DIARY FOR OCTOBER.

2. Thur..Prince Arthur visited Toronto.
5. Sun. ..17th Sunday after Trinity.
6. Mon....County Court Terms and sittings (exclusive of York) begin. Lord Chelmsford died, 1878.
8. Wed...R. A. Harrison sworn in as C. J. of Queen's Bench, 1875.
9. Thur..T. Moss sworn in as Judge of Court of Appeal, 1875.
11. Sat. ..County Court Term (exclusive of York) ends. Guy Carleton, Governor of Canada, 1774.
12. Sun. ..18th Sunday after Trinity.
13. Mon. ..County Court Term for York begins. Battle of Queenston, 1812.
18. Sat. ..County Court Term for York ends.
19. Sun. ..19th Sunday after Trinity.
21. Tues...Battle of Trafalgar, 1805.
23. Thur ..Lord Monck, Gov.-Gen., 1861.
24. Frid...Sir J. H. Craig, Gov.-Gen., 1807.
25. Sat. ..Battle of Balaclava, 1854.
26. Sun. ..20th Sunday after Trinity.
31. Frid....All Hallow Eve.

CONTENTS.

Canada Law Journal.

Toronto, October, 1879.

We may hope that a hearty welcome and a fair amount of "Queen's Weather" will have caused the Governor-General and Princess to carry away with them pleasant recollections of their first visit to Toronto. It was fitting that they should nowhere meet with a warmer reception than in the principal city of this loyal Province; a reception which assuredly indicated not only the attachment of a free people to the Crown and institutions under which they live, but also their recognition of the personal qualities of His Excellency and Her Royal Highness.

We have received with great regret the announcement of the sudden death of Mr. Isaac Grant Thompson, the founder and conductor of one of our most valued exchanges, the *Albany Law Journal*. His short life of thirty-nine years was one of unremitting labour in different departments of legal literature. He was the author of treatises on the "Law of Highways," "Provisional Remedies," &c., and the editor of the series of "The American Reports," commenced in 1871 It will, however, be in connection with the *Albany Law Journal* that Mr. Thompson will be best remembered by the profession, and we can easily believe the statement of his *collaborateur*, that in editing its pages he found his favourite and most appropriate work.

Our readers will certainly not have forgotten the excellent and entertaining work on "The Wrongs and Rights of a Traveller," by Mr. R. V. Rogers, Jr., of Kingston, a review of which appeared in our columns some years ago. We have

received a second series of "Legal Recreations," in the shape of a volume by the same author, on "The Law of Hotel Life; or, the Wrongs and Rights of Host and Guest." We have perused "Hotel Life" with great pleasure, and had intended to give a somewhat extended review of it in our present issue, but have been compelled to hold our notice over till next month. In the meantime we can cordially recommend Mr. Rogers' book to all who recognize the advantage (and who does not) of a skilful blending of the *utile cum dulci*.

We notice in the last batch of English Statutes, the new Bankers' Book Evidence Act, 42-43 Vict. c. 11. By this Act (s. 1), a copy of any entry in a banker's book shall, in all legal proceedings, be received as *primâ facie* evidence of such entry, and of the matters, transactions and accounts therein recorded; but (sec. 2) it must be first proved that the book was, at the time of the making of the entry, one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank. By sec. 6, a banker, or officer of a bank shall not, in any legal proceeding, to which the bank is not a party, be compellable to produce any bankers' book, the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions or accounts therein recorded, unless by order of a Judge made for special cause. By sec. 7, a Court or Judge may order that any party to a legal proceeding be at liberty to inspect or take copies of any entries in a bankers' book, for any of the purposes of such proceeding; which order may be made without summoning the bank or any other party.

Of the others, the Habitual Drunkards' Act, 1879, aims at establishing a number of licensed retreats, to which habitual drunkards may, on their own application, be admitted, and in which they will, when once admitted, be liable to be detained to the end of the term, which was originally proposed as the limit of their restraint. The inmates of these retreats, moreover, under this Act, will subject themselves to criminal punishment for wilfully neglecting or refusing to conform to the rules of the retreat. "Those dreadful fellows, the critics," appear by no means to approve of this statute. The *Law Times* observes, "although we fully expect that it will prove a complete failure, we cannot but regret that so ill-framed a legislative measure should find its way into the statute-book."

