DIARY FOR JULY.

1 Thur...Dominion Day. Confed. of Can. 1867. Long Vacation. Last day for Revision of Rolls by Courts of Revision.

3. Sat....Quebec founded, 1608.

4. SUN..*6th Sunday after Trinity.*

5. Mond..County Court begins. Heir and Devisee sittings begin.

6. Tues..Last day for notice of appeal from Court of Revision to County Judge.

7. Wed..Col. Simcoe, Lieutenant-Governor, 1792.

10. Sat....County Court Term ends. Last day for notice of Primary Examinations.

11. SUN..*7th Sunday after Trinity.* Yacht *Foam* sunk off Niagara, 1874.

18. SUN..*8th Sunday after Trinity.*

20. Tues..Heir and Devisee sittings end.

23. Frid..Union of Upper and Lower Canada, 1840.

25. SUN...*9th Sunday after Trinity.* Battle of Lundy's Lane, 1812.

30. Frid..First English newspaper published, 1588.

CONTENTS.

THE

Canada Law Journal.

Toronto, July, 1875.

It has been held in the Circuit Court for the Eastern District of Pennsylvania that the combination of muslin and paper is patentable for use as collars, although before used for maps. The judge said it was giving new form to an old substance, and by suitable manipulation making its peculiar properties available for a use to which it had not been before applied. We observe that the *Central Law Journal* questions this decision, and we concur in the doubts as to its soundness.

The *Central Law Journal* animadverts on the reprehensible practice of certain New York publishers who seek to palm off old books as new ones. The instance in hand is that of a book republished this year under the title of "The History of Lawyers, Ancient and Modern, by William Forsyth." This is, in fact, the book called "Hortensius; Duty and Office of an Advocate," by Mr. Forsyth, first issued in 1849. The same enterprising publishers have lately reprinted the *brochure* of Sir G. Stephen, "Adventures of an Attorney in Search of Practice," accrediting it, however, to Samuel Warren.

Chief Justice McKean has been removed by the President from the high judicial office held by him in Utah Territory. He has been falling foul of the Mormon difficulty in a very undignified and acrimonious manner. His last act was to commit Brigham Young for contempt in refusing to obey his decree awarding alimony to Ann Eliza, the nineteenth wife of the prophet. The order of committal contains the following impressive recital: "And since this court

has not one rule of action where conspicuous, and another where obscure persons are concerned; and since it is a fundamental principle of the Republic that all men are equal before the law; and since this court desires to impress this great fact, this great law, upon the minds of all the people of this territory . . . therefore, it is adjudged and ordered," &c., &c.

Our judges no doubt frequently feel that they are called upon to hear arguments and give decisions on matters so trivial as to excite their disgust. But they will probably never be required to trouble their minds with a subject so weary, stale, flat and unprofitable as that on which the Chancellor of the Diocese of Lincoln lately gave judgment. The question was whether Mr. Henry Keet, Wesleyan minister, had a right to call himself "the Reverend Henry Keet" in an inscription on a tomb-stone placed over his daughter's grave in a parochial burying-ground. On this point counsel, learned in the law, were heard at length. The Chancellor held that the inscription, through the use of the questionable title, might be made the means of disseminating doctrines inconsistent with those of the Church of England. Bearing in mind the general law of the Church, the 9th of the canons of 1603, and the history of the Wesleyan Methodists, he doubted much whether the words Wesleyan Minister alone would not be unlawful. Judgment,—that the inscription must omit the objectionable word "Reverend."

A curious case recently came before the Court of Exchequer Chamber, at Dublin. The will of Edward Cook contained the following passage:—"I give and bequeath to my steward, Patrick Doran, £50 sterling, and the same to his wife, Maria Doran," and also "the house and lands of Littlefield, until I am able to live there and enjoy it myself." The testator then added—"I give and bequeath my property in the county Tipperary and the county Kilkenny to Captain Benjamin Bunbury." It was contended by the plaintiffs, claiming through Captain Bunbury, that the devise of the lands at Littlefield (which were in Tipperary), was void for uncertainty, and that Captain B. took the estate under the latter clause of the will. Evidence was given by the defendants, in explanation of the words "until I am able to live there and enjoy it myself," that the testator was a firm believer in the millennium, and was simply providing for a re-vesting of the estate in himself when he returned to earth with Christ and the saints, when he looked forward to enjoying the property again. The judges ruled that the words, even taking them to be insensible, did not affect or cut down the previously created estate.

VERDICTS OBTAINED BY TAKING AN AVERAGE.

"To be, or not to be," is becoming a question more and more frequently mooted with regard to that venerable institution denominated "Trial by Jury." Public opinion has considerably changed since the time when Thomas Erskine, on being called to the dignity of Serjeant, gave rings with the motto consisting of these three words. Suitors are awakening to the fact that, as a rule in civil courts, their interests are more likely to be protected and their rights vindicated by a judge skilled in forensic affairs than by a round dozen of their unskilled peers, captured at hap-hazard, and who come to conclusions that not unfrequently prove "a delusion, a mockery, and a snare."

How often do juries make the worse to triumph over the better cause! How often do their verdicts turn on whim, caprice, compromise! How often does one able-bodied, tenacious juror overcome his eleven empannelled fellow-subjects, more infirm of purpose, or more devoted to the trencher!

No doubt many of the blunders and miscarriages chargeable on juries are a result of the present system, which requires that twelve men shall pass upon the given issues and that *unanimously*. Were the number less, or were the majority system introduced, the anomalies and absurdities that now abound would not so frequently crop up. Some change is needed: either in the way of abolition (which most would hesitate upon) or modification (which most would advocate in principle, though as to details opinions would be variant).

Cases are now and again coming up which shew the ingenious devices made use of by the puzzled and disagreeing jurors to expedite their verdicts. One of the most ancient is given in an early volume of "Notes and Queries," extracted from an old court register, in which it is gravely recorded as follows: "The jury could not for several hours agree on their verdict, seven being inclinable to find the defendants guilty, and the others not guilty. It was therefore proposed by the foreman to put twelve shillings in a hat, and hustle most heads and tails whether guilty or not guilty. The defendants were thereupon acquitted, the chance happening in favour of not guilty." And one of the latest is that wherein the Edinburgh jury awarded £1275 damages against the *Athenæum* for an article couched in disparaging terms in a review of the "New Cabinet Atlas." The amount was arrived at by the following expedient, as described in the *Scotsman*: The jury were not unanimous, there being one gentleman who from the first declined to acquiesce in a finding giving any except nominal damages; but by the other eleven it was agreed that each should, without consulting his neighbour, write down what he considered a fair award; and that these separate sums should be added up, and that the sum total should then be divided by eleven, the product of this division to be taken as the damages to be assessed.

We see it stated that the *Athenæum* is about to move against this verdict, but upon what ground is not mentioned. The *Solicitors' Journal* instances several cases from the earlier reports, where juries have adopted modes of decision which saved them the trouble of arriving at an agreement legitimately, after fair and full discussion. But the *Journal* continues, "we have not met with any authority expressly in point as to the effect upon a verdict of recourse being made to the expedient of taking an average under such circumstances as those disclosed with reference to the Edinburgh case." Decisions, however, on this kind of short-cut are to be found in the American reports, and we shall refer to a few of the more important of these cases. We trust the Scotch judges may see their way to the same conclusions, and set aside the verdict, which is altogether exorbitant and unsatisfactory.

In *Smith* v. *Cheetham*, 3 Caines, 57, the matter came before the Court in the State of New York for the first time. The constable who attended the jury made affidavit that while the jury were in discussion he heard one of them say that one cent damages was enough; another, that six cents damages and six cents costs were enough; that he then saw at least six of the jurors take a pen and mark down, as he understood, the sum that they thought proper to give as damages; and he then understood that the whole sum should be divided by twelve, and the quotient was to be the

verdict. There was other evidence corroboratory of this. The Court held that the verdict so arrived at was void. A like result was come to in *Harvey* v. *Rickett*, 15 Johns R. 87, and in *Roberts* v. *Failis*, 1 Con. 238. So also in *Warner* v. *Robinson*, 1 Root. 194.

There was a distinction, however, made in *Dana* v. *Tucker*, 4 Johns. 487, as follows: that if the jurors previously agree to a particular mode of obtaining a verdict and abide by the contingent result, at all events, without reserving to themselves the liberty of dissenting, such a proceeding would be improper; but if the means adopted is for the sake of arriving at a reasonable measure of damages without binding the jurors by the result, it is no objection to the verdict. In that case, the jury, after deliberation, agreed unanimously to find for the plaintiff. Each juror then privately marked the sum he was inclined to give. These sums were added together, divided by twelve, and after the result of the division was known, they individually assented to that sum as their verdict. The Court thought that the verdict had not been improperly obtained, and declined to interfere. Reference may also be made to *Grinnell* v. *Phillips*, 1 Mass. R. 541, and *Cowserthwaite* v. *Jones*, 2 Dall. 55.

The latest case we have seen is the *Illinois Central R. R. Company* v. *Abell*, reported in the *Chicago Legal News*, vol. iv., p. 176. That was an action for damages. The jury differing widely on the amount, it was agreed that each man should privately write upon a slip of paper the amount to which he thought the plaintiff entitled, and place the slip in a hat. The amounts were then to be added together, the total divided by twelve, and the result was to be adopted as their verdict. The Court was of opinion that while juries may resort to a process of this sort as a mere experiment, and for the purpose of ascertaining how nearly the result may suit the views of the different jurors, yet the preliminary agreement to adopt such a result as the verdict vitiated the finding *in toto*.

CONSTITUTION OF OUR APPELLATE COURTS.

We have already incidentally referred to the present constitution of the Court of Error and Appeal, and when again speaking of it, we do so on the understanding that such a court is in existence, and for the moment ignore the important question whether it would not be better, when the Supreme Court is organised, to do away with the Court of Error and Appeal in Ontario altogether. When this is in contemplation, some other considerations would come under discussion. Some think —and there is both force and logic in what they say—that there should be but one Court of Appeal in Canada from the Superior Provincial Courts, of such strength and weight as to command the respect and confidence of all sections of the Dominion, with, of course, an ultimate resort to the Throne, and that we should not waste material in an intermediate Court of Appeal only having jurisdiction over one Province. As to the present court, we have expressed our belief that it would have been more satisfactory had it been composed of the chiefs of the three Superior Courts of Law and Equity, presided over by its own Chief Justice, the duties of the judges being appellate only. The disadvantages of the present system are many, and the belief is becoming general in the profession that it is a mistake. To the selection of the judges who have been appointed to the Court, no exception has been taken. Our remarks only apply to matters for which they are not responsible, and over which they have no control.

The very mode of constituting the court presupposed, as was undoubtedly the fact, that there were not judges enough for circuit and term work, which work was vastly increased by a number of election petitions. It is impossible to suppose that the business of the country will not gradually increase, and it is very important that the judges should be able to drive their work, and not that it should drive them, as is now too often the case. It is better to have too many judges than too few, and if three judges in each court are not enough, let there be four, or let there be four courts with three judges each; but let us have a Court of Appeal that is a Court of Appeal simply, and not a sort of court "in aid," and let it be as strong in every essential particular as is possible.

There is no lack of talent or learning in the present court; but with the exception of the Chief Justice and of the Senior Justice, there is a want of that long judicial experience that not only inspires public confidence, but is of much practical benefit. It is, moreover, an objection that a case should be tried in the first instance before one of the Justices of Appeal, then be heard by the Court in which it originated, and then go up from that court to the Court of Appeal, where, for all that the statute says to the contrary, the judge who originally tried it may again adjudicate thereon; and, in connection with this, it is an objection that the Court is not complete in itself, and that it should occasionally be necessary to call in the aid of a judge of one of the courts below, who has plenty of his own work to do, and who cannot be expected to give that time to the case he is required to hear (for the purpose of making a quorum) that it should receive. It is also an objection that the Judges of Appeal should be called away to do circuit work, and not be able to give their whole time and attention to their more legitimate duties; and if the work would thereby be made comparatively light for these judges, it is proper that those should be in the court who (other things being equal) can claim some relaxation from length of public service. In connection with this objection, it is public policy that a court of final resort should, so to speak, stand somewhat on a pedestal, above and beyond the turmoil of assize and circuit work, and the judges be in the imagination rather than actually before the suitors. Without going more into details, there is apparently no principle running through the present system, and it has a make-shift and patchwork appearance. It is not, however, to be denied that though we can now point out some defects, the country is much indebted to the Government for having, at a time when there was a pressing need of more judicial help, promptly met the difficulty, though there may be some doubt as to whether the way adopted will prove the best in the long run. Nor is it to be denied that in this transition stage of affairs, it is very difficult to say what is best to do on any given emergency.

