed by proclamation of the Governor in Council; and the residue of this Act shall come in force on a subsequent day, to be also appointed by such proclamation." It is not to be lost sight of, in deciding the question of jurisdiction, that the Maritime Jurisdiction Act did not come into operation immediately after its passing. In discussing the merits of *Marsh* v. *Higgins*, 9 C. B., 551, the learned author of Maxwell on Statutes remarks, "Some stress also was laid on the circumstance that the Act did not come into operation until eight months after its passing." The Dominion Maritime Jurisdiction Act did not in reality come into force for ten months after its passage; that did not appear on the face, yet still enough appeared to show that it could not come into operation for several months. Has the Maritime Jurisdiction Act retrospective operation?

In Maxwell on Statutes, at page 191, I find the law thus stated: "It is a general rule that all statutes are to be construed to operate in future, unless from the language a retrospective effect be clearly intended. *Nova constitutio futuris forman imponere debet non preteritis.* "It has been said that nothing but clear and express words will give a retrospective effect to a statute, and that however much the present tense may be used in it, it must be construed as applying only to future matters." In *Vansittart* v. *Taylor*, 4 E. & B. 910, even a statute which confers a benefit, such as abolishing a tax, would not be construed retrospectively to relieve the persons in the property already subject to the burden before it was abolished. And at page 192 the learned author proceeds: "It is where the enactment would prejudicially affect vested rights or the legal character of past acts that the presumption against a retrospective operation is strongest; every statute which takes away or impairs vested rights under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation." However, the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts. In the case of the *Alexander Larsen*, 1 Robinson Ad. Rep. 288, cited by Mr. Brough, would at first give countenance to the contention of the plaintiff. The learned Judge of the High Court of Admiralty (Dr. Lushington), at page 295, states: "I am not aware of any principle or decision which establishes the doctrine that where a statute affords a new mode of suing, the cause of action must necessarily arise subsequent to the period when the statute comes into operation." On the contrary, where the statute creates a new jurisdiction, the new jurisdiction, I apprehend, takes up all the cases. The *Alexander Larsen* was a Norwegian ship, and was arrested to satisfy a claim for £45 13s. 0d., the price of an anchor and cable furnished to the vessel before the Imperial Statute 3 & 4 Vict. came into operation. The 6th section gave the Court of Admiralty jurisdiction, among other things, to decide on claims for necessaries furnished to any foreign ship or vesself, and to enforce payment thereof. The Court was in existence and had power to enforce payments in regard to ships or vessels before. It will be seen the present case cannot be controlled by the ruling of the Court of Admiralty in the *Alexander Larsen.*

The case of the *Ironsides,* L. J. N. S. Admiralty cases, 129, is cited. Dr. Lushington stated in that case: "In the general principle I entirely concur, viz.—that, as a general rule, all statutes should be construed to operate prospectively, and especially not to take away or affect vested rights; but true as these rules are—indeed admitted on all hands as founded on common justice and authority—no one denies the competency of the Legislature to pass retrospective statutes, if they think fit; and many times they have done so, bearing in mind the general principle. The question must always be, what intention the Legislature expressed in the Statute to be construed. The presumption is that it is not retrospective. The facts and circumstances connected with the case of the *Ironsides* cannot help us in coming to a sound conclusion so far as I can see.

In the case of *Moon* v. *Durden*, reported in 2 Ex. 22, the arguments of counsel and the judgments delivered by the learned Barons of the Exchequer are instructive and exhaustive. The 18th section of the 8 & 9 Vict. cap. 109, which received the Royal Assent on the 8th August, 1845, enacts "that all contracts by way of gaming or wagering shall be null and void, and no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event upon which any wager shall have been made." Barons Parke, Alderson and Rolfe held "that the statute had not a retrospective operation so as to defeat any action for a wager com-

menced before the statute passed. Baron Platt dissented. The general principle governing the construction of statutes, viz., "that no statute is to have a retrospective operation beyond the time of its passing," is fully recognised and acted upon in this important case. The case of *Vansittart* v. *Taylor*, 4 E. & B. 910, the case of *Roseberry* v. *Ingliss*, Macqueen's Practice in the House of Lords, and several other well known English cases, treat on the subject of the retrospective operation of statutes. *The Queen* v. *Taylor*, Supreme Court Reports, 65, has, in my opinion, a direct and immediate bearing on the present case. The Supreme Court was created as a new court of appellate jurisdiction by a statute of the Dominion. The Maritime Court was created as a new court, invested with a new and extensive jurisdiction. In the case of *The Queen* v. *Taylor*, the Attorney-General of Ontario filed an information in our Court of Queen's Bench against the defendant, Taylor, a brewer in the town of St. Catharines, for selling a large quantity of beer without a license. The defendant demurred to this information, and the Attorney-General joined in demurrer. The Queen's Bench gave judgment for the defendant on the demurrer, on the 12th of May, 1875. The Attorney-General took the case, by writ of error, to the Court of Appeal for Ontario. On the 25th of September, 1875, our Court of Appeal reversed the judgment of the Queen's Bench—not an unusual thing. The defendant appealed from the judgment of the Court of Appeal to the Supreme Court at Ottawa. The Proclamation of the Governor-General, calling into exercise the judicial functions of the Supreme Court, issued on the 10th of January, 1876. The case was set down for argument for the first sittings of the Supreme Court, held in June, 1876, when the question of whether the Supreme Court had jurisdiction was discussed. I was one of the counsel for the Attorney-General. Afterwards the Supreme Court gave judgment, and held it had no jurisdiction when the judgment appealed from was signed, entered or pronounced previous to the 11th of January, 1876. Sir William Richards, then the Chief-Justice of the Court, and Mr. Justice Ritchie, now the Chief-Justice, gave able and elaborate judgments, which, in the main, were assented to by Strong, Taschereau and Fournier, J. J. Mr. Justice Ritchie, at page 88, stated, "I can see no reason why this statute—Supreme Court Act—should have a retrospective operation, inasmuch as I cannot consider the creation of a court and the right of appeal thereto mere procedure, and I discover no language in the statute indicating that, in its construction, the *primâ facie* rule that statutes ought to be construed to operate in the future was to be departed from. When the enactment changes or takes away rights it is not to be construed as retrospective, and further," the learned Judge remarks, "I think the creation of the right to appeal is by no means a mere matter of procedure, but it is a matter of jurisdiction, of limitation and extension of jurisdiction, by which the rights of suitors may be materially affected. "The Maritime Jurisdiction Act does not appear to be a remedial statute in the sense suggested. It creates a new jurisdiction, new rights and liabilities, to be governed and regulated by the statute itself. The preamble of the Maritime Jurisdiction Act and its title indicate that the intention of the legislation was to create a new independent jurisdiction, a maritime jurisdiction, and a new court to enforce the observance of the rights and afford remedies peculiar to itself. The Maritime Act invests the great fresh-water lakes of Ontario, its navigable rivers, its extensive canals, with new attributes and maritime consequences which did not belong to them before the passage of the Maritime Act. The youthful (I think the expression may be used) inland waters of Ontario are placed, in a maritime sense, on the same footing as the venerable and antiquated high seas and waters within high-water marks, and all navigable waters beneath the first bridges, and makes navigability the true test of maritime jurisdiction. This is an alteration of a system, and the advent of a new order of things in regard to the inland waters of the Province. Before the Maritime Act passed, ships and vessels might pass and repass in these

waters, none daring to make them afraid. A maritime court warrant could not reach them, a marshal could not arrest them. The owners of vessels and mortgagees had no dread of the firm grasp of a marshal or the power of the Admiralty Law. Vessels then had existing rights—vested rights; men were employed and vessels set out on voyages under the then existing laws. The marshal of this court can now arrest a vessel, her cargo, freight and apparel, and stop the progress of the ship until right is done. Surely this must be a new right, a new power, a new jurisdiction, an interference with substantial rights and privileges. In this view of the case, the statute is, in my opinion, not retrospective in this respect, but prospective. Before the passing of the Maritime Jurisdiction Act, the Province was looked upon as an inland Province, while the Provinces of Quebec, New Brunswick and Nova Scotia were called the Maritime Provinces. So far as maritime authority is concerned, it may be looked upon as maritime. It has the same authority on the inland waters, on Lakes Ontario, Erie, Huron and Superior as the Vice-Admiralty Courts have on the waters of the Gulf of St. Lawrence, the Bay of Fundy, the Straits of Northumberland, the Lower St. Lawrence and Gaspé Bay. The Ports of Toronto, Kingston, St. Catharines, are as much maritime ports as Quebec, St. John or Halifax. As I am of the opinion that the statute is prospective it is unnecessary to discuss any of the other points. The petition will be dismissed, but as the question involved is new and important it will be without costs.