At one of the public debates of the Legal and Literary Society not long ago, the distinguished Judge, who presided on the occasion, expressed very decided disapprobation of the present action for breach of promise of marriage. It is interesting to note, in connection with this, that, during the last Session of the British House of Commons, Mr. Herschell proposed, and succeeded in carrying, by a very fair majority, the following motion:—that "the action for breach of promise of marriage ought to be abolished, except in cases where actual pecuniary loss has been incurred by reason of the promise, the damages being limited to such pecuniary loss." The *Scottish Law Magazine* remarks, that the House of Commons is as yet composed only of representatives of men, and hints that Mr. Herschell could scarcely have been so bold if he had an enraged female constituency to face. It objects that this resolution attempts to regulate, by Act of Parliament, what has always been considered a jury question, depending on the special circumstances of each case—and points out that the proposed alteration in the

law would, in so far as Scotland is concerned, be in a retrograde direction. It appears that formerly, in Scotland, the rule *matrimonia debent esse libera* was closely adhered to, and that no action for damages was allowed, based upon the mere fact that a promise to marry had been broken (Erskine I. vi. 3). But gradually the law became more and more liberal towards the unfortunate "pursuers" of such actions, and even before the Jury Court became a Scottish institution, the hearts of their stern "Lords" had been touched, and in determining the actual loss they gave something over and above, by way of consoling wounded feelings, and at last wounded feelings alone were held sufficient to warrant a decree for even substantial damage. In *Hogg* v. *Gow* (1812, F.C.) the matter was fully argued. A strong attempt was made to have the old law of Scotland recognized, and to show therefrom that no damages could be awarded against the defender for refusing to "implement his promise of marriage." The matter was carried to appeal, and the majority of judges agreed in awarding heavy damages. Lord Meadowbank asked if it was no wrong to inflict perhaps the severest distress the human mind can suffer. Referring to the expression in the old case of *Grahame* v. *Burn*, (1685, M. 8472), "loss of the market," he thus explains it. "How does she lose market? Why she loses it because she is not disposed herself to fall soon in love again. Her heart is used; it is worn; she is less attractive to others. A person of any kind of worth of character that has sufferred the calamity of being tricked by a male jilt, is very little disposed for some time to listen to courtship; she is rendered incapable of it." Waxing eloquent, he goes on to say: "Are we at this time of day, in the commencement of this century, to find that we are still in the midst of barbarism; that we are still so blind to the worst of injuries, to the greatest of wrongs, that we are not to give redress." The writer in the *Law Magazine* forcibly remarks, "had his lordship been able to look forward to the old age of this century, he would have found a large majority of the House of Commons returning to what was, in his opinion, "the midst of barbarism."

VICE-ROYALTY AT OSGOODE HALL.

It would not be fitting that so auspicious an occasion as the recent visit of the Governor-General and of Her Royal Highness the Princess Louise to Osgoode Hall should pass without record in these pages. At the same time no lengthy account of an event, so fresh in the memory of all, is needed, nor would our space permit of it.

Shortly after four o'clock His Excellency and the Princess arrived at the Hall, accompanied by the Lieutenant-Governor and Miss Macdonald, the Hon. Mr. Evarts, Secretary of State of the United States, and Colonel Gzowski, A.D.C. The Viceregal party were received at the entrance by Hon. Edward Blake and a reception committee of the Law Society, and conducted to the library, where a full representation of the Bench and Bar and a brilliant gathering of ladies had assembled. Among those present were Mr. Justice Gwynne, of the Supreme Court, Chief Justice Moss, Chief Justice Hagarty, Chief Justice Wilson, Chancellor Spragge, Mr. Justice Burton, Vice-Chancellor Blake, Mr. Justice Cameron, Mr. Justice Osler, Hon. Mr. Mowat, Judge Mackenzie, the Mayor of Toronto (Jas. Beatty, Q.C.), and others.

His Excellency and the Princess having been conducted to a dais Hon. Ed-

ward Blake came forward and read the following—

ADDRESS TO HIS EXCELLENCY.

To His Excellency the Right Honourable Sir John Douglas Sutherland Campbell, K.T., G.C.M.G., Marquis of Lorne, Governor-General of Canada, etc.