As we have taken upon ourselves to express what is, we believe, the general opinion on this subject, we may be asked what suggestion we have to offer in the premises. We would premise that it is desirable that the Chiefs of the Superior Courts should be to a great extent relieved from circuit and chamber work. This would be possible with four judges in each court. This being provided for, let the Court of Error and Appeal be composed of a Chief Justice, being a retired chief of one of the three Superior Courts, together with the heads of those courts, with a provision that the chief of the court appealed from should not sit in a case in which he had taken part below. As this would reduce the court practically to three, it would be well to have at least one or perhaps two additional justices in appeal

who might be chosen directly from the Bench, or be retired chiefs or judges, or one of whom might be the chief of a new court spoken of hereafter. There is no well-founded objection to four judges sitting in appeal. They are not likely to be equally divided, but if so, the judgment of the Court below would of course stand; in fact, four would generally give a better result than three, in reference to the majority of all the judges concerned.

As to this suggestion of a new court, it it not original on our part, but it is though by some that it would be more desirable to have a fourth court, composed of a Chief Justice and two Puisnes, than to appoint a fourth judge to each of the present courts, on the ground that there would be a waste of judicial strength in four judges hearing and adjudicating on a case of small importance which might well be felt to a less number. On the other hand, however, it is not desirable that a court should always work up to its full strength. It is not usual in England for each of the five judges to give a judgment in any one case. Of course, if the case were very important they would do so, and if they were all agreed, an appeal would scarcely be thought advisable. With a court composed of three judges, as one must frequently and as two may sometimes be absent, it has happened that the judgment of the Court is the decision really of only one man. This is objectionable, and unsatisfactory to the suitor, and is provocative of appeals and continued litigation.

When, however, we consider this difficult subject, we must not lose sight of the fact that in addition to providing for our own Court of Appeal, we must be prepared to send some of our best men to the Supreme Court. We claim the right to send three judges there, and that one of them shall be the chief of that Court. If the Government can secure the services of the present Chief Justice of Ontario it will have done well. We have already expressed what is we believe the general opinion on that point. With regard to his coadjutors from this Province one name immediately presents itself—that of Mr. Justice Strong. Admittedly a man of great talent and learning, and a scientific lawyer, he is undoubtedly one of the best civil law jurists in Canada, and thoroughly familiar with the French language. The great advantages of these qualifications in such a position are obvious. There will be no difficulty in choosing a third man for the Supreme Court Bench.

Supposing some such scheme as has been suggested should be adopted, and that the appointments spoken of should be made to the Supreme Court, the *personnel* of the Court of Error and Appeal would be materially changed. We should still have Mr. Draper as its chief, and when he thinks well to give up work we should naturally expect to see his place filled by the present Chancellor of Ontario. The Chief Justice of the Common Pleas would of course become the Chief Justice of Ontario. It would be idle to speculate as to who would form the rest of the court, and it is not our business to suggest names.

As we understand the rule in England, when a man accepts a puisne judgeship he does so without any hope or expectation that it will be a stepping stone to a higher judicial position, and he is not to feel aggrieved that a junior on the Bench, or that a member of the bar should be apppointed as his chief on a vacancy occurring; at the same time we admit that this rule has not been strictly followed in this country. But it is equally well understood that if the public interests will be best served by the promotion of a puisne judge, the fact of his being a puisne is not to prevent his accepting the higher office. Suppose, for example, the present Chancellor were to

leave that office, the senior Vice-Chancellor would have no vested rights because he happens to hold that office; but if he were looked upon as the best available man for the position—and he has certainly established a high reputation for himself during the comparatively few years he has been on the bench—the profession would doubtless expect to see him appointed, not as a matter of promotion, but because it would be the best appointment that could be made.

We have spoken of legal matters being in a transition stage. We do not pretend to say that a better scheme could not be devised, but legal matters being in their present unsettled state, and taking men and things as we find them: it being a fact that judicial work, at least in some of the courts, is greatly in arrear: it being pretty generally acknowledged in the profession that the present constitution of the Court of Appeal is not satisfactory, for reasons entirely beyond the control of those who compose that court: it being probable that two or perhaps three judges may be taken from the Ontario Bench to be put on that of the Dominion; and finally, fusion of law and equity not being as yet in such an advanced stage as to permit of any complete scheme being laid before the public, or at least the powers that be not having, so far as we know, determined at once to grapple with such a difficult task,—we think that what has been suggested, may be of assistance in overcoming some of the existing difficulties.

LAW SOCIETY.

Easter Term.—38th Victoria.

The following is the *resumè* of the proceedings of the Benchers during this term, published by authority :—

Monday, 17th May.

The several gentlemen whose names appear in the usual lists were called to the Bar, received certificates of fitness, and were admitted as Students of the Laws.

Richard Miller, Esq., Q.C., resigned his seat as a Bencher, and his resignation was accepted. The Treasurer informed Convocation of the death of James O'Reilly, Esq., Q.C., on Saturday the 15th inst., when it was ordered that notice be given to the Benchers that an election of a Bencher in the place of James O'Reilly, Esq., Q.C., deceased, will take place on Friday, the 4th June next.

Convocation directed the return of the certificate fees paid for Mr. George Brunel.

The report of the result of the Law School Examinations was adopted.

The petition of Mr. O'Sullivan, praying to be allowed to go up for his final examination as attorney before the expiration of his term of service, was refused. The petition of Mr. P. L. Palmer, of Belleville, to be allowed to file affidavit of execution of his articles *nunc pro tunc*, allowed.

The petition of Mr. A. E. Smyth, praying to be allowed to pass his final examination in Trinity Term, although only nine months have elapsed since his second intermediate examination, allowed.

The petition of Mr. A. W. Brown, praying to be allowed the service he has had since Mr. Proudfoot was made Vice-Chancellor, although his articles were not assigned and new articles had not been entered into, was refused, the application having been made before his term of service had expired.

Mr. Hodgins gave notice of a motion for a petition to the Lieutenant-Governor in Council and the Legislature of Ontario, for an Act vesting power to admit as attorneys and barristers in Law Society, and giving them all necessary power to dispense with rules as to service, &c. when deemed desirable.

Tuesday, 18th May.

The Treasurer reported that the following gentlemen had passed the Law School Examinations, namely:

JUNIOR CLASS.

1. Trevelyan Ridout.
2. William Beairsto.
3. J. Whiteside.
4. D. H. Fletcher.
5. H. D. Gamble.

SENIOR CLASS.

1. Matthew Wilson.
2. D. E. Thomson.
3. Robert Pearson.
4. John S. Fraser.
5. W. C. Mahaffy.
6. D. W. Clendinan.
7. I. B. Clarke.
8. A. J. McColl.
9. Thomas Hodgkin.
10. A. Monkman.
11. W. M. Hall.

The report of the Examining Committee was received and adopted.

The abstract of balance sheet was laid on the table.

The report of the Finance Committee, recommending an increase of one hundred dollars to the engineer's salary, was adopted.

The application of an attorney for a remission of the fine imposed for not taking out his certificates in time, was refused.

The petition of Mr. East, to be allowed to proceed to his second intermediate and final examinations at intervals of nine months, was granted.

The memorandum of examiners as to accommodation in the lecture room, was referred to Committee on Legal Education, to report this term.

Saturday, 22nd May.

The Honourable John Hillyard Cameron was unanimously re-elected Treasurer for the ensuing year.

The Finance, Library, Legal Education, and Reporting Committees were appointed.

The Library Committee presented their annual report, which was adopted, and notice was given for Friday the fourth day of June, of motion to increase the quarterly grant for the Library by fifty dollars.

Mr. Hodgins' motion for petition to the Legislature of Ontario for an Act vesting the powers connected with the barristers and attorneys in the Law Society, and repealing all acts relating thereto, war carried, and the Treasurer and the moves appointed to carry the matter out. The Examining Committee for next term was appointed and the Examiner's fee ordered to be paid.

Mr. C. A. Brough was appointed auditor for 1875 and 1876, in the place of Mr. Rae, whose term has expired.

The Treasurer was directed to submit to the Visitors of the Society the Consolidated Rules for approval.

Friday, 4th June.

The Treasurer reported that the Consolidated Rules had been approved of and signed by all the Judges of the Courts of Queen's Bench and Common Pleas, and by the Chancellor.

Mr. B. M. Britton was unanimously elected a Bencher, to fill the place of the late James O'Reilly, Esq., Q.C.

On motion made,

Resolved, That the Benchers of the Law Society, in convocation assembled, on the occasion of the election of a member of their body as a successor to the late James O'Reilly, Esq., Q.C., desire to record the great regret felt not only by themselves, but by all the members of the profession whom they represent, at the sudden and early death of their lamented friend and brother, and to express to his widow and family their deep sympathy in the bereavement they have sustained.

That a copy of this resolution be engrossed, signed by the Treasurer and communicated to Mrs. O'Reilly.

The Treasurer laid on the table an order of the Court of Chancery, with the affidavits and papers connected therewith, by which Mr. Robert W. Parkinson was struck off the roll of Solicitors of that court.

Ordered that the Solicitor of the Law Society be instructed to apply to the Courts of Queen's Bench and Common Pleas to strike Mr. Parkinson off the

rolls of Attorneys of those courts on the above order.

A similar order was made in the case of Mr. Michael Joseph Macnamara on a rule of the Court of Chancery, ordering that he be struck off the roll of Solicitors of that court.

Standing Rule 128 was amended by making the annual appropriation of $1,000 instead of $800.

The petition of Mr. Wink, praying that he may come up for final examination for call to the Bar without passing any intermediate examinations as a student, he having been admitted as an attorney before intermediate examinations were established, was granted.

The petition of Mr. Monk, asking that his time of service from December 1870, when his articles were executed, may be allowed, notwithstanding that they were not filed until December 1871, was refused as being premature.

The letter of Messrs. Langley, Langley & Burke, on the subject of the ceiling in the Library, was referred to the Finance Committee.

A letter from J. D. Edgar, Esq., on the subject of rules under the Insolvency Act of last session, was read, and an order made that the Treasurer do communicate with the judges on the subject.

The report of the Legal Education Committee was received and adopted.

Ordered that the Secretary do communicate to the Chief Superintendent of Education that the Benchers are informed that the Senate of the University have in contemplation to make various changes in the books and subjects prescribed for matriculation, and that upon this being done, Convocation will consider the subject of assimilation.

Ordered that the Finance Committee may make any arrangements that may be deemed advisable to increase the accommodation during the examinations.

Ordered that the examiners shall have power to carry on their various examinations on such days and hours as they may consider advisable with the consent of the Legal Education Committee, due notice being given.

A memorandum of account, sent in by Mr. O'Brien, was referred to the Committee on Reporting.

J. Hillyard Cameron,
Treasurer.

SELECTIONS.

PROFESSIONAL FAITH.

Two events of unusual importance relating to professional fidelity have recently occurred—the one in England and the other in the United States. It is considered one of the sacred principles of the legal profession that matters which come under the cognizance of its members, while acting in a professional capacity, are not to be divulged or made use of in any but a professional way. A violation of this principle seems to have occurred in the case of Sir Henry James, who, as a member of the House of Commons, has initiated an inquiry into the manner in which foreign loans are introduced into England. There were undoubted abuses in the foreign loan system, but the previous professional connection of Mr. James with it rendered it exceedingly unfortunate that he should institute an attack upon it as a member of parliament. And the question has been largely discussed in English legal circles whether Mr. James has not only acted in bad taste but also in bad faith. The circumstances which suggested that he was availing himself of information received as counsel to institute a public and legislative inquiry, were these: In May, 1874, he was engaged as counsel in a suit brought against the contractors for the Paraguayan Loan No. 2. This suit involved the whole question of bringing out that loan and the method of disposing of the proceeds. Lengthy consultations occurred, at which Mr. James was present; but finally the suit was settled.

Again, on the 15th of December, 1874, he appeared as counsel before the lords justices in a matter involving the Paraguayan Loan. He insists that the precise question which he then argued was an "interlocutory motion" relating to the cross examination of witnesses; and that his only object was to urge that if his clients had not the opportunity of publicly cross examining as hostile witnesses certain persons, there would be an absolute denial of justice. The lords justices ruled against him, however. It will be seen that Sir Henry James was connected professionally in the Paraguayan Loan suit in such a way that he learned all about the secret affairs of the system; and the statement that the suit was settled, and that in another instance he was before the court on an interlocutory motion, was but a technical subterfuge. Now, by the inquiry which he caused to be instituted through the House of Commons, the very point which Mr. James, as counsel, was aiming at judicially, is being accomplished legislatively; for the witnesses summoned before the committee of the House are the very persons mentioned in the argument before the court.

It seems, further, that by a resolution of the House of Commons, passed in June, 1858, and which is now on the records of the House, it was declared: "That it is contrary to the usage, and derogatory to the dignity, of this House that any of its members should bring forward, promote or advocate, in this House, any proceeding or measure in which he may have acted or been concerned, for or in consideration of any pecuniary fee or reward." It would appear, then, that Mr. James is condemned not only by the rules of his profession, but by the rules of Parliament. And we take it that the principle is as well established in this country as it is in England, that the subject-matter of causes, in which members of the profession are engaged, should be kept secret, and that information obtained as counsel in a case should never be used in any other way or in any other capacity than professionally.