Petition dismissed without costs.

INSOLVENCY CASES.

Re Robinson, an Insolvent.

Watch—Ordinary wearing apparel.

A watch and chain which an insolvent had been in the habit of wearing, and of no great value, comes within the exemption applicable to the necessary and ordinary wearing apparel of the debtor, and the insolvent will not be ordered to give them up to the assignee.

[Toronto, January 22, 1879.

This was an application on behalf of the assignee under section 143 of the Insolvent Act of 1875, for an order requiring the insolvent to deliver up to the assignee his watch and chain.

The assignee, by his petition, claimed the watch and chain, as a matter of right, as part of the property which passed to him by the assignment.

Bigelow, for the insolvent, contended that the watch and chain in question did not and should not pass under the circumstances to to the assignee. He filed an affidavit of the insolvent showing, that he, the insolvent, had the watch in question for about five years and the chain for six years. The watch originally cost $30. He also filed an affidavit of a manufacturing jeweller who examined the articles in question and said they were worth about twenty dollars.

Shepley, contra.

McKenzie, Co. J.—Section 16 of the Insolvent Act of 1875 vests in the assignee all property of the insolvent, except such real and personal property as are exempt from seizure and sale under execution by cap. 66 of the Revised Statutes of Ontario, sec. 2, sub 2. "*The necessary and ordinary wearing apparel of the debtor and his family*"—is by this exempt from seizure under any writ of execution.

My attention was directed to *In re Sanborn*, an insolvent, 14 C. L. J. 241, wherein Judge Elliot (Middlesex) explains his views of the law in this respect, accompanied with very sensible remarks.

The question is, whether the watch and chain in question, of the insolvent, valued at about $20, and which he had been wearing on his person upwards of four years came under the exemption of "necessary and ordinary wearing apparel." If they do the insolvent has a right to withhold them from the assignee; if not, he must deliver them up. I am of opinion that the watch and chain in question do come within the statutory exemption, and may be withheld by the insolvent.

Among the definitions given of the word "apparel," may be mentioned "dress," "clothes," "attire," "raiment," "external habiliments."

There is a distinction taken between wearing apparel and necessary wearing apparel in *Spitten* vs. *Chaffer*, 14 C. B. N. S., 714. A watch is a very useful and sometimes a necessary gear; it will inform us as to time, and direct our movements in regard to appointments; when a man is asked the time to go and meet a train or go to a meeting, he pulls out his watch and ascertains the time. In some occupations a persons cannot do without a watch. Thousands of the human race wear external habiliments which may not be necessary but are ordinary and in common use. Fashionable apparel and showy ornaments are among the foibles of our ages, still men and women do not think so, so that they embellish their persons with ornamental things and external habiliments of many kinds, and when within their means and in common use among the inhabitants they appear to become ordinary apparel.

[The learned Judge then quoted the language of the judgment in *Re Sanborn*.]

The watch and chain in question are common and inexpensive, and the insolvent owned them for several years. Following, as I do, the doctrine laid down in *Re Sanborn* I refuse the prayer of the petition. I look upon the watch and chain in question as common and inexpensive, and may be treated as ordinary apparel in ordinary use. If the watch and chain, instead of being of the value of twenty dollars, were worth $150 or less, and had been recently purchased, I would do what was done in *Re Sanborn*; but because they are common and inexpensive and worn on the person of the insolvent for several years, I decline to make an order of delivery.

Order refused.

MUNICIPAL CASES.

Bryan v. Corporation of Ontario.

High Constable—Remuneration—Liability of County.

A County Council is not liable for the salary of the High Constable.

[Whitby, July 2, 1879.

This was an action to recover one quarter's salary, claimed to be due on 1st April, 1879, to the plaintiff, as High Constable of the County of Ontario.

The plaintiff was appointed in 1874, by the Justices in General Sessions, under Revised Statutes of Ontario, cap. 82, sec. 1. They also proposed a resolution fixing the salary at $75, which sum was subsequently raised to $150, and the Treasurer of the County paid it regularly until this suit.

In February, 1879, the plaintiff was notified of a resolution of the council forbidding the Treasurer to continue such payments; whereupon the plaintiff sued.

Dartnell, J. J. The office of High Constable was first ordained by the Statute of Winchester (13 Edw. I. ch. 2, sec. 6). They were appointed at the Courts-leet of the hundred, or franchise, over which they presided, or in default of that by the Justices in Session.

The High Constable has the superintendance and direction of all petty constables within the county; and is, in a manner, responsible for their conduct, since he is bound to notice and to present their defaults: for his neglect of which duty he is representable himself (Burns Justice, 644). In England he has many other duties imposed upon him by various statutes, so that he is there an important municipal officer.

The R. S. O., ch. 82, while giving the power of appointment of constables to the Justices in Sessions, is silent as to how they shall be paid. The fees are fixed by R. S. O., ch. 84: the tariff makes no distinction between high and petty constables.

Before the establishment of municipal institutions in this country, the Justices had control of the county funds, and perhaps could pass a resolution providing for the payment of the high constable's salary. Since that time these duties have been limited; the Justices have simply the power of appointment, and, in my opinion, have no right to fix any sum for his salary, or to say that he shall have any salary at all. The office seems one of *rank* only, giving the appointee merely precedence and authority over the remaining constables of the county. Two instances occur to me in which one body appoints, while the duty of paying the official devolves upon

another. I allude to the office of chief of police in cities and gaolers in counties. In the former case the police commissioners make the appointments, and the council is required to pay him a "reasonable salary," and it has been held that it is not in the commissioners, power to fix what that salary may be (*Prince* v. *Toronto*).

In the latter case, the sheriff appoints, while the county council is to fix and pay the salary.

I think, if the legislature intended the high constable to receive a salary, or any sum beyond ordinary fees, they would have so expressed themselves. No doubt the defendants could make themselves liable by resolutions or by-laws, but there is no pretence that they have done so.

I think, however, that although the defendants are not liable for any future payments, they should, in equity, pay the salary for the one quarter upon which the plaintiff had entered, and for which he has performed the duties. On that ground only I give judgment for him for the amount claimed, being, however, of the opinion that the defendants will not be liable for any future payments.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR NOVEMBER AND DECEMBER, 1878, AND JANUARY, 1879.

[This number includes the following of the Law Reports: 9 Ch. D. 1-734; 10 Ch. D. 48; 3 Q. B. D. 643-807; 4 Q. B. D. 1-18; 3 C. P. D. 393-537; 4 C. P. D. 1-24; 3 Ex. D. 313-383; 4 Ex. D. 1-31; 3 P. D. 73-198; 3 App. Cas. 933-1373.]

Abandonment.—See Insurance, 2.

Accounts.

1. In a bill by principals against agents, to take accounts or rectify accounts already settled, the transactions extended over nearly twenty years, and many errors and overcharges were alleged. *Held*, that although the labour was enormous, it was a case for reopening the accounts, and not merely one to "surcharge and falsify."—*Williamson* v. *Barbour*, 9 Ch. D. 529.

2. In the settlement of partnership accounts made in 1865, the plaintiff alleged a single error of £950, and another formal error. *Held*, that, their being no fraud, he be allowed to surcharge and falsify, thus allowing the account to stand as a whole, and only rectifying it where the plaintiff should plainly show error.—*Gething* v. *Keighley*, 9 Ch. D. 547.

See Partnership.

Acquiescence.—See Bankruptcy, 2.

Administration.

The Probate Division granted a general probate of the will of a Scotch testator. In spite of the opposition of a majority of the executors, this Division granted the usual decree for administration of all the personal assets, not limiting it to those in England.—*Stirling-Maxwell* v. *Cartwright*, 9 Ch. D. 173.

See Parties.

Advances.

By his will, made in 1864, a testator made his six children his residuary legatees, and provided that the sums which he had lent to his two sons should be deducted from the shares which they would be entitled to. Subsequently he wrote to each of his sons, offering to write off part of the debt in each case, if the son would send him a promissory note for the balance. It did not appear that any notes were given. He died in 1874. *Held*, that, in spite of the letters, the sons must bring the entire debts into hotchpot.—*Smith* v. *Conder*, 9 Ch. D. 170.

Ancient Lights.—See Railway, 1.

Annuity.