MAY IT PLEASE YOUR EXCELLENCY,—The Law Society of Upper Canada, on behalf of the Bar of Ontario, heartily welcomes your Excellency and H. R. H. the Princess Louise to Osgoode Hall, the seat of the profession and of the Provincial Courts.

The Bar, concerned, as it is, in the exposition and enforcement of the laws, has ever taken an active interest in political institutions framed upon the British system, which has been well said to embody the rule of law.

Among the numerous distinctions of your Lordship's House it is recorded that the first strong declaration of the fundamental principle that some one must be responsible for every act of the Crown was made a hundred and forty years ago by the Duke of Argyll of that day. A century later our people were agitated by the claim of her Majesty's subjects in North America to the practical application of that principle to their local government. And now after a long experience has proved the wisdom of its concession, we hail your Excellency's arrival among us in the confident belief that you will approve yourself an eminently constitutional Governor, and we beg to assure your Excellency of our sincere attachment to the Queen, under whose benign sway her people in this province have so greatly prospered.

We receive with the utmost pleasure Her Royal Highness the Princess Louise, who is dear to us not only as the daughter of our Queen, but also by reason of her ample recognition and conscientious discharge of the responsibilities of her exalted station, and we earnestly wish for your Excellency and her Royal Highness a long career of prosperity and happiness.

EDWARD BLAKE,
Treasurer.

Osgoode Hall,
Toronto, 10th Sept., 1879.

The Governor-General then read the following reply :—

GENTLEMEN,—I return to you my heartfelt thanks for the eloquent expression of your loyalty to the Queen, the head of that free Empire whose just and equal laws it is your duty to illustrate and your privilege to enforce.

I do not know that any better instance of the importance of the Canadian Bar, and of the great position occupied by the body I have now the honour to address in the capital of Ontario, can be adduced than by these facts:—The Queen's Representative has, at the present moment, as chief adviser, a gentleman drawn from your ranks; and in the Chancellor of the University and your present spokesman we are welcomed by one who, while he fills the Chancellor's chair with such distinction, has also held office in a Dominion Government.

In the presence among the statesmen of the country of so many who owe their rise to ability displayed at the Bar, we see another resemblance in the young land to that old country from whom it is your boast to have derived your descent, and whose practice and custom in all affairs of government are here receiving a fresh and striking confirmation of the wisdom of that patience which has allowed our law to broaden, like our freedom, from precedent to precedent.

It is alone to your profession that your fellow-citizens have recourse for advice in affairs that touch both private and public life; and how widely spread are the individual interests placed in your hands in the single Province of Ontario alone. Your jurisdiction extends over territory greater than many of the ancient kingdoms of the Old World, and this is considering one Province only. In cases where life may be forfeit to the law, evidence coming from countries widely separate as are Nova Scotia and British Columbia, has to be weighed and sifted by the responsible Minister of Justice in the Dominion Government, while the highest placed among you, namely, they who occupy a seat on the Bench of the Supreme Court, have to consider questions perhaps as complicated and involving consequences of as great importance as are settled by the chiefs of any Bar. Questions of constitutional law, affecting materially relations of the State, are submitted to the opinions of Judges whose ability and independence would be an honour to the oldest State in Europe.

The Princess thanks you for the welcome given to her by the members of the Law Society, and I hope that you will be disposed to accord to me when my term of office is finished the credit of a desire to develop to the full in Canada those constitutional principles to which you have made allusion, and which have been so happily recognized during the long reign of our Sovereign the Queen.

LORNE.

Mr. Blake, then, by permission of his Excellency, alluded to the presence of Mr. Secretary Evarts. He referred to the impeachment of the President of he United States and to the Geneva

arbitration as being two of the greatest cases in which Mr. Evart had been concerned. He continued as follows :—