It is another principle of the legal profession that matters which are confided to its members as lawyers are never to be used to the injury of the client. No technicality can justify a lawyer in first obtaining information from a person in his professional capacity, and then using that information for the benefit of a hostile person, no matter whether the subject-matter is in litigation at the time or not. It is not necessary that there should be a suit pending, in order to protect the confidential communications of a client from betrayal at the hands of his lawyer. It is not necessary that the lawyer should even understand the full and complete nature of the difficulty between one who asks his advice and a third person; if the lawyer gives his professional word that he will not make use of the results of the interview to the advantage of the adversary, he is bound thereby, although he does not understand the precise nature of the controversy before he gives his promise.

In view of these well-established principles of professional fidelity, it is impossible to reconcile the attitude of Mr. Tracy in the Tilton-Beecher case. The circumstances of his connection with that case are too well known to need recounting here. It is stated that Mr. Tracy's brother lawyers in the case are satisfied with his course, and that they think he has committed no breach of professional faith. It will be a difficult matter for them to satisfy the profession at large, however, if they have satisfied themselves. Upon Mr. Tracy's own showing, we cannot see how he can save himself from the just reproach of the profession. Even if he did not understand the precise nature of the charge which Mr. Tilton made against Mr. Beecher, he knew that Mr. Tilton relied upon him in his professional capacity, and gave him information which he promised, in effect, not to use against him in case the parties afterward came into collision. The excuse that Mr. Tracy misunderstood the character of the charge, or that Mr. Tilton did not charge so grave an offence as he afterward charged, if that be true, cannot be availed of by Mr. Tracy. That he listened to Mr. Tilton's story, that he promised not to go against Mr. Tilton in case of a collision with Mr. Beecher, that he acted in all this professionally, bound him absolutely and by all the sacred principles of the profession not to appear subsequently againt Mr. Tilton. We can see no escape from this conclusion, and we believe it is concurred in by the great majority of the profession throughout the country.—*Albany Law Journal.*

TRADER OR NON-TRADER.

The question of trader or non-trader has not ceased to be of importance in bankruptcy law, because the insolvent laws have been merged therein. The very commencement of proceedings calls attention to this fact. Thus one of the acts of bankruptcy is that when "the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons, requiring him to pay a sum due of an amount not less than £50, the debtor, being a trader, has, for the space of seven days, or not being a trader, has, for the space of three weeks succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same:" (32 & 33 Vict. c. 71, s. 6.) In *Re Schomberg* (L. Rep. 10 Ch. A. 172; 23 W.R. 204) the Lords Justices held that the section meant that the trader must be a trader at the date of the summons. Still a trader may be retiring, or the person who traded may have retired from the business. To use the illustration of Horace: A grain is taken away from a heap of corn; it still continues a heap. Another is taken, and another, and at some time the heap ceases to exist. A difficulty of this kind was, in *Chidley* v. *Chidley*, recently presented to Lord Justice Mellish for decision, his learned brother having been detained by illness from assisting in the solution or decision of the logical *sorites*. Lord Justice Mellish remarked that it rested with the debtor to rebut the presumption of continuance: (*Heanny* v. *Boul*, 1 Rose, 356, 3 Camp. 233.) In delivering his judgment, he said that the case presented no difficulty to his mind. "A trader does not cease to be such because he stops active business for temporary purposes. It might be that trade was bad, that he wanted money, that there was a strike among the workmen. The stoppage must be with an intention to abandon the business altogether. After October 24th no more corn was purchased. September 7th was the last day for selling. On December 3rd the debtor was still in possession of the distillery. I will assume that no more servants were retained than were necessary to keep the distillery in order. He might be inconvenienced by the want of money, but his efforts to obtain it were evidence of his intention to start again. It is absurd to say that he had ceased business. Otherwise a stoppage in business would make any insolvent a non-trader." The appeal was dismissed with costs. We do not suppose that this case or *Re Schomberg* throws any doubt upon the well-established doctrine that in respect of debts contracted during the trading, a man who has retired from business may be made a bankrupt: (*E. P. Dewdney*, 15 Ves. 495; *Willoughby* v. *Thornton*, 1 Selw. N. P. 175.) In *Ex parte Griffiths, Re Mostyn* (3 D. M. & G. 170), Lord Justice Bruce held that a trader, after becoming indebted, is not to be heard to say to his creditor that the trading has been left off, if a question arises whether the debtor can or cannot be made bankrupt, any more than to say that the merger of a simple contract in a bond, or a bond in a judgment, which for many cases extinguishes without satisfying the original debt, would prevent the creditor making his debtor bankrupt on the original debt if still unsatisfied. Trading within the bankruptcy law, it may also be remarked, does not depend upon the quantity of business done, but upon the intention. The general words of the Act of 1869 are: "Persons who either for themselves, or as agents or factors for others, seek their living by buying and selling and selling or buying, and letting for hire goods or commodities, or by the workmanship or conversion of goods or commodities."—*Law Times.*

The marginal note to Clement's case, 1 Lewni C.C. 113 (1834), runs thus: "Possession in Scotland evidence of stealing in England." This is a summary of a case of horse-stealing tried at Carlisle, the evidence being that the horse was a few days afterwards found in the prisoner's possession, across the border, and it has been made the ground for much gibing, by the English, at the acquisitive propensities of their northern brethren.

CANADA REPORTS.

ONTARIO.

ELECTION CASE.

(Reported by John A. Macdonell, Esq., Barrister, and Registrar to the Chief Justice.)

North Wentworth Election Petition.

Robert Christie, *Petitioner*, v. Thomas Stock, *Respondent.*

Agency—Treating on polling day- 32 *Vict. cap.* 21, *sec.* 66—36 *Vict. cap.* 2, *sec.* 1.

About a dozen of the electors met some time before the nomination to consult as to the candidate who should run in the interest of the political party to which they belonged. By them and others the respondent was nominated, and accepted the nomination. They met occasionally to report progress, and consult as to the canvass. One of them named Sullivan, on the election day, during the hours of polling, treated some of the electors at a tavern. The respondent was present and gave a silent consent to the act, and drank with the rest.

Held, That Sullivan was an agent, and that the respondent was a party to, and personally responsible for, a corrupt practice under the above statutes.

[Hamilton—May 19, 1875. Draper, C. J., E. & A.]

The petition filed in this case was in the usual short form, containing the allegation, that Thomas Stock was both personally and by his agents, before, during and after the election, guilty of corrupt practices as defined by the Controverted Election Act of 1873, and by sec. 1 of the Election Act of 1873, whereby the return became void and the respondent incapable of being elected; with a prayer that it should be determined accordingly.

A considerable number of witnesses were examined; but as all the allegations of corrupt practices, with the exception of a very few, were subsequently withdrawn, and the whole case turned and was ultimately decided by his Lordship upon the act of one Sullivan, committed with the consent aud knowledge of the respondent, only such portions of the evidence as bear upon that are given.

John Davis Morden, being sworn, said he lived in East Flamboro', and worked in a saw mill in the village of Carlisle. Polling day was the 18th of January last. He was at James Davidson's tavern at Carlisle between two and three o'clock. Saw Mr. Stock there, and heard him call to the crowd to drink; fully thirty persons were present. He went into the City Hotel (Davidson's); witness also went in. Stock said, "Come in and drink, boys." It was beer mostly they drank. Davidson put it into the sitting-room through a small window; the bar was on the other side of the partition. William Valleck was there and William Ashbaugh, Thomas Attridge, Zimmerman and others. Cross-examined by Robertson—He was not a voter; they wanted him to vote; he heard Stock speak the words; he took a cigar; Ashbaugh and Zimmerman were, he was told, electors; was certain it was on the polling day, and that whiskey was drunk as well as beer.

William Valleck, sworn,—Lives near Carlisle, and was at Davidson's tavern there on the polling day between two and three p.m. Saw Mr. Stock drinking beer in the sitting-room at Davidson's; about thirty others were with him. Saw him go in and a lot followed him, amongst whom was witness. Beer and whiskey were drank; he was there half an hour but took nothing. Stock was standing by the place there while the liquor was passed. Stock drank first. Cross-examined by Robertson—He was not an elector. William Ashbaugh, Bill Looney, and Zimmerman were there.

James Sullivan, sworn,—Lives half-a-mile out of Carlisle in the North Riding. He was a member of Stock's committee. Met at Davidson's. George Gaskill was chairman. William Edgar, Edward Vipper, John Gallagher, and Frederick Looney were members of it. The committee was formed for this election. They met after Mr. Stock accepted the nomination. Never saw Mr. Stock at any of the meetings. At the first meeting about twelve met. Stock was there—(this was previous to his candidature). No chairman was appointed. The object was to organize. It was settled then they were to canvass. They got the voters' lists afterwards. Stock was at no meeting afterwards. They got reports. In East Flamboro' thought they would have a majority of 132 or 133. Meetings were without formal summons; one told another to come. At the close of this meeting they adjourned to another day, and so from time to time. He canvassed, but not with Stock. He had a voters' list, but did not remember from whom he got it. It was printed. He saw Mr. Stock at Davidson's at Carlisle, just as he drove up. He drank at Davidson's in the room already spoken of. It was his (witness') treat. Stock said, "Boys, this is the first time I came to Carlisle I dare not treat you." He (witness) said he would treat. Stock took beer. There was a crowd present. He handed in $1. Meant to get his change afterwards, but never asked for it. He meant to expend twenty or twenty-five cents, no more. He went into Davidson's through the front door. The window was small. He supposed people were drinking more or less. Before the meeting at Carlisle there had been one at Dundas, when it was un-

derstood Stock was to be supported. Then, and three weeks before the polling, there was another meeting at Carlisle, at which Stock was present, and a canvass was agreed on. The last meeting at Davidson's was on the polling day.

Cross-examined,—Stock had nothing to do with the first meeting; he was present at it. No committee was formed then. Stock had then made up his mind, and accepted the nomination. There was no definite understanding that they who met were accepted by Stock as his committee. When they had received the acceptance of Stock, they talked together as to what should be done, as to voters' lists, &c., both out of doors and in different places, but had no regular meetings. Knows Stock well. When he meets his friends he makes a habit of treating. Politics made no difference; but after the election Stock said he would treat "Clear Grits" no more. Was sure that at Davidson's, on polling day, Stock did not invite the crowd in, as Morden had sworn. He was at Davidson's not more than a few minutes. Kept no minutes of committee proceedings, &c.

Re-examined,—There was no other committee organization than that he had described. He was at all the meetings. We met at different times and places to compare notes, and to discuss how we were getting on.

William Edgar, sworn,—Was not at the Dundas meeting, but was at the first Carlisle meeting. It was before the nomination. A number were there, perhaps a dozen. We met by mutual agreement. Stock's friends met to arrange matters for his support; they were together two hours. Stock was there; he said he hoped no one would do anything to avoid the election or that should be considered bribery. There was no talk of money at that meeting. They looked over the voters' list, making an estimate of voters for Stock. He was at several such meetings, and spoke to—*i.e.* canvassed—several who had previously voted with the Conservative party. He canvassed once with Stock. Voted at the Carlisle polling place; the poll was adjourned a short time about twelve o'clock. During this time Gallagher paid for a treat for four of them at Davidson's. Gallagher was present at the first Carlisle meeting. The persons who met at Carlisle formed the only organization in support of Stock. Davidson attended no meeting of this committee to his knowledge.

Cross-examined,—Before he parted with us, Stock said he hoped none of us would do anything to avoid the election; this was addressed to those present.

James Davidson, sworn,—Keeps a hotel at Carlisle. Supported Mr. Stock; was not a committee man. There were committee meetings, three or four; Stock was at one. He sold liquor to persons on the polling day, but not to Stock—he got none, paid for none. Stock was not in Carlisle at three o'clock. Sullivan treated soon after Stock came; it was before the poll closed, and Stock went away almost directly afterwards.

Cross-examined,—Others all round were selling liquor.

Thomas Stock, the respondent, sworn,—Heard Morden's evidence. It is untrue; did not wave his hand and ask people to drink. Thinks it was before he accepted the nomination that the meeting spoken of by Sullivan and Edgar took place, though it might have been a few days later. There was no formal meeting, only a consultation between his friends, and no committee was then formed; no plan of action was resolved on; eight or twelve persons were present. The understood purpose of the meeting was to advance the interests of their political party. After that meeting he had no information of the formation of any committee. Never treated with Sullivan or Edgar, as members of any committee.