G. gave a legacy to his wife and empowered his trustees to demise portions of his real estate for terms of years, for building purposes and otherwise, as they thought proper, during his wife's life, to sell and dispose of the property, and to invest it so as to raise an annuity of £1,200 for her during her life, payable quarterly. Subject to the annuity, the trustees were to set apart other portions of the income for his children. The residue he gave to his children. The yearly income of the trust estate did not amount to £1,200. *Held*, that the widow could not have it made up out of the *corpus*.—*Gee* v. *Mahood*, 9 Ch. D. 151.

See Trust 1; Will, 3.

Appointment.

P., the donee of a power to appoint by deed or will, in favour of her "issue respectively to be born before any such appointment," recited, in her deed of appointment, the power, her desire to act under it, and that she had three children, and appointed the fund to her daughter F. for life, and, at her decease, to her children, in equal shares, on their respectively attaining twenty-one; but if any of them should die before that age, leaving issue, then the share of them so dying should go to their issue, vesting at twenty-one. If the said F. should have but one child attaining twenty-one, to that child absolutely. In case F. should die without leaving any child or issue who should take a vested share in the trust-fund, another disposition was made. F. had six

children. Two were born before the date of the appointment, and another was then *en ventre sa mère*. F. died in 1874, and in 1877 only one of her children had attained twenty-one. *Held*, that the power gave authority to appoint only in favour of the three in existence at the date of the appointment; that the appointment undertook to include all the six children. Hence it was effectual only as to a sixth of the fund for each of the three objects entitled. One-sigth ordered paid to the child having attained twenty-one, the remaining five-sixths to lie in court.—*In re Fawcombe's Trusts*, 9 Ch. D. 652.

Assignment.

T. contracted with J. to build him a steam launch for £80, to be paid when the boat was done. J., however, advanced him £40 on account. Afterwards, before the work was done, T. being in debt to R., agreed to make over to him the other £40, and he wrote to J.: "I hereby assign to R. the sum of £40, or any other sum now due or that may hereafter become due in respect of" the boat. J. promised to give the matter his attention. *Held*, that the letter was not an order to pay money, but an assignment of a debt.—*Buck* v. *Robson*, 3 Q. B. D. 686.

See Insurance, 1; Mortgage, 5.

Attorney and Client.—See Solicitor.

Bankruptcy.

1. The old rule in bankruptcy, that, "if there is a legal debt, and the person coming before the court [to petition for an adjudication] in respect of it is not the beneficial owner, there must be brought before the court also the beneficial owner" if he is a person not under disability, is still in force.—*Ex parte Culley. In re Adams*, 9 Ch. D. 307.

2. D. and C., partners, petitioned in liquidation, Dec. 4, 1876. Dec. 19, the creditors, under a vote to liquidate by arrangement, appointed B. trustee with a committee, who were empowered to discharge the debtors, if they thought fit. Jan. 3, 1877, the committee voted to discharge D., subject to the payment of his private debts, and to discharge C. on his paying 15*s.* in the pound, as follows: The stock-in-trade and debts due were to be realized by him under the committee's inspection, and the proceeds paid to them. If the amount realized equalled 7*s.* 6*d.* in the pound and costs, C. should have his discharge on paying 7*s.* 6*d.* in the pound additional thereon. D. was discharged, Jan. 24, 1877. C. received £719 8*s.* 9*d.*, which he paid the committee, and paid B. £60 costs. 7*s.* 6*d.* in the pound on the debts proved came to £950, and C. made up the balance. Before the liquidation, C. had effected a loan, on behalf of himself and his firm, with the A. Bank, by giving a mortgage of some real estate and insurance policies, containing a power of sale. At the liquidation, the debt amounted to £251 7*s.* 6*d.* The bank did not prove. C. began business alone in February, 1877, before which he asked for a new credit on his securities with the A. Bank. The manager consulted B., who said the matter was "all right, and quite out of his hands." The bank then gave C. credit, and his business went on. Feb. 22, he paid part of the firm debt due the bank, and July 25, 1877, the balance. From the time of beginning business alone, all but one of his old creditors who had proved did business with him and gave him credit. He did not pay the second 7*s.* 6*d.* in full, and some others partly, by checks on the A. Bank. The creditors applied for the second 7*s.* 6*d.* to B., but not to C. July 18, he sold his real estate, the bank reconveyed it, and the purchase-money was passed to his account in the bank. July 31, B. demanded the purchase-money. In August C. went into bankruptcy. *Held*, that the bank was entitled to retain all its advances, both to the firm of D. and C. and to C. alone, and B. was entitled to the balance only.—*Ex parte Bolland. In re Dysart*, 9 Ch. D. 312.

See Felony; Jurisdiction, 2; Set-off.

Beneficial Owner.—See Bankruptcy, 1.

Bequest.—See Will, 5, 7, 8.

Bill of Lading.

The plaintiffs shipped two hundred and eighty bags of sugar on the defendant's ship, under a bill of lading signed "P. and K., Agents." The court found that they were the agents of the defendants to give this bill, though without the knowledge of the plaintiffs. P. and K. were charterers of the ship for the voyage. The bill of lading undertook that the sugar should be delivered in good condition, excepting the usual risks, and "any act, neglect, or default whatsoever of the pilot, master, or mariners in navigating the ship, the owners of the ship being in no way liable for any of the consequences of the causes above excepted; and it being agreed that the captain, officers, and crew of the vessel, in the transmission of the goods as between the shipper, owner, or consignee thereof, and the ship and ship-owner, be considered the servants of such shipper, owner, or consignee." Some oxide of zinc in casks was negligently stowed on board in such a way that the sugar was damaged by it. *Held*, that the damage was not within the exceptions in the bill of lading, and the defendants were liable.—*Hayn* v. *Culliford*, 3 C. P. D. 410.

See Charter-party, 2.

Bill of Sale.—See Mortgage, 4; Sale, 2.

Bills and Notes.

Suit by plaintiff, as endorsee on a bill of exchange, against L. & F., partners, the defendants, as acceptors. C., the plaintiff's partner, gave the plaintiff, for a debt, the bill in suit, purporting to have been accepted by L. & F., and perfect in every respect, except that the drawer's name was left blank. F. had accepted the bill without the knowledge of L. and having no authority to accept for the firm. The plaintiff took the bill in good faith, believing the acceptance *bonâ fide*, but afterwards, suspecting something wrong, he filled in his own firm's name as drawer. *Held*, that he could

not recover against L.—*Hogarth* v. *Latham*, 3 Q. B. D. 443.

Breach of Promise of Marriage.—See Infancy.

Charge.—See Trust, 1.

Charity.—See Will, 4.

Charter-party.

1. The defendant, owner of the ship R., entered into a charter-party with the plaintiff, that, "after loading with dead weight at M. for the owner's benefit," she should proceed to a first-class Spanish port, where "a steamer with cargo from a foreign port can load by Spanish law without risk of detention by the custom-house authorities." She loaded with military stores as "dead weight" at M., which plaintiff knew would prevent her being admitted at such Spanish port, and proceeded to V., a first-class Spanish port. On application to the Spanish authorities for special permission to load, notwithstanding the prohibited dead weight, it was refused, contrary to the expectation of the defendant, and the R. at once sailed away. The charter-party contained the usual clause, "The act of God, the Queen's enemies, fire, and all and every other the dangers and accidents" of navigation excepted. *Held*, that the plaintiff could not maintain an action against the defendants for not loading at V.—*Ford* v. *Cotesworth* (L. R. 4 Q. B. 127; s. c. 5 Q. B. 544) followed.—*Cunningham* v. *Dunn*, 3 C. P. D. 443.

2. Charter-party to load a cargo of bark at a port in Australia, and proceed to an English port, at 60*s.* a ton freight in full, "ship paying all port charges, pilotages, and towages, the freight to be paid in cash on right and true delivery of cargo at port of discharge, less any advances that may have been made. The captain to sign bills of lading for cargo as presented, at any rate of freight required by charterers or their agents, without prejudice to the charter-party; but should the total freight by bills of lading amount to less than the total chartered freight, the difference to be paid to the master in cash before sailing." A bill of lading was signed by the plaintiff, the captain, and given to the charterers before sailing. The goods were deliverable "unto order, or his or their assigns; average as accustomed; freight for the said goods to be paid in cash at port of discharge, at the rate of discharge, rate of freight, and other conditions as per charter-party, with 5 per cent. primage, in cash, on delivery, as customary." The defendants were indorsees of the bill of lading from the charterers, and received the cargo as their agents. The captain received a fixed salary which included all charges and allowances. *Held*, that primage could not be recovered.—*Cauyhey* v. *Gordon*, 3 C. P. D. 419.