As a statesman he is as distinguished as he is as a jurist. The address to which your Excellency has so graciously responded refers to the fact that the members of the Bar have always taken a deep interest in the political history of the country. To this rule, Mr. Evarts has been no exception. He now holds the chief office in the department of State, a post made illustrious by such occupants as Jefferson, Marshall, Adams and Livingstone. From the ranks of the two great departments to which I have referred have commonly been recruited the chief justices of the United States Supreme Court, the most important judicial position to be found among civilized nations. This Province is necessarily deeply interested in the life that passes along the other side of the border. For many hundreds of miles our land is conterminous with that of the United States. It is an invisible and impalpable line, and serves rather as a means of communication than as a line of demarcation. Although all the powers of the greatest empires could put no obstacle to the passage of that line, yet a little printer's ink and some paper had been able to place serious impements in the way of trade. I hope that this will not be for long, and that from neither side will tariff wars be kept up. Our guest must have inferred from the references in the address to your Excellency that the sacred fire of freedom burns as purely and is attended by as fervent a warmth under a monarchical form of government as under the Government from which he comes. I would ask him to reflect upon the points in regard to which all English-speaking people are alike, rather than on the points on which they differ. While in our country the form of Government is monarchical, and in the United States republican, yet there appears that marked resemblance that both countries may emphatically be called commonwealths, inasmuch as the rights of the people, to have a voice in the making of the laws by which they are governed, is recognized by the constitution. These are the points of resemblance which surely outweigh the points of dissimilarity. I hope that the great mass of the English-speaking races in this continent may work together in harmony by virtue of the common bond of brotherhood, rather than by one of parchment paper. I congratulate the members of the Bar upon the opportunity they have of becoming acquainted with so distinguished a gentleman as Mr. Evarts.

Mr. Evarts, in reply, remarked that he could see no difference between the people on this side of the line and those on the other. It would be quite obvious to all here that lawyers were kind to each other. Not until he had heard the sound of the eloquent speech of the head of the legal profession here had he heard of anything to be said, and he had neither expected a speech to be made nor that he would be called upon to reply to so many compliments. Mr. Blake had very kindly referred to some of the celebrated cases in which he had been engaged, some of which had determined issues such as heretofore had been referred to the arbitrament of the sword. He had been very fortunate that, in the great cases to which reference had been made, he had always been on the winning side ; and some of them were great examples of the power of law in our generation as compared with war. The settlement of the differences between Great Britain and the United States—which in early times would have been submitted to the arbitrament of arms—by the generosity of the British nation and the prudence of the American nation had been submitted to a civil tribunal, which had been left to determine between the two most powerful nations of the world—a very great triumph, indeed, for law. He thanked them for the kind wishes expressed towards himself.

The Vice-Regal party then, after seeing some of the courts, took their departure, leaving, as usual, a very pleasant impression in the minds of those whom they had honoured by their visit.

TRIAL BY JURY.

Cl. of Ar. Gentlemen, are you agreed.
Omnes. Yes, my lord, we are all agreed now.

Trial by Jury has recently been the subject of much lively criticism, owing to the revelations regarding the verdict in the Mainwaring murder case in England. Mr. Cross, the Home Secretary, produced before the House of Commons a letter from the foreman of the jury, in which the writer stated that, after the jury had retired, it was ascertained that they were equally divided as to the verdict. Six were for manslaughter, and six for wilful murder, with a strong recommendation to mercy. They, therefore, ballotted for a chairman, and agreed that the vote of the majority should carry the verdict, and that, if they were equally

divided, the chairman should have a casting vote. The foreman innocently requested that the greatest publicity might be given to the letter, in order to contradict the many false reports that had been in circulation; and was, probably, much astonished at the obtuseness of Mr. Cross, who regarded their course of action as very like casting lots for the verdict. The *Times* hints that such delinquency on the part of jurymen is by no means unparalleled; while a writer in the *Albany Law Journal* makes a strong attack on the whole system of trial by jury. He regards it as a relic of the past, which, like slavery, once served a useful purpose, but should now be abolished. Certainly the reasons for the continuance of an institution are not always the same as the reasons to which it owed its origin, and the writer in the *Albany Law Journal* maintains there is no reason for the continuance of trial by jury at all. In the days of inequality it was a defence of the weak against the strong, and so promoted justice. Where equality prevails it promotes injustice. As it now exists it is beneficial to only two classes—professional jurors and jury lawyers. In places he becomes more abusive than argumentative. Thus for example he says:—

"The Jury is the clown of the law. It is constantly inventing new and ingenious tricks for the evasion of duty. It is the patron of the joke called 'temporary insanity,' and the author of numberless other jests of a like character. It is a never-failing source of amusement to all except its victims. There is nothing certain about it but its uncertainty. It has been sneered at and satirised and lampooned and caricatured. Judges have snubbed it, and legal wits, like Curran, have riddled it with sarcasm in open Court. Yet a mistaken conservatism suffers it to continue its blundering way, unchallenged."