Cross-examined,—He is well acquainted in that part of the country. Counted on getting the assistance of the members of the Conservative Association. Till he accepted the nomination he did nothing to promote his election. He consented to become a candidate at a meeting held at Dundas; cannot fix the date of that meeting. Was at the first meeting at Carlisle for the purpose of helping the cause, and was relying on the assistance of those present. Heard both Edgar and Sullivan give their evidence. Did nothing further to organize the work of the election than he has already stated. At Davidson's tavern, in Carlisle, he never beckoned with his hand, or asked people in to drink. He may have said that some of them must treat him as he could not treat them, but if so, it was said in a joke.

Bethune for the petitioner. The treating on the polling day, at Davidson's, was clearly a violation of the law. It was proved, and not contradicted, that Sullivan treated several with whiskey and beer; that Stock was present and a consenting party to such infringement of the law, for he partook of the liquor. The first question was, had Morden and Valleck told the truth? They agreed substantially that Stock treated. This is opposed by the respondent, who denies it, and

by Sullivan, who says he was there when Stock arrived, and did not hear Stock invite. The witnesses on the affirmative are not impeached on general character, nor is any motive suggested. Much reliance cannot be placed on the respondent's account of the proceedings, for he must have been under considerable excitement or he would not have countenanced any violation of the law, or joined in it. Under subsec. 2 of sec. 3, 36 Vict., cap. 2, if the candidate be a consenting party to a breach of the law, agency need not be proved. It is proved that Sullivan committed a breach of the law, and admitted that respondent consented to the act. He also relied upon the fact, in proof of Sullivan's agency, that it was proved by the evidence of Edgar, that a caution was given by the respondent to those present at the Carlisle meeting to do nothing to avoid the election, thus showing that he himself considered he would be responsible for their illegal acts. It was also proved that Sullivan had canvassed for the respondent.

Robertson, Q.C., for the respondent, contended that the evidence of Morden and Valleck did not agree, Valleck saying he did not hear Stock invite the crowd to drink, Morden asserting that he had. He also dwelt upon the fact that whereas a large number of persons had been present, many of them voters and known to the petitioner, none had been called to testify to the fact except two young and irresponsible persons; that the respondent did nothing but partake of refreshment, and is not brought by that act within the definition of a corrupt practice; that there was no proof of Sullivan's being an agent; that, in fact, he was not an agent, nor was he a member of the Conservative Association, by whom the respondent was brought out; nor was there any charge in the particulars of Sullivan's being guilty of a breach of sec. 66.

Draper, C. J., E. & A. In the interval between the adjournment of the Court yesterday evening and the meeting this morning, I carefully read and considered the whole evidence. The result at which I arrived in regard to the acts of the respondent and others on the polling day and during the hours appointed for taking the polls at Davidson's hotel in the village of Carlisle, rendered it unnecessary, in my opinion, to determine any other of the charges advanced for the purpose of avoiding the election. My finding and my report to the Speaker will be limited to that one matter.

It will be convenient to begin by referring to the statutory provisions on which the charge of corrupt practices is founded. They are contained in the Ontario Statutes 32 Vict. cap. 21, sec. 66; 36 Vict. cap. 2, secs. 1 and 3, sub-secs. 1 and 2.

The first of these enactments is: "Every hotel, tavern, and shop in which spirituous or fermented liquors or drinks are ordinarily sold, shall be closed during the day appointed for polling in the wards or municipalities in which the polls are held, and no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period under a penalty of $100 in every such case."

2nd. "'Corrupt practices' or 'corrupt practice' shall mean bribery, treating and undue influence or any of such offences as defined by this or any other act of the Legislature or recognized by the common law of the Parliament of England, also any violation of the 46th, 61st and 71st secs. of the Election Law of 1868, *and any violation of the 66th section of such last mentioned act during the hours appointed for polling.*"

3rd. "When it is found, upon the report of a judge upon an election petition, that any corrupt practice has been committed by any candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void;" and further, when it has in like manner been found "that any corrupt practice has been committed by or with the actual knowledge or consent of any candidate at an election, in addition to his election, if he has been elected, being void, he shall, during the eight years next after the date of his being so found guilty, be incapable of being elected," &c., &c.

It will be seen, therefore, that the first provision above stated prohibits certain things, and subjects the persons who act contrary to the prohibition to a penalty of $100 in every such case. The second, among other things, makes things prohibited corrupt practices; and the third, in its first branch, avoids the election of a candidate found guilty of such corrupt practice, and, by the second branch, superadds a very severe personal disqualification.

The question I have to determine is, whether the respondent is guilty to the full extent, so as to be unseated and disqualified, or so far only as to be unseated, and this question is to be disposed of on the evidence taken on the trial.

Now, it is not disputed that the 66th section above quoted was entirely set at naught in both particulars. Davidson's hotel was not kept closed during the day appointed for polling, and

whiskey and beer were both sold and given in that hotel within the limits of Carlisle. Davidson's evidence proves the house not altogether open, for there was no access proved to exist directly from the street into the bar room ; but entrance from the street into the dining room was proved, and spirituous liquors and beer were passed from the bar into the dining room. Then it was proved by Sullivan that, being outside the hotel, he saw respondent drive up; that respondent, addressing Sullivan or the people assembled, said something to this effect—"Boys, this is the first time I came to Carlisle when I dare not treat, and some one will have to treat me ;" and Sullivan said he would treat, and, with respondent, went into the house, followed by a number of persons, variously estimated at from 30 to 50. Several of them drank, the respondent taking a glass of beer.

Surely no one can doubt that these facts constituted a breach of sec. 66, and under the subsequent act of the Legislature such breach was a corrupt practice. The respondent's attention had evidently been attracted previously to the law, which occasioned him to say he *dared not treat*, and this makes it the more remarkable that he should have so entirely overlooked or forgotten the prohibitory enactment as to having certain houses closed, and as to the sale and gift of liquors, &c. In reality, he acted like one who did not know that the law required that the house should be kept closed, and that liquors should not be sold by the tavern keeper or given away by Sullivan or any other purchaser while the polling was in progress. I am compelled to attribute knowledge of the law to him, nor can I avoid the conclusion that he was a participant in its breach. He went into that house in order to accept a treat which his own remark shews he did not imagine would be limited to himself, and which was not so limited.

The whole evidence may be thus summarised. About a dozen of the electors of North Wentworth met together some time before the election for North Wentworth to consult as to their course, they all being of similar political views. By them and others the respondent was nominated, and ultimately accepted the nomination. James Sullivan was one of their body. There was but slight evidence given of their proceedings until the polling day. It appeared that they were not personally summoned to meet—did not keep minutes of their proceedings, appointed no chairman—but as they met one another they agreed to meet and adjourn their meetings from time to time ; and it was argued, on these and similar grounds, that they did not constitute a committee—but there is no magic in that word. These parties united together for the common purpose of procuring respondent's election : they had some organization ; they canvassed electors, procured voters' lists, got reports on which they estimated their chances of success. They are the parties, so far as appears, whose nomination the respondent accepted and acted upon; and if they did not style themselves a committee or committees, they seemed to have assumed the functions which usually devolve upon such bodies. Mr. Sullivan appears to have been an energetic member, under whatever name, in supporting the repond ent. It is he who, in the respondent's presence, gives spirituous liquors and beer to some of the electors who were assembled on the polling day as respondent's friends, the respondent being present, with his silent consent and undeniable knowledge.

This was a corrupt practice by the express language of one of the statutes. It was committed, as I conclude, to help the respondent's election by one of his known supporters, and it was concurred in by the respondent, and, as I am willing to think, in forgetfulness, at the moment, of the law.

I do not found my conclusion on the question whether the respondent actually did drink any of the liquor or beer given by Sullivan, who bought from Davidson. But he was one of those who more or less actively concurred in a corrupt practice. He joined in going into the house which the law directed should be kept closed ; he joined in accepting beer as a treat, or in other words as a gift—in a literal as well as substantial violation of the law, with knowledge of the fact and assenting thereto. It is not as if the question turned on a violation of sec. 66, when he was prosecuted for the pecuniary penalty, and might say he was not within the law, neither having sold nor given. Until those acts were declared a corrupt practice the election was not avoided, but since that declaration the effect of the 66th section is extended. The concurrence in the commission of the prohibited act makes the candidate responsible fo the newly imposed consequence.

I must report to the Speaker accordingly.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR AUGUST, SEPTEMBER, AND OCTOBER, 1874.

From the American Law Review.

Account.—*See* Bill in Equity.

Acknowledgment.—*See* Will, 4.

Action.

The plaintiff employed the defendant to purchase a vessel as cheaply as he could. The owner of the vessel had agreed with his broker to allow him all in excess of £8,500 obtained for the vessel. The defendant, being aware of this, purchased the vessel for £9,250, and by agreement with said broker kept £225 for himself. The plaintiff discovered the transaction, and brought an action for money had and received against the defendant for the £225. *Held*, that the action would lie.—*Morison* v. *Thompson*, L. R. 9 Q. B. 480.

See Judgment, 1.

Adulteration.

A person entered the appellant's shop and asked for green tea. The appellant sold him tea which upon analysis proved to be faced with gypsum and prussian blue. It appeared that tea imported from China as green tea, and known as such to the trade, is faced as above, and that tea not faced is imported from Japan, and is not generally known as green tea; but this is not generally known to the public. The tea sold as above was faced in China. *Held* (by Cockburn, C. J., and Blackburn and Archibald, JJ.—Quain, J., dissenting), that the appellant was guilty of selling adulterated tea as unadulterated. *Roberts* v. *Egerton*, L. R. 9 Q. B. 494.

Adverse Possession.

A testator by will dated 1824 devised all his estates and all other his estates of which he might be possessed at the time of his death to his wife for life, with remainder over. He purchased a freehold estate after the date of his will. After his death his widow entered into possession of all of the estates of which he died possessed, believing she was entitled so to do under the will; and she continued in possession more than twenty years. *Held*, that she had acquired title by adverse possession.—*Paine* v. *Jones*, L. R. 18 Eq. 320.

See Conditional Limitation.

Agency.—*See* Evidence, 2; Principal and Agent.

Agreement.—*See* Frauds, Statute of.

Alien.—*See* Jurisdiction.

Appropriation.—*See* Bills and Notes.

Assignment.—*See* Bill of Lading, 2.

Assumpsit.—*See* Action.

Attorney, Warrant of.—*See* Judgment, 2.

Attornment.—*See* Distress.

Average.—*See* Insurance, 1.

Bank.—*See* Check.

Bankruptcy.

A London draper sold the furniture in his house and shop, and hired it back at a weekly rent. The draper became bankrupt. *Held*, that the furniture was in the order and disposition of the draper with consent of its owner, and passed to the creditors.—*Ex parte Lovering. In re Jones*, L. R. 9 Ch. 621.

See Marshalling Assets; Partnership, 2.

Bequest.—*See* Legacy; Will, 6.

Bill in Equity.

In a bill filed by a principal against his agent, praying an account, an item of damages occasioned by the negligence of the agent in disobeying the instructions of his principal cannot be introduced.—*Great Western Insurance Co.* v. *Cunliffe*, L. R. 9 Ch. 525.

Bills and Notes.

1. A. drew bills in Brazil on B, in England, and sold the drafts to the plaintiff, and then sent remittances to B. to cover the bills. B. refused to accept the bills, and the plaintiff thereupon filed a bill praying that said remittances should be applied to discharging said bills. Bill dismissed.—*Vaughan* v. *Halliday*, L. R. 9 Ch. 561.

2. The holder of a bill protested for non-payment by the acceptor, notified the drawer that the bill had been "duly presented for payment and returned dishonoured," but did not state that the bill had been protested by a notary. *Held*, that the notice of dishonour was sufficient. *In re Lowenthal*, L. R. 9 Ch. 591.

See Check; Pleading.

Captain.—*See* Ship.

Carrier.

Goods were sent by the defendants' railway under a special contract, which described them as being carried at "owner's risk." Part of the goods were delayed on the journey and damaged in consequence of the negligence of the defendants' servants. *Held*, that the defendants were liable for said damage.—*D'Arc* v. *London and Northwestern Railway Co.*, L. R. 9 C. P. 325.

Check.

A. drew a check in London on a bank at Jersey, payable to B. B. received the check in the afternoon of Jan. 27, 1873, and the next day paid it to his account at his banker's in London, who, having no agent at Jersey, forwarded the check to the Jersey bank demanding payment. In due course of post the check would arrive at Jersey Jan. 29, and the London bank would receive a remittance on Jan. 31. On Feb. 7, the check was returned unpaid, with the words, "Refer to drawer." The Jersey bank stopped payment Feb. 4, at which time A. had sufficient funds in the

bank to pay the check. By custom of London bankers, a foreign check is sent direct to the banker upon whom it is drawn if the London banker has no agent at the place where the check is payable. Checks drawn on bankers at Jersey are considered foreign checks. *Held*, that there had been no such laches on the part of B. as to make the check his own.—*Heywood* v. *Pickering*, L. R. 9 Q. B. 428.

Common Carrier.—*See* Carrier.

Company.—*See* Mutual Insurance Company; Priority.