3. A ship's husband cannot cancel a charter-party already entered into, though he have authority to make one, and though such cancellation would profit the owners.—*Thomas* v. *Lewis*, 4 Ex. D. 18.

Collision.

The court found that, while a ship was in charge of a pilot within a district where the ship was obliged, by statute, to employ such a pilot, she dragged her anchor and got into collision with a bark, wholly through the negligence of the pilot. *Held*, that the shipowners were not responsible for the damage.—*The Princeton*, 3 P. D. 90.

See Evidence.

Company.

1. Under a contract not registered as required by the Companies Act, 1867 (30 and 31 Vict. c. 131), shares in a limited company were allotted to the party with whom the company made the contract, as fully paid up shares, and were duly registered by the company as such. The shares were subsequently transferred for value, as fully paid up shares, to N., the respondent, who had no notice of any irregularity in their issue. On the winding up of the company, *held*, affirming the decision of the Court of Appeals, that the company was estopped to deny that the shares were paid up, and that N. could not be put on the list of contributories, as the holder of shares not fully paid up. As he took them for consideration in the regular course of business, the burden of showing that he took them with notice of the irregularity in their issue is on the party asserting such notice.—*Burkinshaw* v. *Nicolls*, 3 App. Cas. 1004; s. c. *nom. Re British Farmers' Linseed Cake Co.*, 7 Ch. D. 533; 12 Am. Law Rev. 724.

2. A syndicate, composed of ten members, was formed to purchase the island of Sombrero, in the West Indies, then offered for sale by the liquidator of an unsuccessful company holding a lease of it. In pursuance thereof, a purchase was made by one Evans, a paid agent of Baron Erlanger, one of the syndicate, and the sale was confirmed by the court. About the same time, the syndicate determined to get up a company. The said Erlanger had charge of the matter, and finally an agreement was signed between Evans and one P., on behalf of the proposed company, for the purchase of the island by the latter for double the price paid by the syndicate. The company was registered the same day. The directors were five in number, as follows: Drouyn de Lhuys, the French statesman, resident in France; Eastwick, M. P., resident in Canada; T. Dakin, Lord Mayor; the said Evans; and Macdonald, an English rear-admiral without means, to whom Erlanger advanced money enough to pay for shares, by virtue of holding which Macdonald could be a director. Dakin and De Lhuys alone held shares *bona fide*, as required for the office of director. Dakin was not a member of the syndicate. The first two did not attend the meeting at which the purchase was confirmed. It appeared that the entire board of directors was made up by Erlanger. At the end of a year, the affairs of the company were in a bad way, and the truth about the price having leaked out, a committee was appointed to examine into the company's affairs, and on their

recommendation the old directors were retired, and suit brought against Dakin and the members of the syndicate for the difference between £110,000, the price paid Evans by the company, and £55,000, the price paid by the syndicate, or to rescind the contract. *Held*, that the contract could not be maintained.—*Erlanger* v. *New Sombrero Phosphate Co.*, 3 App. Cas. 1218; s. c. 5 Ch. D. 73; 12 Am. Law Rev. 91.

3. H. acted as director for a company, but stated that he accepted the office on the distinct understanding that no share qualification was necessary, and none was in law necessary. He also said he never intended to take any, and did not know, until winding up proceedings were taken, that he had been put on the register of shareholders. But by a vote of the directors, at a meeting when he was absent, his name was put on, and shares allotted him, *Held*, that he was not a contributory. As director, he was not presumed to know the contents of the company's books.—*In re Wincham Shipbuilding, Boiler, & Salt Co. Hallmark's Case*, 9 Ch. D. 329.

4. P., J., & W. were made and acted as directors of a company, and subscribed for shares, but had never paid anything. They personally guaranteed a loan from a bank to the company, The bank got judgment against them, and thereupon the dircetors of the company resolved that "in order to reduce the balance at the" bank, the directors be recommended to pay for their shares, "as contemplated in the company's prospectus," and as authorized by the articles. At the same time, it was voted to sell out the property of the company and discontinue business, and this was done. P., J., & W. paid for their shares, and this sum was passed to the company's credit at the bank. On winding up, *held*, that, by this payment P., J., & W. had discharged themselves as guarantors and committed no breach of trust towards the company.—*In re Wincham Shipbuilding, Boiler, & Salt Co., Poole, Johnson, & Whyte's Case*, 9 Ch. D. 322.

5. A contributory cannot set off a debt due him from a company in voluntary liquidation against a claim for calls, whether made before or after the liquidation. *Brighton Arcade Co.* v. *Dowling*, L. R. 3 C. P. 175, criticised. *In re Whitehouse*, 9 Ch. D. 595.

6. The articles of a company provided that no person should "be eligible as director, unless he holds, as registered member in his own right, capital of the nominal value of £500." The plaintiff, a registered shareholder to that amount, mortgaged his shares, though they still stood in his name, and he was subsequently elected director. The mortgagee by mistake, as plaintiff said, subsequently had the shares transferred to his name, and the other directors refused the plaintiff a seat. *Held*, that he could have an injunction against them for excluding him, and that the article did not mean that the shares should be held in beneficial ownership.—*Pullbrook* v. *Richmond Consolidated Mining Company*, 9 Ch. D. 610.

Condition.—See Contract, 1, 2; Sale, 2.

Construction.—See Contract, 3; Seisin; Trust, 1; Will, 2, 3, 6, 11.

Contract.

1. Eight persons made an agreement to convey certain land to two of their number by an absolute deed, and that the two should sell the same in lots and hold the proceeds in trust for the eight. The defendant, in April, 1875, made a verbal offer to W., agent of the owners for the sale of the lots, for some of them. W. told him that he must purchase subject to certain conditions printed on a plan of the lands, and which W. made known to him. The last condition was to the effect that each purchaser should sign a contract embodying the conditions, the payment of a deposit, and the completion of the purchase within two months from the date of the contract. W. promised to lay the offer before the "proprietors" and soon after wrote the defendant that the "proprietors" had accepted the offer, and asking about his wishes as to the title. The next day defendant wrote in reply, saying that unless he was at liberty to build or not (referring to one of the conditions), the offer had better be reconsidered. The next day W. answered, saying that the acceptance was unconditional, and the defendant could do as he pleased about building. Soon after the defendant wrote, declining to go on. On a suit for performance, *held*, that the correspondence constituted a contract, and the provisions as to signing a formal contract was not a condition precedent, and did not suspend the concontract made. The designation of W.'s principals as the "proprietors" was sufficient to satisfy the Statute of Frauds.—*Rossiter* v. *Miller*, 3 App. Cas. 1124; s. c. 5 Ch. D. 648; 12 Am. Law Rev. 316.

2. The defendant, a builder, made a tender to do work, giving sufficiently full particulars, in the opinion of the court, to designate the conditions definitely enough. The plaintiff, an architect, answered, accepting the tender, and added that his solicitors would "have the contract ready for signature in a few days." Defendant, finding that he had made a mistake in his tender, withdrew it. *Held*, that the tender and acceptance made a contract, the document to be made by the solicitor being merely to put the contract in form. —*Lewis* v. *Brass*, 3 Q. B. D. 667.

3. A contract for building iron buildings, for a lump sum of £25,000, provided that the owners might make alterations or additions therein, allowing therefor at schedule rates; but that a written order of their engineer, authorizing the changes, should be requisite in all cases to bind them beyond the written contract, and "no allegation, by the contractors, of knowledge of or acquiescence in such alterations or additions on the part of the" owners, should be "available as equivalent to the certificate of the engineer, or in any way superseding the necessity of such certificate as the sole warrant for such alterations." No payment was legally due till the work was done;

but payments up to a certain percentage of the work done might be made on the certificate of the owner's engineer. As to castings, payment might be made to within twenty-five tons of the whole amount furnished to the time of such payment, the engineer to certify approximately the amount so furnished, from time to time, as a basis of payments; but the owners were never to be liable for more weight than was specified in the drawings making part of the contract. The contractors found it not feasible to cast certain mouldings of the weight specified, and, after stating the case to the owner, made them heavier, and the engineer, in his return certificate, returned the weight furnished, as thus increased. In an action by the contractors, for extras beyond the contract, by reason of these heavier castings, *held*, that no recovery could be had beyond the contract price; the certificate of the engineer, made with reference to the payments, did not amount to a written order authorizing alterations under the contract.—*The Tharsis Sulphur & Copper Co.* v. *M'Elroy*, 3 App. Cas. 1040.