He asks what greater virtue lies in twelve than in three, six, or nine—what reason there is for requiring absolute unanimity in the decision—why the majority should not control in law as in politics, in juries as in appellate courts—and sundry other unpleasant questions calculated to make the Palladium of our liberties shake upon its pedestal. And there is no doubt that—especially as regards the requirement of unanimity—he is not without supporters. This, as Mr. Forsyth points out in his "History of Trial by Jury," (ch. xi), has been attacked by such men as Bentham, Professor Christian, and Mr. Hallam, who (Supp. Notes, Midd. Ages, p. 262) speaking of "the grand principle of the Saxon polity, the trial of facts by the country," says:—"From this principle (*except as to that preposterous relic of barbarism the requirement of unanimity*) may we never swerve—may we never be compelled, in wish to swerve—by a contempt of their oaths in jurors, and a disregard of the just limits of their trust."

But "vixere fortes ante Agamemnona," and years before any of these gentlemen, our fellow-countrymen in Lower Canada, assailed this feature of jury trial. Mr. Baron Maseres, who was Attorney-General of Canada up to 1773, in his Account of the Sentiments of the Canadians concerning the Introduction of English Laws and Trial by Jury into the Province, cited in 14 How. St. T. 618, says, (p. 324):—

"Some of the Canadians observed that it was a strange thing, and a hard one, to force twelve persons, who really think differently upon a doubtful matter that is referred to their determination, to say, upon their oaths, that they are all of the same opinion, and to continue to be shut up together without food or light, till they do so. This, they said, was putting the decision of causes into the power of those jurymen who had the strongest constitution, and could go longest without food. And it was also forcing some of them to break their oath, and commit a kind of necessary perjury. . . . I must confess, I think those reflections just; insomuch that I am convinced that this unanimity could never have been required in the original institution of juries, but must have grown up from some accidental

and collateral cause in the practice of this mode of trial, as for example, from the unwillingness of Judges to take the trouble of adding a number of fresh jurymen to the first twelve, where they could not agree in their verdict, and causing the evidence, that had been before given in the cause before the first twelve jurymen to be repeated over again by the witnesses to the original jurymen, till a verdict was obtained, in which twelve at least, out of the whole number of jurymen, were really unanimous. For this was the way of proceeding in this matter in the days of King Henry III., that is, about the year 1260 (or about fourscore years after the first institution of juries by King Henry II.) as appears by the following passage in the famous lawyer, Bracton."

Baron Maseres then quotes a passage from Bracton "De Legibus," &c., lib. 4, c. 10, which he gives a free translation of as follows :—

"It often happens that jurymen, when they come to deliver their verdict, appear to be of different opinions, so that they cannot bring in an unanimous verdict. In that case, the Court must order the assize or jury to be reinforced, or increased by the addition of as many new members as there are in the majority of the jury who already agree in one opinion and differ from the minority, or at least by the addition of from four to six new members. And these additional members of the jury shall join with the former jurymen in considering and debating the matter in question. Or they may, if the Court shall so direct, consider and debate the matter in dispute by themselves, without any such conjunction with the original jurymen, and give their answer concerning the matter in dispute, separately by themselves. And the verdict of these members of the original jury with whom these new jurymen shall agree in opinion, shall be allowed and held good."

And, accordingly, in his plan of administering justice in the Province of Quebec, the Baron proposed that a majority of jurymen should carry the verdict.