Condition.—*See* Vendor and Purchaser, 2.

Conditional Gift.—*See* Legacy, 1.

Conditional Limitation.

A testator devised an estate, in trust for his niece for life, remainder to the use of her first and other sons successively in tail male, with a proviso that so soon as any person should become entitled in possession after the death of said niece, such person should forthwith take the testator's name and arms; and in case of neglect so to do for twelve months, then such person's estate should cease, and the testator's estate should go to the person next entitled in remainder under the will. A tenant in tail remained in possession over twenty years without taking the testator's name and arms, and on his death the next remainder-man failed to comply with said requirements through ignorance of his rights under the will. *Held*, that the remainder-man's estate was forfeited; also that the tenant in tail had not acquired title by adverse possession under 3 & 4 Will. c. 27, § 4.—*Astley* v. *Earl of Essex*, L. R. 18 Eq. 290.

Contract.

The defendant agreed to sell the plaintiff, at a certain price per ton, two hundred tons of potatoes grown on the defendant's land. The defendant planted land amply sufficient to grow more than the two hundred tons in an average year, but the blight appeared and the defendant could deliver but eighty tons. The plaintiff brought an action for non-delivery of one hundred and twenty tons of the potatoes. *Held*, that as the contract was to deliver a specific crop of potatoes from a specific piece of land, there was an implied condition that if delivery became impossible owing to the potatoes perishing without the defendant's fault, the defendant should be excused. Judgment for defendant.—*Howell* v. *Coupland*, L. R. 9 Q. B. 464.

Conversion of Realty into Personalty.

Trustees held certain real estate in trust for two persons, one an infant, as tenants in common in tail, with cross remainders between them. A suit was instituted by the trustees against the *cestuis que trust* for administration of the trusts, and a decree made with consent of the adult defendant that the estate should be sold. Sale was accordingly made, the purchase-money paid into court, and half of the money subsequently paid to the adult. The infant died without issue. The adult then barred his estate tail, and claimed to be entitled absolutely to both moieties of the fund. *Held*, that the moiety of the fund in court went to the legal representative of the infant.—*Steed* v. *Preece*, L. R. 18 Eq. 192.

Copyright.

H. wrote and published a novel, which he afterward dramatized. H. assigned the drama to the plaintiff, but it was never published or represented on the stage. G. also dramatized the novel in ignorance of H.'s dramatization, and assigned his drama to the defendant, who represented it on the stage. *Held*, that the defendant was not liable for representing G.'s drama. Two parties may dramatize the same novel.—*Toole* v. *Young*, L. R. 9 Q. B. 523.

Covenant.—*See* Easement; Landlord and Tenant.

Creditor.—*See* Elegit.

Criminal Law.—*See* Malicious Injury.

Damages.

The plaintiffs contracted to furnish a Russian railway company 1000 waggons by a certain day, with a penalty of two roubles per waggon for each day's delay in delivering them. The defendants contracted to furnish the plaintiffs wheels according to tracings, and were informed that the wheels were wanted to complete waggons which the plaintiffs were bound to deliver a Russian company under penalties, but neither the amount of the penalties nor the day of delivery were mentioned. The wheels were not delivered, and the penalties were incurred, but the company remitted one-half the penalties, and the plaintiffs forfeited £100. The jury found the damages at £100. *Held*, that the jury might reasonably assess the damages at the above sum. It seems that the penalties incurred by the plaintiffs could not be recovered as such from the defendants.—*Elbinger Actien-Gesellschafft* v. *Armstrong*, L. R. 9 Q. B. 473.

Defamation.

An untrue statement disparaging a man's goods, published without lawful occasion and causing him special damage, is actionable.—*Western Counties Manure Co.* v. *Lawes Chemical Co.*, L. R. 9 Ex. 218.

Devastavit.—*See* Legacy, 3.

Devise.—*See* Adverse Possession; Interest; Legacy; Will, 6.

Disseisin.—*See* Adverse Possession; Conditional Limitation.

Distress.

Two tenants in common mortgaged an estate which they held as tenants in common, to secure a debt which they jointly and severally covenanted to pay, and they separately attorned to the mortgagee a portion of the estate jointly occupied by them as partners. *Held*, that the mortgagee could not distrain upon the

partnership property for rent due from the portion of said estate jointly occupied by the partners.—*Ex. parte Parke. In re Potter*, L. R. 18 Eq. 381.

Drama.—*See* Copyright.

Easement.

A mortgagor and mortgagee (the defendant) united in a conveyance of the mortgaged land to the plaintiff. The deed included the right to pass with or without horses and carriages along the roads delineated on the plan. The defendant covenanted that he had not done, or been party or privy to, anything whereby the premises might be impeached, affected, or incumbered in title, estate, or otherwise. The defendant and the mortgagor had united in a previous deed, wherein the latter covenanted to make the above road of a width of not less than forty feet throughout its entire length; and the proviso followed that it should be lawful for the grantee to erect and maintain a porte-cochère or projection extending over the foot-pavement of the above road, provided the plan thereof be submitted to said mortgagor and approved of by him. A porte-cochère was built encroaching two feet beyond the curb-stone into the road, leaving a clear space of 24 feet 8 inches of carriageway. *Held*, that the defendant was party to the last-mentioned deed, but that there was no interference with the easement granted to the plaintiff.—*Clifford* v. *Hoare*, L. R. 9 C. P. 362.

Election.—*See* Libel.

Elegit.

A judgment creditor sued out an *elegit*, but was unable to obtain execution, as the legal estate was in trustees, and the defendants' interest was subject to several mortgages, under one of which a mortgagee was in possession. The Court declared that the creditor was not bound to redeem the prior incumbrances; that he was not entitled to foreclosure; but that he was entitled to equitable execution, and consequently to have the property sold and a receiver appointed without prejudice to the rights of prior incumbrancers, and that the receiver must not interfere with any prior incumbrancer in possession.—*Wells* v. *Kilpin*, L. R. 18 Eq. 298.

Equitable Execution.—*See* Elegit.

Equity.—*See* Injunction.

Evidence.

1. The prisoner attempted to obtain an advance of money on a ring which he falsely represented to be a diamond ring. Evidence was admitted that the prisoner had previously obtained money on the pledge of a chain which he had falsely represented to be gold, and had endeavoured to obtain money upon the pledge of a cluster ring which he falsely had represented to be a diamond ring. The cluster ring was not produced. *Held*, that the evidence was properly admitted.—*The Queen* v. *Francis*, L. R. 2 C. C. 128.

2. In an action against a railway company, it was proved that on the 17th of July, the plaintiff sent a sum of money from one station on the railway to the U. station on the same, directed to a clerk of the plaintiff; that the money was not delivered, and that on said day a porter in the company's service at the U. station disappeared. H., a superintendent of police, was then called on behalf of the plaintiff, and testified, under objection by the company, that in consequence of a communication he went to the station-master at U. on the 20th of July, and that the station-master told him that the parcel porter had absconded from the service, that a money parcel was missing, and that he, the station-master, suspected the porter had taken it; and that the station-master requested him, the superintendent, to make inquiries about the porter. *Held*, that as it was within the scope of the station-master's authority to employ the police to arrest said porter, the above evidence was admissible.—*Kirkstall Brewery Co.* v. *Furness Railway Co.*, L. R. 9 Q. B. 469.

See Negligence; Nuisance.

Executors and Administrators.—*See* Gift.

False Representation.—*See* Defamation; Evidence, 1.

Foreign Contract.—*See* Jurisdiction.

Forfeiture.—*See* Conditional Limitation.

Fraud.—*See* Evidence, 1; Mutual Insurance Company; Principal and Agent, 3.

Frauds, Statute of.

1. An agreement for the sale of a vessel was drawn up and presented to the plaintiff, who made certain interlineations therein, and then signed it. The interlineations were subsequently struck out at the suggestion of the owners' broker, who then forwarded the agreement to the owners. The owners made further interlineations, to which the plaintiff assented, and then the owners signed the agreement. *Held*, that evidence that the plaintiff had assented to the striking out of his interlineations and the insertion of the owners' interlineations after his signature, was admissible, notwithstanding the Statute to Frauds, as said evidence was not offered of alter an agreement already made between the parties, but merely to show what the condition of the document was when it became an agreement between them.—*Stewart* v. *Eddowes*, L. R. 9 C. P. 311.

2. L. was the chairman of a board of health, which had constructed a sewer, and given notice to the owners of houses near the sewer to connect their drains with the sewer. The owners had not obeyed said notice. M., who had constructed said sewer, was about to withdraw his carts and building materials, when L. said to him, "What objection have you to making the connections?" M. answered, "None, if you or the board will order the work or become responsible for the payment." L. replied, "Go on, M., and do the work, and I will see you paid." *Held*, that there was evidence to go to the jury, on the question whether L. had by his words rendered himself personally liable. The above words

did not necessarily constitute a promise to pay the debt of another within the Statute of Frauds.—*Lakeman* v. *Mountstephen*, L. R. 7 H. L. 17.

GIFT.

B.'s step-mother lived with him and paid £212 per quarter for board and lodging. B. borrowed £1100 of her, and it was agreed that the loan should be repaid by quarterly deductions of £100 from the sum paid for board. Deductions were made accordingly for the first two quarters, after which the step-mother refused to make further deductions, and paid in full quarterly for four years, after which she died, leaving B. her executor. *Held*, that B.'s debt was released at law by his appointment as executor; also that the intention to give B. £900 was completed by her payment of nine instalments of £100 each.—*Strong* v. *Bird*, L. R. 18 Eq. 315.

HIGHWAY.—*See* PRINCIPAL AND AGENT.

HUSBAND AND WIFE.—*See* MARSHALLING ASSETS.

INJUNCTION.

Where an injunction is sought to restrain an intended act, it must be shown that such act will inevitably, or with very great probability, violate a right of the plaintiff.—*Pattison* v. *Gilford*, L. R. 18 Eq. 259.

See LICENSE.

INSANITY.—*See* PARTNERSHIP, 1.

INSURANCE.

1. Sugars were insured in London for a voyage to Holland. The insurance was "to cover only the risks excepted by the clause 'warranted free from particular average unless the vessel be stranded, sunk, or burnt;' to pay all claims and losses on Dutch terms and according to statement made up by official dispacheur in Holland." The sugar was already insured in Holland. The vessel carrying the sugar took the ground under circumstances which would amount to a stranding according to English but not according to Dutch law. A statement was made by a dispacheur in Holland, showing a considerable sum to be due from the insurance company. *Held*, that the English policy must be construed as if it had stood alone, as the Dutch policy was not incorporated in it; but that the insurance company was bound under the policy to pay said sum stated by the dispacheur to be due.—*Hendricks* v. *Australasian Insurance Co.*, L. R. 9 C. P. 460.

2. The plaintiff insured silks "at and from Japan and [or] Shanghai to Marseilles and [or] Leghorn and [or] London *via* Marseilles and [or] Southampton, and whilst remaining there for transit, and in the good ship called the ——— steamers or steamer per overland, or *via* Suez Canal." The perils insured against included arrests, restraints, and detainments of all kings, princes, and people of what nation, condition, or quality soever, and all other perils, losses, and misfortunes that should come to the detriment of said goods. The policy contained a memorandum that it was agreed that said goods should be shipped by the M. or certain other steamers only. Goods were never in the ordinary course of business carried to London *via* Marseilles except by M. steamers which stopped at Marseilles, and the M. Steamer Company always sent such goods overland through France and thence to London, and this was well known among underwriters. Said silks were transmitted by the M. steamers from Shanghai to Marseilles, and thence through France *via* Paris. In Paris the goods were detained in consequence of the city being besieged and surrounded by the Germans. After the silks had been detained a month the plaintiff gave notice of abandonment to the underwriter. *Held*, that the policy covered the whole journey from Shanghai to London, including the overland transit through France; and that said detention in Paris was in consequence of a "restraint of princes," and that the plaintiff was entitled to abandon and recover as for a total loss.—*Rodocanachi* v. *Elliott*, L. R. 9 C. P. (Ex. Ch.) 518; s. c. L. R. 8 C. P. 649; 8 Am. Law Rev. 542.

3. A vessel was chartered to D. by a charter-party providing that freight should be paid on unloading and right delivery of cargo at the rate of 42s. per ton on the quantity delivered, and providing further that said freight was to be paid one-half cash on signing bills of lading less four months interest at bank rate, remainder on right delivery of the cargo. The owner insured his freight, and D. insured the cargo at the increased value by prepayment of freight. The vessel was wrecked and half the cargo recovered. The owner claimed from his insurer the unpaid half of his freight. *Held* (by COCKBURN, C. J., MELLOR, J., and AMPHLETT, B.,—CLEASBY and POLLOCK, BB., dissenting), that D. was bound to pay the owner half the freight remaining unpaid, and that therefore the insurer was liable only for half the unpaid freight.—*Allison* v. *Bristol Marine Insurance Co.*, L. R. 9 C. P. (Ex. Ch.) 559.