See Sale, 1; Solicitor, 3.

Contributory.—See Company, 1, 3, 4, 5.

Conversion.—See Vendor and Purchaser.

Costs.

1. The Court of Appeals *held* that a bill for short-hand notes of proceedings on a hearing before the Vice-Chancellor could not be allowed under a general order for costs, notwithstanding that the solicitors of the parties had agreed to have the bill included.—*Ashworth* v. *Outram*, 9 Ch. D. 483.

2. Brief copies of short-hand notes for the use of counsel, on a reference, will not be allowed under an ordinary order for costs, where not specially mentioned, and in the absence of any agreement of the parties.—*Wells* v. *The Mitcham & Wimbledon District Gas Light Co.*, 4 Ex. D. 1.

See Husband and Wife; Solicitor, 2.

Covenant.

The trustees for sale of a mansion-house and land connected sold, in 1845, two pieces thereof to S., who covenanted with the trustees and their assigns not to build on the lands within a certain distance of a road leading "to the mansion-house and property belonging to the said trustees," and made certain other covenants, looking, as the trustees asserted, to the preservation of the whole property for purposes of private residences; but it was not stated that the covenants were for that purpose. The trustees afterwards sold other pieces under similar conditions. In 1854, the the trustees sold the mansion-house estate to B., and in 1870 his devisees sold it to the plaintiffs. These conveyances contained no covenants like those in the deeds to S., but contained other restrictive covenants. They did not refer to the conveyances to S., nor to any of the other conveyances. Meantime, the devisee of S. sold a part of his purchase to G., who in turn sold to the defendants. The deed to G. contained substantially the same covenants as were found in the deed of the trustees to S. The plaintiffs sued the defendants, on the original covenants, for carrying on manufacturing on their property in violation of the covenants, by which the mansion-house was injured, and the whole property diminished in value for private residences. There had been nothing said, when B. bought of the trustees or sold to the plaintiffs, about the purchasers having the benefit of the covenants made by S. with the trustees. *Held*, that the plaintiffs could not sue the defendants on the original covenants in the deeds to S., although they were the assigns of the trustees.—*Renals* v. *Cowlishaw*, 9 Ch. D. 125.

See Lease; Mortgage, 1; Settlement, 1, 3.

Creditor.—See Fraudulent Conveyance.

Criminal, Reward for Apprehension of.

G. committed forgery and absconded, and a reward was offered by the defendants. The handbills stated the facts, and that £200 reward would be paid "to any person or persons giving such information to A., superintendent of police at D., or to H., superintendent of police at W., as will lead to the apprehension of the said G." The plaintiff was chief constable at E., and a man presented himself there before him, and said, "You hold a warrant for me; I am wanted for forgery." Plaintiff asked his name, and the reply was, "You know already and hold a warrant." Plaintiff thought the man was drunk, left him alone in a private room, and examined a newspaper, where he found the advertisement, "G. wanted for forgery," and, getting the man to remove his hat, recognized him, from the description, to be G. Thereupon he telegraphed to A. at D., "Do you hold warrant for apprehension of G. for forgery?" The reply was, "I still hold warrant for G., and I should like him to be apprehended." Plaintiff then "apprehended" G., and he was convicted. *Held*, that plaintiff was not entitled to the reward, as G. surrendered himself.—*Bent* v. *Wakefield Bank*, 4 C. P. D. 1.

Damages.—See Negligence, 1; Vendor and Purchaser, 1.

Debenture Stock.

"Debenture stock [*i.e.* preferred stock] is a charge on the net profits and earnings of a trading corporation and is no more land, tenement, or hereditament, or any interest in land, tenement, or hereditament, or charge or incumbrance affecting land, tenement, or hereditament, than the share stock in such corporation is, or a bond or other debt due from a man who has got real property is." *Semble* also the same as to debentures. *Ashton* v. *Langdale*, 4 DeG. & Sm. 402; and *Chandler* v. *Howell*, 4 Ch. D. 651, overruled.—*Attree* v. *Hawe*, 9 Ch. D. 337.

Delay.—See Fraudulent Conveyance; Injunction, 1.

Director.—See Company, 2, 3, 4, 6.

Domicile.

A Frenchman came to England in 1844,

while still young, and lived there till his death in 1872. He was a shopman till 1851, when he formed a partnership with an Englishman in the French form. He married an English Protestant in 1852, in a Protestant church, and without Catholic rites, though he was a a Catholic. His wife died the next year. In 1853, he formed another partnership with an Englishman. In 1863, the partnership was renewed for ten years longer. In 1856, he married a Protestant whose father was French and mother English. They had three children, all brought up as Protestants, though the eldest, a son, was baptized in the Catholic form. For his second marriage, he got a certificate from the French consul. Beyond that, he took no step to have his marriage conform to French law. Before his first child was born, he made a will, invalid by French law, giving all his property to his wife. In 1872, he made another will, making use of provisions of English law and repugnant to French law. In the conduct of his business, the Paris branch was managed by an agent, and he only went there for visits of a few weeks at a time. There were in evidence some depositions of witnesses, that they had often heard him express an intention and a desire to return to France, and that in the Franco-German war he was patriotic and wished to join the French army. He refused to be naturalized, never leased a house for more than three years and said there were many advantages in being an alien, among them freedom from serving on the jury. *Held*, chiefly on the strength of his marriages, that he had acquired an English domicile and abandoned his domicile of origin, and his estate was to be administered without regard to the law of France.—*Doucet* v. *Geoghegan*, 9 Ch. D. 441.

Easement.—See Railway, 1.

Ecclesiastical Law.

1. The Court of Arches has no jurisdiction to suspend a clerk in orders, *ab officio et a beneficio*, for disobedience to a monition from that court, to abstain from certain illegal practices in the services of the Church. Rule to Lord Penzance, official principal of the Arches Court of Canterbury, and one Martin, to show cause why a writ should not issue to prohibit that court from enforcing such a degree of suspension against the Rev. Alexander H. Mackonochie, clerk. *Held*, by Cockburn, C. J., and Mellor, J. (Lush, J., dissenting), that the writ should issue. (Cf. *Martin* v. *Mackonochie*, L. R. 3 P. C. 409, and *Hebbert* v. *Purchas*, L. R. 4 P. C. 301.)—*Martin* v. *Mackonochie*, 3 Q. B. D. 730.

2. In a criminal suit under the Church Discipline Act (3 and 4 Vict. c. 86), the Arches Court had suspended the delinquent clerk *ab officio et a beneficio*, for six months, for certain illegal practices in the church service, and a motion was made to enforce the suspension, on the ground that the clerk had repeated the offence; and, while the case was pending, the Queen's Bench, in *Martin* v. *Mackonochie* (3 Q. B. D. 730), decided that such suspension was beyond the jurisdiction of the Arches Court. *Held*, that though the Arches Court protested against that decision, it would "hold its hand" and "decline to proceed to compulsory measures at present." (Cf. *Coombe* v. *Edwards*, L. R. 4 A. & E. 390; 2 P. D. 354. —*Coombe* v. *Edwards*, 3 P. D. 103.

Estoppel.—See Company 1; Mortgage, 1.

Evidence.

1. S., with two friends, F. and D., went to the L. railway station to see a friend off for D., on the up-train from K. to D. at 11.30 p.m. As the train for D. was coming up, S. crossed the road to the ticket-office for his friend's ticket. When he had got it, and started to return, the D. train had come in, and was stationary, on the up-track. He crossed again, this time below the train, at the L. end, so that, when he was behind it he could not see either track at the D. end of the station. As he stepped from behind the D. train, upon the down-track, an express train for K. struck and killed him. F. and D. and the friend, who remained on the side opposite the ticket-office, swore they heard no whistle, though they were very near, and D. said he saw the train and heard it rumble, but heard no whistle. Employees of the road said they heard the whistle, and the engineer of the express train said he whistled as usual, according to a rule of the road. There was a notice-board at the point where S. crossed, warning the public not to cross there, and the railway had power to prohibit crossing there. But it appears that the public disregarded the notice, and the railway never enforced the rule, but acquiesced in the violation of it. *Held*, that, on this state of facts, the case was properly left to the jury. The jury, not the court, is to pass on contradictory and conflicting evidence. Lords Hatherley, Coleridge, and Blackburn dissented, on the ground that, in the most favourable view of the evidence, there was not enough uncontradicted to entitle the plaintiff to a verdict, and, in such a case, it was for the court to decide, and direct a verdict for defendant or a nonsuit.—*The Dublin, Wicklow and Wexford Railway Co.* v. *Slattery*, 3 App. Cas. 1155.