4. An insurance company in Liverpool employed E. as their agent in London to accept risks and receive premiums there. The plaintiff employed P. to effect insurances on certain rails, and P. prepared a slip which was initialed by E. for said company, and transmitted the same day to Liverpool. The company received the slip and held it for some time, and in the meantime E. received a check payable to the company's order for the amount due the company for premium and stamp duty, and by virtue of his authority E. endorsed the check and received the money. The rails were lost by the perils insured against, and the company refused to execute a stamped policy. *Held*, that no action would lie.—*Fisher* v. *Liverpool Marine Insurance Co.*, L. R. 9 Q. B. (Ex. Ch. 418; s. c. 8 Q. B. 469; 8 Am. Law Rev. 542.

5. Chartered freight was insured July 12, at and from Montreal to Monte Video. The vessel was then at sea, and was so delayed by perils of the seas that she did not arrive at Montreal until August 30, whereby the ensuing voyage was changed from a summer

to a winter one, which materially affected the risk and rate of premium. *Held*, that there was an implied understanding that the vessel should be at Montreal within such time that the risk should not be materially varied.—*De Wolf* v. *Archangel Insurance Co.*, L. R. 9 Q. B. 451.

6. The plaintiffs insured their goods in a marine policy for an amount greatly exceeding their value, without disclosing the overvaluation to the underwriter. It was proved in an action on the policy that it was the custom of underwriters to take into consideration whether an overvaluation was so great as to make the risk speculative. *Held*, that it was proper to leave to the jury the question whether the plaintiff 's valuation was excessive, and whether it was material to the underwriters to know of such excessive valuation.—*Ionides* v. *Pender*, L. R. 9 Q. B. 531.

See Mutual Insurance Company.

Intention.—*See* Gift.

Interest.

Devise of an estate in trust for sale and out of the proceeds to pay certain legacies. Interest ordered to be paid on the legacies from a year after the testator's death.—*Turner* v. *Buck*, L. R. 18 Eq. 301.

See Judgment, 2 ; Legacy, 3 ; Mortgage.

Joint Tenancy.—*See* Distress.

Judgment.

1. A judgment was recovered by the plaintiff against the defendant in China, and an action on the judgment brought in the Queen's Bench in London, in which action judgment was signed by default. *Held*, that there was no cause of action arising in London so as to give the Lord Mayor's Court jurisdiction.—*Tapp* v. *Jones*, L. R. 9 C. P. 418.

2. A warrant of attorney was given to secure payment of a sum of money "with interest thereon at and after the rate of £5 per cent. per month, on the 2d of June next, judgment to be entered up forthwith." *Held*, that judgment was to be entered for said sum with interest at £5 per cent. per month up to June 2d : and that after June 2d interest at 4 per cent. per annum would be allowed. —*Cook* v. *Fowler*, L. R. 7 H. L. 27.

Judgment Creditor.—*See* Elegit.

Jurisdiction.

A foreigner will not be allowed to bring suit in a British court against a foreigner respecting property situate in a foreign country. —*Matthaei* v. *Galitzin*, L. R. 18 Eq. 340.

See Judgment, 1 ; Pleading ; Will, 5.

Laches.—*See* Check.

Landlord and Tenant.

A lessee covenanted to "bear, pay, and discharge the sewers rate, tithes, rent-charge in lieu of tithes, and all other taxes, rates, assessments, and outgoings whatsoever, which should be taxed, rated, charged, assessed, or imposed upon the devised premises, or any part thereof, or upon the landlord or tenant in respect thereof." *Held*, that the lessee was liable for the expense of a drain which the local board had authority to compel the lessor to make.—*Crosse* v. *Raw*, L. R. 9 Ex. 209.

See Notice to Quit.

Lapse.—*See* Legacy, 2.

Lease.—*See* Landlord and Tenant ; Notice to Quit ; Vendor and Purchaser.

Legacy.

1. A testator directed that his legacies to charities should be first paid out of such part of his estate as should be legally applicable to such purposes. The testator borrowed £6,800 from a bank, and the loan was unpaid at his death, when £629 stood to his credit at the bank. *Held*, that the smaller sum was not an asset at all, and formed no part of the pure personalty.

At the time of the testator's death, £90 remained in the hands of his agent ; but a larger sum was due the agent for commissions on rents. *Held*, that said sum must be set off against the amount due the agent, and that it formed no part of the pure personalty.

The sum of £861 was due to the testator as arrears of rent from land for which he was owing ground-rent. *Held*, that said sum formed a part of the pure personalty.

A sum was due the testator as apportioned rent of the leasehold estates. *Held*, that said sum was pure personalty.

The testator gave £200 to each of ten poor clergymen, to be selected by O. *Held*, that said gifts were not charitable legacies.

The testator gave a certain sum to each of twenty charitable institutions, and added a codicil to his will in these words : "Presuming and believing that the rental of my estate will produce £16,000, I desire my executors to appropriate £4,000 more to the established institutions of the country." The rental of the estate did not produce the above sum. *Held*, that the gift in the codicil failed.—*Thomas* v. *Howell*, L. R. 18 Eq. 198.

2. A testatrix gave an estate for life to her daughter, with remainder to her daughter's children, provided that if said bequest be not claimed by the daughter within three months after the testatrix's decease the bequest should lapse, and the amount thereof be considered part of the residuary estate. No notice of the legacy was received by the daughter, who, therefore, made no claim within said three months. *Held*, that said bequest lapsed, and that the legacy fell into the residue.—*Powell* v. *Rawle*, L. R. 18 Eq. 243.

3. A testator devised certain estates to several of his children, and then gave his personalty to all of them ; but directed that the shares of his children in his property should be equal, and that to that end the shares of real estate devised to certain of his children should be taken at the values named in his will. The executor absconded to America with the personal estate, but a large portion of it was recovered after several years. *Held*, that the sums recovered must be consid-

ered as consisting of a principal sum, with interest thereon at four per cent. from the death of the testator; and that the shares the children were then entitled to being ascertained, the portion representing interest should be divided in proportion to the shares of the principal.—*Ackroyd* v. *Ackroyd*, L. R. 18 Eq. 313.

See Interest; Will, 6.

Libel.

A meeting to hear a candidate at a parliamentary election discuss subjects of general importance is a meeting of public interest; and the conduct of persons who take part in such meeting may be made the subject of fair *bona fide* discussion in a public newspaper. —*Davis* v. *Duncan*, L. R. 9 C. P. 396.

See Defamation.

License.

The owner of land licensed P. to burn the clay on the land into bricks, but reserved no power to direct when or how such burning should be carried on. P. burned the bricks so as to create a nuisance to the plaintiff's cottages. *Held*, that said owner was liable to be sued for the nuisance, though committed by P., under a revocable license. Injunction granted against said owner and P.—*White* v. *Jameson*, L. R. 18 Eq. 303.

See Notice to Quit.

Limitations, Statute of.

A testator gave certain land to trustees in trust to sell, the proceeds to be considered as personal estate. The trustees allowed the land to remain unsold for fifty years. *Held*, that there was an express trust for sale of real estate within sec. 25 of the Statute of Limitations. Decree for execution of the trust of the unsold land.—*Mutlow* v. *Bigg*, L. R. 18 Eq. 246.

Malicious Injury.

A man threw a stone at persons in the street with whom he was fighting, but unintentionally thereby broke a window. *Held*, that he did not break the window maliciously.—*The Queen* v. *Pembliton*, L. R. 2 C. C. 116.

Marshalling Assets.

It was agreed between two partners in London, that in case a partner died, his share of the capital should be ascertained, and the amount considered a loan from the executors to the partnership, which was not to be determined by the death of the partner, and that the widow should receive a share of the profits. A partner died, and his widow married a trader in Brighton, who bought the other partner's interest in the London business, and then covenanted with a trustee that three-fourths of the profits of the London business should be for the sole use of his wife. The trader became bankrupt. *Held*, that the assets of the London business must pay its debts, and the assets of the Brighton business must pay its debts, and that any surplus would go to the general creditors.—*In re Childs*, L. R. 9 Ch. 508.

See Partnership, 2.

Master.—*See* Ship.

Master and Servant.—*See* Principal and Agent.

Mortgage.

C. held an estate upon trust to pay out of the rents the interest upon a mortgage on the estate, and to accumulate the residue of the rents as a sinking fund for payment of the principal. C. neglected to pay the interest, and the mortgagees advertised the estate for sale. F. thereupon agreed to pay off the mortgage and take a transfer, and in September, 1864, paid the mortgagees the principal sum due them, with several months' arrears of interest. The mortgagees then transferred to F. said principal sum, with interest from September, 1864, and conveyed the mortgaged property to F., subject to the equity of redemption. The beneficial owner filed a bill for redemption. *Held*, that F. was entitled to be paid said arrears of interest, although the transfer to him assigned only interest after September, 1864, and although C. had been guilty of a breach of trust in allowing the interest to get so in arrear.—*Cottrell* v. *Finney*, L. R. 9 Ch. 541.

See Elegit.

Mutual Insurance Company.

Declaration that the plaintiff was a member of a mutual marine insurance society; that the defendants were the committee of the society, and under the rules had entire control of the funds and affairs of the society, and power to determine upon the admission, rejection, and exclusion of any vessel insured or proposed to be insured; that under said rules, if the committee at any time deemed the conduct of any suspicious or that such member was from any reason unworthy of remaining in the society, they had power to exclude such member by giving him notice in writing, and after such notice the member was excluded, and had no claim for loss happening after such notice; that the defendants wrongfully, collusively, and improperly contriving to deprive the plaintiff of the benefit of his indemnity, expelled him from the society on the alleged ground that his conduct was suspicious, but without reasonable cause for such expulsion, and without having given the plaintiff notice that his conduct was to be investigated and adjudicated by the defendants, and without giving the plaintiff an opportunity of being heard before them; that the plaintiff's vessel sustained damage by perils of the seas a few days after said expulsion, and that but for said expulsion the plaintiff would have received £92 as indemnity for said damage, which sum the plaintiff had lost by reason of said expulsion. Demurrer. *Held*, that the demurrer must be sustained (by Kelly, C. B., Pollock and Amphlett, BB.), because, if the allegations in the declaration were true, the plaintiff's expulsion was void, and he had suffered no damage; (by Cleasby and Pollock, BB.) because there was no allegation of *mala fides* on the part of the defendants.—*Wood* v. *Woad*, L. R. 9 Ex. 190.

Name.—*See* Will, 3.

Necessaries.—*See* Ship.

Negligence.

1. The plaintiff, who was standing on a road at the side of a railway, saw a train pass on the farther track, and after the train had passed, stepped upon the nearer track and was struck by another train. The carriage-gate on the side of the railway next the plaintiff was open, and no danger-signal was exhibited. The plaintiff might have seen the train which struck him. *Held*, that there was evidence of negligence on the part of the railway company to go to the jury.—*Directors of North Eastern Railway Co.* v. *Wanless*, L. R. 7 H. L. 12; s. c. L. R. 6 Q. B. 481.

2. The plaintiff, who was crossing the defendants' railway at a level crossing, was injured by a passing train. The plaintiff testified that he did not see nor hear the train until it was close to him; that he saw no light on the train, and heard no whistling, and that he was no servant of the defendants, and did not hear any one call out. *Held* (by Bramwell, Pollock and Amphlett, BB., and Mellor, J.,—Cockburn, C.J., and Cleasby, B., dissenting), that there was no evidence of negligence on the part of the defendants to go to the jury.—*Ellis* v. *Great Western Railway Co.*, L. R. 9 C. P. (Ex. Ch.) 551.

See Bill in Equity; Carrier; Principal and Agent.

Next Friend.—*See* Partnership, 1.

Notice.—*See* Bills and Notes, 2; Legacy, 2.

Notice to Quit.

W. let No. 5 of a block of houses to A. as tenant from year to year. The defendant, who was tenant of No. 4, hired the cellars of No. 5 from A., as yearly tenant from Michaelmas; A. to be allowed to do anything required to the gas-meter in the cellars when defendant's premises were open. A. gave up his house to W., who let the same to one Davis, with knowledge of the defendant, to whom no notice to quit was given. Davis gave up his lease to W., who let house No. 5, expressly including the cellars, to the plaintiff for ten years from the 24th June, 1872. On the 9th of July the plaintiff gave the defendant notice that he required immediate possession of the cellars, which the defendant refused to give until he received a proper notice to quit, and he did not give up possession until April 10, 1873. On the 10th of January, the defendant cut off the plaintiff's water by hammering up the service-pipe passing through said cellars and cut off his supply of gas and severed his bell-wires. Said water-pipes and bell-wires had been put into the cellars without objection by the defendant, but without his permission being asked. *Held*, that no act of A. could deprive the defendant of his right to a notice to quit; but that the defendant was liable for cutting said pipes and wires, as he had given a license for placing said pipes and wires in the cellars, which could not be revoked without giving notice and allowing time for removal.—*Mellor* v. *Watkins*, L. R. 9 Q. B. 400.

Novel.—*See* Copyright.

Nuisance.

The plaintiff kept a coffee-house on a narrow street; and the defendants, who were auctioneers, had a rear entrance next to the plaintiff's entrance, at which they were loading and unloading vans throughout the day, thereby obstructing access to the plaintiff's premises, diminishing light to such an extent that the plaintiff had to burn gas nearly all day, and causing an offensive smell from the stalings of the horses, whereby the takings of the plaintiff's coffee-house were materially lessened. *Held*, that the plaintiff had shown such a direct, substantial, and particular injury to himself beyond that suffered by the rest of the public, as to entitle him to recover damages from the defendants for a nuisance.

The declaration alleged that the plaintiff's premises were rendered by the above acts of the defendants "unhealthy and incommodious, as well as a house of business as also as a dwelling-house." *Held*, that evidence of inconvenience from bad smells occasioned by the stalings of the horses was admissible under the declaration.—*Benjamin* v. *Storr*, L.R. 9 C. P. 400.

See License.

Owner.—*See* Bankruptcy.

Partnership.

1. A bill for dissolution of partnership may be maintained on behalf of a person who has become permanently insane, although not so found by inquisition.—*Jones* v. *Lloyd*, L. R. 18 Eq. 265.

2. By partnership articles it was agreed that the death of either of the four partners should not dissolve the partnership, and that the share of the partner who died should be ascertained at the succeeding half-yearly stock-taking, and paid in instalments to his representatives. Two partners died, but no steps were taken to ascertain their shares. Subsequently the surviving partners became bankrupt. *Held*, that the creditors of the four original partners had no right to have the property which had belonged to the partnership of the four applied in payment of their debts, in priority to the creditors of the two surviving partners.—*In re Simpson*, L. R. 9 Ch. 572.

See Distress; Marshalling Assets; Mutual Insurance Company.

Party.—*See* Easement; License.

Pleading.

Action in the Lord Mayor's Court in London by indorsee against acceptor of a bill of exchange. Plea to the jurisdiction. *Held*, that though the plea admitted acceptance, presentment and dishonour somewhere, it did

not admit that either of them was in London.—*Sewell* v. *Cheetham*, L. R. 9 C. P. 420.

See Action; Mutual Insurance Company; Nuisance.

Presentment.—*See* Check.

Principal and Agent.

1. The defendants intrusted the management of their sewage farm to B., giving him power to manage the same in the most beneficial way, with a view to the purposes for which they used it. A ditch ran between the farm and the plaintiff's land; and B., in order to render the ditch more efficient for drainage purposes, went on to the plaintiff's land and pared away the plaintiff's side of the ditch, and cut down brush and trees which impeded the flow of the ditch. *Held*, that the defendants were not liable for B.'s trespass, as B. was not acting within the scope of his authority.—*Bolingbroke* v. *Swindon Local Board*, L. R. 9 C. P. 575.

2. A surveyor of highways was ordered by the vestry to employ men to raise a portion of a way, and he accordingly contracted with G. to do the work, the vestry finding materials. One-half of the road was raised, and the other half left at the old level, and nothing was done to warn persons at night of the difference of level. The plaintiff drove along the road, and was upset and injured. The surveyor did not personally interfere in doing the work. *Held*, that the surveyor was not liable.—*Taylor* v. *Greenhalgh*, L. R. 9 Q. B. 487.

3. A principal is answerable where he has received a benefit from the fraud of his agent acting within the scope of his authority.—See *Mackay* v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. 410.

See Action; Ship.

Priority.—*See* Partnership, 2.

Privity.

By the articles of association of a joint-stock company, it was provided that all expenses incurred in the establishment of the company, not exceeding £2000, which the board of directors should consider might be deemed preliminary expenses, should be defrayed by the company. The plaintiffs incurred expenses in the establishment of the company to an amount exceeding the above sum. *Held*, that no action would lie against the company for the non-payment of the plaintiff's expenses.—*Malhado* v. *Porto Alegre Railway Co.*, L. R. 9 C. P. 503.

Protest.—*See* Bills and Notes, 2.

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

Remainder-man.—*See* Timber.

Rent.—*See* Distress.

Reputed Owner.—*See* Bankruptcy.

Revocation.—*See* Will, 6.

Sale.—*See* Contract; Frauds, Statute of; Vendor and Purchaser, 1.

Set Off.—*See* Legacy, 1.

Ship.

The plaintiff supplied necessaries to the defendants' captain in a foreign port for the use of their vessel. The defendants had agents in this port who were instructed, willing, and able to advance any sums which might be required for the ship; but of this the plaintiff was ignorant. *Held*, that the plaintiff was not entitled to recover the cost of said necessaries from the defendants.—*Gunn* v. *Roberts*, L. R. 9 C. P. 331.

See Bill of Lading; Charter-party; Insurance; Pilotage.

Signature.—*See* Will, 3.

Slander.—*See* Defamation; Libel.

Stamp.—*See* Insurance, 4.

Statute.—*See* Conditional Limitation; Place.

Statute of Limitations.—*See* Limitations, Statute of.

Surrender.—*See* Notice to Quit.

Tail, Tenant in.—*See* Conditional Limitation; Estate Tail.

Tea.—*See* Adulteration.

Tenant for Life.—*See* Timber.

Tenant in Common—*See* Distress.

Testimony.—*See* Evidence, 2.

Timber.

Oak, ash and elm are timber if twenty years of age, and not so old as not to have a reasonable quantity of usable wood in them. Local custom may increase the number of timber trees. A tenant for life can cut all that is not timber, excepting ornamental trees, germins, young trees growing into timber, trees protecting banks, &c. He may cut young timber to promote the growth of the rest. Timber proper cut by the tenant for life, or blown down, belongs to the owner of the first vested estate of inheritance, except in case of fraud and except when cut by order of Court, when the proceeds are invested and the income paid to the tenant for life and the principal paid to the owner of the first vested estate of inheritance on his coming into possession. If the tenant wrongfully cuts trees not timber, the property is still in him at law, though he is liable to an action in the nature of waste.—Jessel, M. R., in *Honywood* v. *Honywood*, L. R. 18 Eq. 306.

Title.—*See* Vendor and Purchaser, 2.

Trespass.—*See* Principal and Agent, 1.

Trust.—*See* Estate Tail; Limitations, Statute of; Mortgage.

Vendor and Purchaser.

1. The defendants wrote to the plaintiffs offering a certain price for land belonging to

the latter. The plaintiffs replied that they accepted the defendants' offer, and "now hand you two copies of conditions of sale which we have signed; we will thank you to sign same, and return one of the copies to us." *Held*, that the plaintiffs' acceptance was only conditional; bill for specific performance refused. *Crossley* v. *Maycock*, L. R. 18 Eq. 180.

1. A leasehold was put up for auction with a condition that the abstract of title should begin with an indenture of underlease to B. from A., and that it should form no objection to the title that said indenture was an underlease, and that no requisition or inquiry should be made respecting the title of A. or his superior landlord, or A.'s right to grant such underlease. A. had mortgaged the premises previous to said underlease.—*Held*, that the purchaser at the auction was not bound to complete the purchase.—*Waddell* v. *Wolfe*, L. R. 9 Q. B. 515.

Warrant of Attorney.—*See* Judgment, 2.

Waste.—*See* Timber.

Way.—*See* Easement; Principal and Agent, 2.

Will.

1. A testatrix wrote her will on a sheet of paper which contained an attestation clause on each page. The testatrix inserted her name in each attestation clause, and two witnesses signed at the end of the first page only. It appeared that the witnesses signed before the testatrix signed the second page, but after she signed the first page. *Held*, that the will was not properly executed.—*In the Goods of Dilkes*, L. R. 3 P. & D. 164.

2. A will was written upon ten sheets of paper, and nine sheets were signed by the initials of the testator and the names of three witnesses, but the tenth sheet was signed by the full name of the testator and of one witness only. *Held*, that the will was not properly executed.—*Phipps* v. *Hale*, L. R. 3 P. & D. 166.

3. A witness attempted to write his name opposite that of the testator in a will, but, after writing his Christian name, was unable to complete his signature through weakness. A second witness signed his name. Subsequently the testator again signed his name in presence of said second witness and of a third witness. The second witness traced his former signature with a dry pen, and the third witness signed his name. *Held*, that the will was not properly attested by two witnesses.—*In the Goods of Maddock*, L. R. 3 P. & D. 169.

4. A testatrix signed her will in presence of a witness, and after her signature a second witness entered the room. A person who had brought said witnesses at the request of the deceased, then requested the second witness to sign his name under the signature of the testatrix. Thereupon both witnesses signed the will. *Held*, that the testatrix had acknowledged her signature in the presence of said witnesses.—*Inglesant* v. *Inglesant*, L. R. 3 P. & D. 172.

5. The Court has no jurisdiction to grant probate of a will relating wholly to real property.—*In the Goods of Bootle*, L. R. 3 P. & D. 177.

6. A married woman made a will under a power in her marriage settlement, whereby she appointed all her real and personal estate to her husband. She made a subsequent will whereby, after reciting said power, she devised a freehold to E., and bequeathed certain specific legacies. She then added, "I revoke all former wills by me heretofore made." The latter will left certain household furniture undisposed of. *Held*, that the former will was revoked.—*In the Goods of Eustace*, L. R. 3 P. & D. 183.

See Legacy.

Witness.—*See* Will.

Words.

"*At and from.*"—*See* Insurance, 5.

"*At Owner's Risk.*"—*See* Carrier.

"*Restraint of Princes.*"—*See* Insurance, 2.

CORRESPONDENCE.

Reforms in the Court of Chancery.—Rehearings—Chambers.

To the Editor of The Law Journal.

Sir,—The law as it now stands compels a dissatisfied litigant to re-hear the cause before he can take it to the Court of Appeal. Formerly it was not so, and it must be conceded that the step taken to compel a re-hearing before appeal was a retrograde one. It is felt by the profession, and I have no doubt by the judges themselves, that there is a reluctance on the part of the two to interfere with the decision of the third; and thus the unsuccessful suitor, in going eventually to the Court of Appeal, frequently has the decision of three instead of one to contend against.

It is to be hoped this objectionable provision will be repealed next session, and an option given to the party to re-hear or go to the Court of Appeal direct; and if he should adopt the latter course there will be a saving of three or more months and of great expense. Where parties have drifted into litigation every facility should be afforded with a view to the bringing of the dispute to an end. *Interest reipublicæ ut sit finis litium.*

In furtherance of the principle embodied in that maxim, I think it advis-

able that a change should be made in the present Chambers system.

Why should not the judges, as heretofore, sit in Chambers? As it now stands it is unsatisfactory in the extreme. It is apparent to any one practising in Chancery that many of the suits and matters now pending would be stopped at the threshold if they came before a judge in the first instance; many administration suits, as to which orders are granted in Chambers, would be nipped in the bud; and those that are proceeded with, by adopting the course pointed out in my former letter, viz., allowing the proceedings from beginning to end to be conducted before the same judge, could be disposed of at a few sittings and at much less expense.

The numerous appeals from Chambers show conclusively how unsatisfactory the present system is. Instead of time and money being saved, both are spent. A matter that could be disposed of at once were a judge in Chambers now takes one or two weeks if an appeal is to be heard. It has been urged in favour of the present system that it ensures uniformity in practice, which did not prevail when judges sat alternately. But there is nothing in this point. Judges sit alternate weeks to hear appeals from Chambers; and if there was danger of diversity of decision under the old system, that danger still exists. One very objectionable feature in the present system is, that where the question appealed from is one of discretion on the part of the party who first hears the application, great difficulty is experienced in reversing the decision, by reason of the ruling in *Day* v. *Brown* and other cases. The correctness of the ruling in that case is questionable, and in many instances it has been productive of great hardship, if not injustice. Frequently the judges must feel that, in dismissing an appeal which arises upon a question of discretion, had they heard the application in the first instance a different order would have been pronounced; but because of the rule referred to they are reluctantly compelled to uphold the decision. It may be urged that the judges have enough to do without taking the Chambers work. An hour a day will dispose of all the applications in Chambers, and on an average the half of that time at least is taken up every week in hearing of appeals which would no longer exist if applications were heard by a judge in the first instance.

Yours, &c.,

Reform.

June 26th, 1875.

FLOTSAM AND JETSAM.