2. The owners of the ship G. brought an action against the ship H., for damages from collision. The mate of the H. made an entry in the log, of the circumstances of the collision, at the time, and her master made a deposition, when he reached port, before the receiver of wrecks, as provided by the Merchant Shipping Act, 1854 (17 and 18 Vict. c. 104, § 448). Both the mate and the master had since died. *Held*, that the log-book and the deposition were both inadmissible in evidence.—*The Henry Coxon*, 3 P. D. 156.

3. E., who was impecunious, consented to a decree as to a sum due from him to G. Subsequently a compromise was made through their respective solicitors, by which G. agreed to accept a less sum in settlement, on the ground that E. was poor, and that his father, who was believed to have property, had refused to assist him, or to have anything to do with him. Before this compromise was signed, E's father

died. E's solicitor knew of this at the time of the signing, but said nothing about it, and repeated the statement as to E's poverty and his unfriendly relations with his father. G's solicitor knew nothing of the father's death. G., thereupon, applied to have the original degree enforced, setting up the foregoing, and averring that as he "was informed and believed," the father had died intestate, in which case E. would be entitled to property more than enough to satisfy the decree. MALINS, V. C., ordered the decree to be enforced. *Held*, that, in such a proceeding, evidence on information and belief should not have been admitted; but if the court below had admitted it, the defendant should not be allowed to object to it on appeal. The proper course was a separate action, to try the validity of the compromise, but the order of MALINS, V. C., being right in substance, it was affirmed.—*Gilbert* v. *Endean*, 9 Ch. D. 259. See DOMICILES; FELONY; NEGLIGENCE, 2.

FELONY.

A clerk of a bank absconded, March 16, and on looking over his accounts, it was thought he was a defaulter to the extent of £100, or thereabouts. Subsequently, on March 24, he wrote the bank, confessing to have taken about £8,000. Orders for his arrest were given March 26, and, two days later, a warrant was issued, and committed to a detective, on the exertions of the bank. The detective found the culprit had left England. On March 19 and 22, the relatives of the clerk had interviews with the bankers, and one partner said, "My advice is, that he should get out of the country to America or elsewhere;" and again, on the suggestion of the wife, that the clerk return and throw himself on the mercy of the bank, the partner said, "No, if he did that, we should be obliged to prosecute him; if he were abroad, I don't suppose we should trouble further for him." After that, one of the relatives met the culprit in England, and since then he could not be found. On bankruptcy proceedings against the estate of the culprit, the bank was not allowed to prove its claim of £8,000, on the ground that it had compounded the felony. *Held*, by BACON, C. J., that the claim could be proven.—*Ex parte Turquand. In re Shepherd*, 9 Ch. D. 704.

FEUDAL TENURE.

In Lower Canada, where the Crown took lands held in feudal tenure according to the law of France, all the feudal rights of the *seigneur* were extinguished, except a right of indemnity, amounting, until 1667, in the case of lands held by *roturires*, to one-fifth the value.—*Les Sœurs Dames Hospitalières de St. Joseph de L'Hôtel Dieu de Montreal* v. *Middlemiss*, 3 App. Cas. 1102.

FIXTURES.

Testator gave his wife all his "household furniture," &c., "within my dwelling-house at the time of my decease." He lived in a leasehold house, containing tenant's fixtures, as gas-brackets, &c., put up by himself as tenant. *Held*, that these could not pass.—*Finney* v. *Grice*, 10 Ch. D. 13.

FRAUDS, STATUTE OF,—See MORTGAGE, 4.

FRAUDULENT CONVEYANCE.

K., the insolvent, assigned all his property to trustees, by a deed purporting to be by K. of the first part, the trustees of the second part, and the assenting creditors of the third part. The trustees were to carry on K.'s business, and pay all costs and charges and preferred claims, and make a dividend to all the creditors who gave notice. If a dividend, so assigned to a creditor, was not called for within a certain time, the trustees were to pay it over to K. Proof of debts, to the satisfaction of the trustees, was required. The assenting creditors were to indemnity the trustees for all loss or damage to which they should become liable. Subsequently, the defendants, who were not parties to the above arrangement, got a judgment against K., and levied on a writ of *fi. fi.* on property in the hands of the above trustees. The debtor had procured the above arrangement by assignment, fearing attachments by the defendants, among other creditors. *Held*, that the transaction was fraudulent and void, under 13 Eliz. c. 5., and the defendants' levy was good.—*Spencer* v. *Slater*, 4 Q. B. D. 13.

FRAUDULENT PREFERENCE.—See COMPANY, 4.

GUARANTY.—See COMPANY, 4.

HUSBAND AND WIFE.

By the Divorce Acts (20 and 21 Vict. c. 85, and 21 and 22 Vict. c. 108), a husband is liable for certain statutable costs of his wife, when suing for a divorce. *Held*, that a wife's solicitor might sue him also at common law for extra necessary costs, as for necessaries.—*Ottaway* v. *Hamilton*, 3 Q. B. D. 393.

See PLEADING AND PRACTICE; TRUST, 2.

INFANCY.

By the Infants' Relief Act, 1874 (37 and 38 Vict. c. 62, §2), it is provided, that "no action shall be brought whereby to charge any person upon . . . any ratification, made after full age, of any promise or contract made during infancy. Defendant, on October 14, 1876, while an infant, formally offered to marry the plaintiff, and was accepted. March 8, 1877, he came of age, and the relations of the parties continued the same, as shown by affectionate letters between the two. No new promise was otherwise shown, and September 24, 1877, he broke the engagement. *Held*, that no action could be maintained.—*Coxhead* v. *Mullis*, 3 C. P. D. 439.

INJUNCTION.

1. Where the court was of opinion that the defendant was attempting to represent to the public that he was carrying on the business of which the plaintiff was proprietor, *held*, that the fact, that plaintiff had known the facts for three years before beginning suit, was no bar to his right to an injunction. It is a matter governed by the Statute of Limitations only.—*Fullwood* v. *Fullwood*, 9 Ch. D. 176.

2. A railway company contracted to purchase a piece of land of plaintiff for its road, entered and built and opened their road over it, but did not pay the price nor the interest-money on the price. In an action for specific performance, and for an injunction against running trains over the land, and for a receiver, before decree, the application for the interlocutory injunction was *held* monstrous, and refused.—*Latimer* v. *Aylesbury & Buckingham Railway Co.*, 9 Ch. D. 385.

Insurance.

1. Action, by the assignee of a life-policy, against the insurance company. The company pleaded that they had paid the money due on the policy into court, under the Trustees Relief Act; that the policy said it was "liable to be paid and made good" out of the stock and funds of the company. *Held*, that the company was a mere debtor and not a trustee, and it must pay over the money to the claimant as matter of law. *Matthew* v. *Northern Assurance Company*, 9 Ch. D. 80.

2. The assured had information that the ship insured was in great danger of becoming a total loss, and the result was that the condition of the ship was such as to have entitled him to claim as for a constructive total loss, and the ship was afterwards properly sold as in case of constructive total loss. He failed, on receiving his information, to give prompt notice of abandonment, and of a claim for constructive total loss. *Held*, that he could not recover from the insurers. The doctrine of notice of abandonment, in such a case, is part of the contract of indemnity.—*Kaltenbach* v. *Mackenzie*, 3 C. P. D. 467.

See Mortgage, 5; Taxes.

Jurisdiction.

1. Patentee of certain shells obtained an injunction against the agents of the Mikado, a foreign sovereign, against putting some of these shells on board some war ships belonging to the Mikado, and lying in an English port. The shells were made in Germany, and bought and paid for there. The Mikado applied to be admitted a defendant, and, having been made one, he applied by his agent, to have the shells delivered up to him. Granted. The Mikado did not waive his rights as sovereige by becoming a defendant.—*Vavasseur* v. *Krupp*, 9 Ch. D. 351.

2. A court of bankruptcy ought to admit a creditor to the proceedings, if he is willing to come in, and encourage him to come in, though he is not amenable to the jurisdiction of the court. *Ex parte Fletcher. In re Hart*, 9 Ch. D. 381.

See Administration; Ecclesiastical Law, 1, 2.

LAW STUDENTS' DEPARTMENT.

We continue the publication of the Law Society Examination Papers, which was discontinued during the summer months. Some of our young friends write to us that they are "lonely without them." One says "I am sure if you published them monthly and students knew it, that your circulation would increase." We propose to give an opportunity of testing this observation. We are not too modest to think that many of those spoken of often spend five dollars for a much less useful purpose than subscribing to this journal.

Examination Papers. Trin. Term, 1879.

First Intermediate.

Williams on Real Property.

1. How comes it that a lessee for a term for even a thousand years is said to have a chattel interest only?

2. What do you understand by emblements?

3. What was the writ of waste? What is the procedure now in vogue?

4. What is the effect of a conveyance in fee by a tenant in tail to which the protector to the settlement has not given his assent—what estate is vested in the grantee?

5. What were the rules in connection with descents as to persons of the half-blood at common law and under the Statute of William?

6. What do you understand by the destruction of contingent remainders? What was the mode usually adopted to prevent their destruction? Explain the efficacy of the mode?

7. Sketch the form of "uses to bar dower" prior to the statute of 1834. Why is that form now of no avail?

Smith's Manual of Equity.

1. Explain the maxim, "Equity follows the law," in regard to executed and executory trusts.

2. Explain and illustrate the maxim, "He who comes into equity must come with clean hands."

3. In what cases of mutual mistake will relief be decreed?

4. When will misrepresentation be a sufficient ground for the avoidance of an agreement? Discuss the question fully.

5. Is an agreement between solicitor and client for payment of a gross sum in lieu of costs valid?

6. Are any precautions necessary on the purchase of personal property from executors?

7. What law (as between countries where the death, domicile, and distribution of assets take place) determines priorities of creditors and the fund out of which they shall be paid?

Smith's Common Law—Con. Stat. U. C. cap. 42 & 44, and Amending Acts.

1. Under what circumstances will it be lawful forcibly to eject a person from your house? Answer as fully as you can.

2. It is said that an account stated will not support a promise to pay at a future day. Explain this fully, giving reasons for the truth of this statement.

3. In how far is a husband chargeable with goods supplied to his wife by a tradesman?

4. Define the term "*dormant partner*" and "*nominal partner*." To what extent is each liable to third persons?

5. In how far is a master responsible for an injury happening to one of his servants in consequence of the negligence of another of his servants?

6. Must the expenses of noting and protesting a dishonoured promissory note be specially declared for in order that the same may be recovered? Give the reasons for your answer.

7. Can an action be successfully brought on a verbal representation made by A as to the character of B, to the intent that B should obtain credit from C thereupon? Give the reasons for your answer.

Certificate of Fitness.

Leith's Blackstone.—Real Property Statutes.

1. Give the definition of rent. State accurately its essentials.

2. Within what period should a will be registered? What is the effect of non-registration?

3. A remainderman and a reversioner die pending the prior estate. From whom will descent be traced under the various periods?

4. What is the meaning in the statute of Victoria as to descent of the words "where the estate shall come to the intestate on the part of the father or mother?"

5. What is the meaning of recent legislation as to tenancy by the curtesy?

6. Can an action be maintained upon a bond, the condition of which is to do an act contrary to law or *malum in se*, or to do something which becomes impossible to be done?

7. What is the effect of the Statute as to the right of a widow to dower out of improvements which may have been placed upon land at times subsequent to her marriage?

8. What are the provisions of the Statute as to the mode of pleading in cases of prescription?

9. When does the right to enjoy an easement over land become absolute when the land is vested in one person for life with remainder to another in fee?

10. What proceedings must be taken, and within what periods, in order that a mechanic may have a lien upon lands upon which he has expended labour or material?

Certificate of Fitness.

Smith on Contracts—The Statute Law.

1. Give a short summary of the statutory security given to mechanics, builders, and others for work done and materials provided upon buildings, beyond the ordinary Common Law remedies.

2. To what extent is an innkeeper liable to his guest for the safety of the goods of the guest brought to the inn? Answer fully, referring to any statutory enactment relating thereto.

3. What is an escrow? State accurately its essentials, referring to any decisions affecting the same mentioned by Mr. Smith.

4. *A contract by deed requires no consideration to support it.* Give exceptions to this rule, with reasons for the same.

5. What was the decision arrived at in the leading case of *Wain* v. *Warlters* in consequence of the use of the word *agreement*, in the fourth section of the Statute of Frauds? What subsequent legislation has taken place in relation to the law as laid down in that and kindred cases?

6. Distinguish between *executed* and *executory* considerations, and explain fully the expression that an *executed* consideration must have arisen from a previous request by the person promising, in order that it may be sufficient to support the *promise*.

7. A and B agree together that B is to furnish A with the money to pay premiums, and that A will with such money insure his life for the benefit of B. Will a policy issued under such an arrangement be binding? If so, why? If not, why not?

8. A loses $100 to B at cards and accepts a bill for the amount. B discounts the bill with C, who has no notice of the way in which it was obtained, for the full amount of the bill. What remedy has C against the acceptor, and why? Refer to any Statutes affecting your answer.

9. In what respects does the liability of a dormant partner differ from that of an ordinary one after dissolution of the partnership? Explain fully.

10. Give a short sketch of the remedy provided by way of *mandamus* by which the observance of contracts may be enforced.

Taylor's Equity Jurisprudence — Pleading and Practice.

1. Distinguish between satisfaction and performance.

2. Give the rules as to ademption of a legacy by a portion.

3. What is the foundation of the equitable jurisdiction as to relieving against forfeitures and penalties? By what test must it be ascertained whether relief can or cannot be granted?

4. What constitutes an infant a ward of the Court of Chancery? What are the incidents of wardship?

5. State the position and powers of a married woman as to her real estate under the various statutes of this Province.

6. Can a woman contract with her husband? Answer fully.

7. State some circumstances apart from fraud or mistake upon which the Court will set aside an award.

8. State shortly the usual course of an administration suit.

9. In filing a creditor's bill to set aside a fraudulent conveyance, when is it necessary to file it on behalf of all creditors of the debtor? Give the foundation of the necessity.

10. If a decree is not drawn up and settled in accordance with the judgment, in what manner can an application be made to correct it (1) before entry, (2) after entry? Give the whole procedure carefully.

Smith's Mercantile Law — Common Law Pleading and Practice—Statute Law.

1. Discuss and illustrate the meaning of the maxim. "*Jus accrescendi inter mercatores locum non habet.*"

2. A & B are partners in trade, under the name and style of A & B. A bill of exchange is drawn on the firm in its usual name of A & B, and is presented to A for acceptance, and he accepts it in his own name. State accurately the effect of such acceptance. What would be the effect of A *drawing* in his own name for the purpose of the firm?

3. An agent is bound to keep a clear account and communicate the result from time to time to his employer. In how far does this rule extend to the case of an inferior or sub-agent accounting to the principal instead of to his immediate master? Answer fully.

4. State shortly the extent to which failure to properly stamp a bill of exchange at the time it is drawn affects the validity of the bill.

5. Contrast the liability of several part owners of a ship for debts contracted for expenses and repairs with that of partners.

6. State accurately the rights of an indorsee of a bill of lading (*a*) at Common Law, (*b*) and now.

7. Define the terms *average, general average* and *demurrage.*

8. What precautions must be taken in case it is desired to take security on personal property for future advances to be made to a merchant for the purpose of carrying on his business? Give reasons for your answer.

9. What powers have been given to County Court Judges with regard to interlocutory proceedings and applications in Superior Court suits? Answer fully.

10. What provisions are made for the revision of bills of costs taxed by Deputy Clerks of the Crown and Pleas?

CORRESPONDENCE.

Division Court Jurisdiction—Set-off.

To the Editor of The Canada Law Journal, *Toronto.*

Dear Sir,—I take the liberty of asking your opinion on the following question, as it is one of considerable importance to persons having business in Division Courts, and it would be advisable to have the practice uniform, if possible:—"R.," living in No. 3 Division, is sued in his own county by "A." who lives in No. 2 Division. "R." pleads set-off, and at the trial tries to put in as his set-off a claim he has against "A." which claim arose in No. 2 Division.

The objection is taken that as the cause of action, if any, on this claim of "R." against "A." arose in No. 2 Division, "R." cannot in an action in No. 3 Division put it in as a set-off.

As I understand the law of set-off, it is a right given to avoid the necessity of cross-actions, and thus avoid litigation. But if the above objection be a valid one,

the right of set-off, so far as relates to Division Courts, is in many cases only a sham.

Yours, &c.,

Law Student.