The *Law Magazine and Review*, in speaking of Sir Henry Thring, the author of the pamphlet on the "Simplification of the Law," says, that no one has had greater experience in the drafting of bills in Parliament than Mr. Thring. It is stated in Mr. Thring's pamphlet, that the statute law of England is comprised in about 100 octavo volumes, containing more than 18,000 acts of parliament, a considerable portion of which is obsolete, and another portion of which relates to local and private matters. The "reports" contain the judicial decisions through a period of more than 550 years. In 1866 they consisted of 1,308 volumes, and they increase with great rapidity. In 1866 the number of reported common-law cases was 60,000; and the number of equity cases was 28,000. Sir Henry Thring is of the opinion, that in order to properly simplify the law a code is essential; that a code is the most complete form in which the law of a country can be presented and the ultimate aim of all law reform; but that the bulk of English law is so vast that it does not admit of being codified as a whole, until it has previously been collected, sifted and put in form adapted to codification. He then proposes a scheme, the object of which is to consolidate the existing statute and adjudicated law; and urges upon all classes the policy of the simplification of the law.

Case Law.—A story illustrative of the advantages of studying law by cases, and the complaints which are sometimes made of the uncertainty of the law, used to be told of an eminent lawyer of Massachusetts, whose name is still associated with many of the pleasant anecdotes which used to be repeated at the social meetings of the bar, and may not be wholly without point in the present phases of legal science. On returning to his office one day, he found his table loaded with books upon which a student in his office appeared to be diligently engaged. Before he could have a chance to inquire as to the subject of his investigation, the student

broke out with an expression of surprise and astonishment to find the law so defective. To an inquiry as to what led to such a sweeping remark, the student informed Mr. B. that, in his absence, a client from a neighbouring town had come into the office, and told him that a man had just got on to his horse and rode off, and he wanted to know how he could get him back, or get satisfaction for his loss. He had thereupon gone to work and looked into the index of every law book in the office, to find something about "horse" or "saddle," and was surprised to find that the law had made no provision for either of them. He had therefore become satisfied that the client was without remedy, and had so informed him, and he had gone home on foot. It is needless to say that Mr. B. informed his student that a lawyer sometimes was able to settle a question about a specific article by a course of reasoning drawn from general principles, although the law writers had been so culpably negligent as to omit that particular article. And thereupon the student gravely concluded that the index of a law book was not always the surest mode of settling legal principles in their application to particular cases.—*Albany Law Journal.*

BREACH OF PROMISE OF MARRIAGE.—The subject of "Suits for Breach of Promise" has recently been well treated by the *New York Times*, which significantly remarks in the very first sentence that these suits have "not yet disappeared from the records of our courts." The fact that actions for breach of promise of marriage are almost invariably brought by women, is considered remarkable, since the ground of the action is a breach of the contract, and the man has as good a right to sue in a proper case as the woman. The position and characteristics, the abilities and resources, of the man are different from those of the woman, and hence the Courts tolerate actions by women for breach of promise with better grace than actions by men. But these suits, even when brought by women, are falling more and more into discredit, and our contemporary appears to be as delighted with this as we are ourselves. The *Times* also refers to the language of Helps in his last book, where he says: "There ought to be no such cases. It is perfectly monstrous that any person should be compelled to marry by any such pecuniary consideration. . . . If there is reluctance on either side, the project should fall to the ground." And so specific performance is not decreed. Why, then, should there be damages as for breach of contract? The *Times* concludes its remarks by suggesting that it is only in aggravated cases of wrong that this suit is justifiable.—*Albany Law Journal.*

THE conviction that Dr. Kenealy is a coward is rapidly gaining ground. The following extracts from two of his speeches is strong evidence on the point, and ought not to be lost. They are supplied by the Glasgow *News*:—

CITY HALL, GLASGOW, April 13, 1875.—"*Now, I have studied the constitutional law of England, and I think I have made myself master of it*—(hear, hear)—and I am going to Parliament on Thursday in order to hear from the Chancery-lane attorney's clerk his notions of the constitutional law."

HOUSE OF COMMONS, April 16, 1875.—"*I do not profess to be a very profound student in constitutional law*, or in the usages of this House, but I have really heard no language cited by the right hon. gentleman from the petition which comes properly under the designation of slander."

THE GAIKWAR.—Mr. Fitzjames Stephen, Q.C., writes to the *Pall Mall Gazette* on the Gaikwar trial, and expresses an opinion that there could be no doubt about his guilt. He adds that there was no backbone in the defence, and that Serjeant Ballantyne's cross-examination, so far from breaking down the case for the prosecution, simply enveloped the case in a cloud of sophistry.—*Law Journal.*

LORD ST. LEONARDS' SECRET.—A charming letter from old Lord St. Leonards is published. Somebody wrote to him once congratulating him on his good health, and saying that he seemed to have the secret of long life. In reply he wrote as follows:—"Your kind present will be a great ornament to my library. I must altogether disclaim the possession of the secret of long life. My own great age—in my 91st year—is singular in this respect: its operation on the two classes to which I belong. I am the oldest peer in the House of Lords, and therefore I am called the father of the House; I am the oldest member of the Bar, and therefore I am called the father of the Bar. After so long a period, never withdrawing from the duties attached to the position which I have occupied, I have ultimately retired from public life, but still find myself called upon to exercise the faculties of which a kind Providence has left me in possession. I lead a life which seems likely to extend itself. I enter into no speculation,

Flotsam and Jetsam.

and have nothing to agitate me. I avoid all luxurious living, and limit myself to a moderate quantity of wine. I go early to bed, and my moderation is rewarded by a good night's sleep. I live a happy life, for which I thank God, and submit myself to His guidance and mercy. This, then, is all the secret I possess of long life."

"The Court of equity in all cases delights to do complete justice, and not by halves." Per Cur. in *Knight* v. *Knight*, 3 P. Wms. 333.

Duels.—In the days of Curran and his contemporaries, a duel was an indispensable diploma at the Irish bar, quite essential to success, and sometimes leading to the bench. Below we give a few recorded cases.

Lord Clare, afterwards Lord Chancellor, fought Curran, afterwards Master of the Rolls.

Clonmell, afterwards Chief Justice, fought two lords and two commoners—to show his impartiality, no doubt.

Medge, afterwards Baron, fought his own brother-in-law and two others.

Toler, afterwards Chief Justice of the Common Pleas, fought three persons, one of whom was Fitzgerald, even in Ireland the fire-eater *par excellence*.

Patterson, also afterwards Chief Justice of the same courts, fought three country gentlemen, one of them with guns, another with swords, and wounded them all.

Curran fought four persons, one of whom became one of his most intimate friends. Many other instances might be mentioned to illustrate the ferocious spirit of these days.

In the *King* v. *Fenton*, where the prisoner was tried in 1812 for the murder of Major Hillas in a duel, old Judge Fletcher thus capped his summing-up to the jury: "Gentlemen, it's my business to lay down the law to you, and I will. The law says the killing a man in a duel is murder; therefore, in the discharge of my duty, I tell you so; but I tell you at the same time, *a fairer duel* than this I never heard of in the whole *coorse* of my life!"

Sir Bartholomew Shower's mode of treating Monmouth's invasion is excellent for its brevity. "Memorandum.—In Trinity Term Monmouth's rebellion in the west prevented much business; in the vacation following, by reason of that rebellion, there was no assize held for the western circuit; but afterwards five judges went as commissioners of oyer and terminer and gaol delivery, *and three hundred and fifty-one of the rebels were executed*", &c. 2 Show. 234.

When sitting in the Rolls Court, indignant at the conduct of one of the parties, Lord Kenyon astonished his staid and prosaical audience by exclaiming, "This is the last hair in the tail of procrastination!" Whether he plucked it out or not, observes Mr. Townsend, the reporter has omitted to inform us.—*Lives of Eminent Judges, Vol. I., p.* 79.

Lord Eldon mentions a remarkable instance, as regarded himself, of the uncertainty of evidence as to handwriting. A deed was produced at a trial, on which much doubt was thrown as a discreditable transaction. The solicitor was a very respectable man, and was confident in the character of his attesting witnesses. One of them purported to be by Lord Eldon himself; and the solicitor, who had referred to his signatures to pleadings, had no doubt of its authenticity, yet Lord Eldon had never attested a deed in his life. *Eagleton* v. *Kingston*, 8 Ves. 473. Quoted by Mr. Justice Coleridge in his judgment in *Doe* v. *Suckermore*, 5 Ad. & El. 716, and 2 Nev. & Per. 34.

In the Court of King's Bench women were early engaged as counsel. In a case in Lord Raymond we find Mrs. Cheshyre counsel with the plaintiff.—*Vincent* v. *Beston*, 1 Ld. Raym. 717, A. D. 1702.

In a very recent case Chief Justice Chapman observed that "Experience is not sufficiently uniform to raise a presumption that one who has the means of paying a debt will actually pay it.—*Atwood* v. *Scott*, 99 Mass. 178.

It is said in March on Arbitrements, 215, that a non-suit "is but like the blowing out of a candle, which a man, at his own pleasure, lights again."—Quoted by Metcalf, J., in *Clapp* v. *Thomas*, 5 Allen, 159.

In Jenkins' Centuries it is said: "A., a woman of twelve years of age, married B., of thirteen years of age; A. has issue; this is a bastard in our law. Yet some write that Solomon begot Rehoboam at ten years of age, by the computation of the Scriptures." Cent. vii. Cas. 26. See also Cent. ii. Cas. 84, citing Year Book, 1 Hen. VI. 3.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Easter Term, 38th Victoria.

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law, (the names are given in the order in which the Candidates entered the Society, and not in the order of merit):

No. 1321—Alfred Howell.
Henry Carscallen.
John Butterfield.
John Alexander Macdonnell.
William F. Ellis.
Mortimer Augustus Ball.
John Turnbull Small
Oliver Aiken Howland.
Alexander Mansel Greig.
Adam Rutherford Creelman.
John Gunn Robinson.
J. Stewart Tupper.
John Highett Thom.
John Davison Lawson.
Charles James Fuller, under special act.
No. 1336—Edward Stonehouse, " " "

The following gentlemen received Certificates of Fitness, (the names are given in order of merit):

John Turnbull Small.
Alexander Mansel Greig.
Harry Symons.
Hugh O'Leary.
Edwin Hamilton Dickson.
John Highett Thom.
Oliver A. Howland.
Michael Kew.
J. Stewart Tupper.
George A. Radenhurst.
John D. Lawson.
J. Boomer Walkem.
Snelling Roper Crickmore.
Henry Auber Mackelcan.
John A. Macdonnell.
William Hall Kingston.
Edward Ellis Wade.
John Boultbee.
George Bruce Jackson.

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

Junior Class.

No. 2537—William Hodgins Biggar.
George Anderson Somerville.
William Barton Northrop.
Arthur Oheir.
Robert Hodge.
William H. Pope Clement.
Elgin Shoff.
Horace Edgar Crawford.
Earnest Joseph Beaumont.
John Philpott Curran.
James Henderson Scott.
William Berry.
Eugene de Beauvoir Carey.
Gideon Delahey.
Skeffington Connor Elliott.
Gerald Francis Brophy.
John Lawrence Dowlin.
Wm. J. McKay.
William Henry Deacon.
John Woodcock Gibson.
John Baptiste O'Flynn.
Allan McNab.
Ivor David Evans
Reginald Boultbee
George W. Baker.
James Craigie Boyd.
Archibald Stewart.

No. 2563—Charles Henry Cogan, as an Articled Clerk.

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

Ordered, That the division of candidates for admission on the Books of the Society into three classes be abolished.

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

That all other candidates for admission shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination upon the following subjects namely, (Latin) Horace, Odes, Book 3; Virgil, Æneid, Book 6; Cæsar, Commentaries, Books 5 and 6; Cicero, Pro Milone. (Mathematics) Arithmetic, Algebra to the end of Quadratic Equations; Euclid, Books 1, 2, and 3. Outlines of Modern Geography, History of England (W. Douglas Hamilton's), English Grammar and Composition.

That Articled Clerks shall pass a preliminary examination upon the following subjects:—Cæsar, Commentaries Books 5 and 6; Arithmetic: Euclid, Books 1, 2, and 3, Outlines of Modern Geography, History of England (W. Doug. Hamilton's), English Grammar and Composition, Elements of Book-keeping.

That the subjects and books for the first Intermediate Examination shall be:—Real Property, Williams: Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), (C. S. U. C. caps. 42 and 44).

That the subjects and books for the second Intermediate Examination be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, Statutes of Canada, 29 Vic. c. 28, Insolvency Act.

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

1. For Call.—Blackstone Vol I., Leake on Contracts, Watkins on Conveyancing, Story's Equity Jurisprudence, Stephen on Pleading, Lewis' Equity Pleading, Dart on Vendors and Purchasers, Taylor on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

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

That the subjects for the final examination of Articled Clerks shall be as follows:—Leith's Blackstone, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the final examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining certificates of fitness and for call are continued.

That the Books for the Scholarship Examinations shall be as follows:—

1st year.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. C. c. 12, C. S. U. C. c. 43.

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

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

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

That no one who has been admitted on the books of the Society as a Student shall be required to pass preliminary examination as an Articled Clerk.

J. HILLYARD CAMERON,
Treasurer.