[The right to set off is founded on 2 Geo. II. cap. 22, sec. 13, whereby mutual debts between plaintiff and defendant may be set against each other. The Statute 8 Geo. II. cap. 24, provides that mutual debts may be set against each other, although they be of a different nature and provides for the mode of doing so. The right of set-off is quite as extensive in Division Courts as in the Superior Courts (see the discussion in O'Brien's D. C. Manual, as to entry of judgment for defendant on set-off, 2nd ed. p. 318).

The provisions of sec. 62, &c., of the Division Courts Act, as to the division in which suits are to be entered, does not affect the right of a debtor to set off a debt under the statutes named, and there being no restrictions either in those statutes or in the Division Courts Act, we think that, when a Division Court is once resorted to by a plaintiff for the recovery of a debt, all the right of set-off which may be exercised by a defendant in any other Court may be set up by him in whatsoever Division Court he is summoned. Sec. 92 of the D. C. Act. (O'Brien, 2nd ed. 87.) seems to bear out this view.

The general principle, as we understand it, may be thus stated: The plaintiff, being *dominus litis*, can bring his action in any one of the Courts to which access is given by the Statute. But he is not to recover anything against a defendant contrary to the equities existing between the parties. It would be contrary to "equity and good conscience" that the plaintiff should recover if the defendant has a contra account which would reduce or annihilate it; and this, quite apart from any question as to the Court in which the set-off should be sued for.—Eds. L. J.]

Compositson and Discharge.

To the Editor of The Law Journal.

Sir,—In the *Monetary Times* of July 4th, a case recently decided by the Judge of the County Court, at Halifax, is referred to, which case, it is said, amongst other things, touched on the right of an Assignee in Insolvency under the Act of 1875, to transfer the estate to the insolvent after the execution of a deed of composition and discharge, by the required proportion in number and value of the creditors, the Judge holding that the assignee had no right to transfer the estate to the insolvent, until the deed had been confirmed by *the Court*. This is said to be the first decision upon the point, for though referred to by Chief Justice Moss in *Re McFaren* v. *Chambers* in appeal, still, in that case, it was thought that the reference was to a confirmation by the creditors at the meeting held by them for the purpose of considering the deed.

If the view of the Judge at Halifax be correct, then it is clear that the wording of section 60 of the 1875 Act, is calculated to mislead, for it says "So soon as a deed of composition and discharge shall have been executed as aforesaid, it shall be the duty of the assignee to reconvey the estate to the insolvent."

And surely that seems to mean "executed" by the required proportion of the creditors; and if it means confirmed by the Court it should say so.

I think that the Legislature intended to leave it to the creditors themselves, each one having a right to be present at the creditors, meeting and explain his views, and this is reasonable, for otherwise the business of most insolvents would be gone, or materially injured by the delay, if kept out of his hands until all the time should have elapsed necessary to give all the notices, &c., attending the application to confirm a discharge by the Court.

I should like to see the question discussed in your Journal by others.

Yours, &c.,

Barrister.

[The point is one of practical importance, and worthy of discussion. We shall be glad to make room for any communication on the subject.—Ed. L. J.]

REVIEW.

The Law of Negligence: By Robert Campbell, M.A., of Lincoln's Inn, Barrister-at-Law, &c. 2nd edition. London: Stevens & Haynes, Law Publishers, Bell Yard 1878.

The first edition of Mr. Campbell's book was published in 1871, and was composed in the form of lectures for pupils. The present takes more the form of a practical essay on this important branch of the law. The subject is one of a varied and constantly changing nature, and as mercantile business, and manufactures, and science as applicable thereto, develop themselves, the law on the subject must necessarily rapidly increase in volume and importance. This edition is a decided improvement on the first, and will be found, in many ways, more useful to the practitioner, and none the less interesting to the student.

Mr. Campbell does not trouble the reader with preface or introduction, but gives, what is much more useful. a very full index.

FLOTSAM AND JETSAM.

Giants and their Tailors.—A singular case came before the judge of the Brighton County Court on the 3rd instant. The plaintiff was Mr, Ivens, a gentleman over six feet in height, and more than proportionately stout, whose gigantic proportions excited considerable interest as he stepped into the witness box. The defendants were a firm of tailors in Brighton, who had extensively advertised suits of Scotch tweed at two guineas. It appeared that Mr. Ivens requested the defendants to send some one to measure him for one of these suits; and, when the messenger arrived at his house, jocularly remarked that it would be a losing bargain. Responding in the same vein, the assistant said it would be a splendid advertisement for them, and that they made the little ones pay for the big ones. The plaintiff was then measured for the clothes, and went, as arranged, to try them on; but was met by the head of the firm, who, considerably less pleased than his assistant, said they were not accustomed to work for giants, and refused to make the suit. The plaintiff thereupon left the shop and obtained a suit elsewhere, and he now sued to obtain the difference in the prices, namely, thirteen shillings. The defence was that no contract had been made; but his Honour expressed a different opinion, and gave a verdict for the amount claimed, with costs.—*Law Journal.*

The political problems of our colonies are of the greatest interest and diversity, and it is probable that they will increase in complexity and importance. Unless the people of Victoria save themselves and us from what now appears to be imminent, Mr. Barry will precipitate questions demanding all our self-control to preserve us from the sphere of violence and passion. We have probably escaped a crisis in New Zealand; but those who have watched the recent progress of that colony believe that we have only postponed a collision of difficulties. In Canada there is less apprehension of trouble than elsewhere; but we have seen that intricate questions may arise in Canada demanding solution. In all these cases the Colonial Governors represent, or ought to represent, the best wisdom of England brought to assist in the solution of disputes, and helping forward such a solution both by freedom from temper and by fullness of knowledge. The Colonial Governor cannot, however, be better than the Colonial Office from which he derives authority and inspiration. According to Mr. Froude, the fountain of light is itself generally darkness, and although we cannot accept his lugubrious judgment on such a point as final, we must admit that cases too often arise in which Colonial Governors look to Downing Street for guidance and find none.—*The Times.*

We learn that in the administration of the estate of the late Chief Justice Harrison, there will be offered for sale the copyright of his two works, the "Municipal Manual" and the "Common Law Procedure Acts." Since the latest edition of the latter work was published, in 1870, the consolidation of the various Acts relating to Common Law Procedure has taken place; and this fact, independently of the time that has elapsed since the last edition, would make a new one now very acceptable. We hope some one of our readers may be found of sufficient enterprise to take up the work now that the opportunity is presented of acquiring the right to the labours of the late lamented Chief Justice.

Law Society of Upper Canada.

OSGOODE HALL,

TRINITY TERM, 43rd VICTORIÆ.

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

Henry Theophilus Waring Ellis.
Peter L. Palmer.
George Tate Blackstock.
Alexander Jackson.
James Alexander Williamson.
George R. Webster.
Duncan Arthur McIntyre.
Thomas W. Crothers.
Charles W. Mortimer.
Frank Egerton Hodgins.
James Morrison Glenn.
Charles Wesley Colter.
George Claxton.
Hubert L. Ebbels.
Angus John McColl.

The names are given in the order in which they appear on the Roll, and not in the order of merit.

The following gentlemen were admitted as Students and Clerks.

Graduates.

John Young Cruickshank.
Thomas Arthur Elliott,
John Campbell Ferrie Brown.
Richard Scougall Cassels.
John Walter Delaney.
Frederick William Aplin G. Haultain.
Charles Coursolles McCaul.
John D. Cameron.
Thomas P. Corcoran.
John Carruthers.
James Chisholm.
Ghent Davis.
Joseph Alexander Culham.

Matriculants of Universities.

John Franklin Palmer.
James Duncan S. C. Robertson.
William Street Servos.

Graduate.

Henry James Campbell.

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

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

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

Articled Clerks.

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

Students-at-Law.

Classics.

1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.

1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog. I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1880 { Xenophon, Anabasis. B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

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

Mathematics.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical analysis of a selected poem :—
1879.—Paradise Lost, Bb. I. and II.
1880.—Elegy in a Country Churchyard and The Traveller.
1881.—Lady of the Lake, with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek.

FRENCH.

A Paper on Grammar.
Translation from English into French Prose—
1878 and 1880 } Souvestre, Un philosophe sous les toits.
1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

or GERMAN.

A Paper on Grammar.
Musaeus, Stumme Liebe.
1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.
1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer. Die Kraniche des Ibycus.

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

INTERMEDIATE EXAMINATIONS.

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

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

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

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

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

SCHOLARSHIPS.

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

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

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

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

The Law Society Matriculation Examinations for the admission of students-at-law in the Junior Class and articled clerks will be held in January and November of each year *only*.