Mr. Warrington (Obs. on Magna Charta, c. 29) inserts part of the above passage from Bracton, and remarks that this continued to be the practice in the next reign when Fleta is supposed to have written. In confirmation he quotes a passage from Fleta, which, says he, "shews, that the Judge had a power of insisting upon the unanimity of the first jury impanelled; and it was probably found, when new jurors were added, that it was in reality the trouble of trying the cause over a second time, and so *toties quoties;* at last for the greater despatch of business, they insisted in all cases upon the unanimity of a jury." The above passage from the old work of Baron Maseres not only suggests the same arguments against the unanimity which are used by more recent critics (amongst others some of the writers to the *Times*, on the occasion of the Mainwaring verdict); but, in its historical account of the matter, it is in harmony with the account by Mr. Forsyth, in his work above mentioned. The Imperial commissioners appointed in 1830, to report upon the Courts of Common Law, recommended a change in this matter, and suggested that, after a certain fixed period of deliberation, if any nine of the jury concur in giving a verdict, such verdict should be entered on record; and in a failure of such concurrence, the cause should be made a remanet. But, as our friend of the *Albany Law Journal* says: "institutions cling to the people who adopt them, as the Old Man of the Sea clung to Sinbad, refusing to be shaken off." No change resulted from the recommendation of the commissioners, and although it may no longer be true that—

Hungry Judges soon the verdict sign,
And wretches hang that Jurymen may dine,

it appears from the Mainwaring verdict, that wretches have a good chance of hanging, that jurymen may be relieved from the trouble of fulfilling their solemn oath to "well and truly try, and a true verdict give, according to the evidence."

SELECTIONS.

A NEW HEAD OF EQUITY.

In an action of *Betts* v. *Doughty*, tried last week before Sir James Hannen and a special jury, a new head of equity was "evolved;" and, although no definite decision as to its validity was rendered by reason of the dispute between the parties being settled, yet the matter amply deserves the notice of the profession. From the facts proved in the course of the plaintiffs' case, it appeared that Miss Doughty, who died last year, aged seventy-nine, had made a will in 1853, by which she directed her real and personal estate to be sold, and the moneys realized from the sale to be divided equally between her brothers (two in number) and her sister. Her brothers and her sister predeceased her, all leaving issue. The children of the sister—namely, Major Betts and Miss Betts—propounded the will and were plaintiffs in the action; the eldest son of the eldest brother was defendant in the action, and as heir at law opposed the will on the ground of the incapacity of the testatrix; and the children of the other brother appeared as interveners in the action. In the course of the plaintiffs' case, counsel for the defendant cross-examined the witnesses who gave evidence in support of the will, not only for the purpose of proving the plea of the incapacity of the testatrix, but also for the purpose of showing that twenty years after the will had been made, the testatrix was desirous of executing a new will depriving the plaintiffs in the action of all benefit under her will of 1853, and transferring that benefit to the defendant, his brother, and the interveners, and that she was prevented by the threats of the plaintiffs from executing this further will. Enough was elicited in cross-examination to make out a *prima facie* case to this effect; and, therefore, at the close of the case for the plaintiffs, counsel for the defendant applied to the judge to be allowed to amend the statement of defence, by adding a paragraph to the effect that the testatrix was prevented, by the threats of the plaintiffs, from executing the draft will excluding the plaintiffs from all interest under the will of 1853; and also by adding a claim that the plaintiffs should be declared to be the trustees of the share bequeathed to them by the will of 1853, for the benefit of the defendant, his brother, and the interveners. In spite of the opposition of the plaintiffs' counsel, Sir James Hannen allowed the statement of defence to be so amended; and his lordship also allowed the interveners to put in the same pleading, and ask for a like declaration. However, upon his lordship's suggestion, the parties wisely compromised the dispute, and the will of 1853 was pronounced for upon terms. We believe that no case of this kind is to be found in the whole history of equity jurisprudence, and that there is, therefore, no precedent for the plea. But, if the plea is bad, then it would seem to follow that a party who knew that a testator had made a will in his favour might, by actual force, prevent the testator from changing the disposition of property, and so take advantage of his own wrongful act. The novelty of the equity set up is sufficient to enforce its claim to legal attention, as, although no case of the kind has occurred in the past, the future may bring forth fresh instances. It is worthy of observation that, before the Judicature Act, the parties could not have raised such an issue in the Court of Probate, but would have been driven to file a bill in Chancery to assert the claim.—*Law Journal.*

JOTTINGS FROM OUR CONTEMPORARIES.

The Law Times in an article entitled "Mr. Justice Hawkins and the Statute of Frauds," criticises the recent interpretation in *Davey* v. *Shannon* (40 L.T.N.S. 628) of the 4th section of the Statute of Frauds, which enacts that "No action shall be brought whereby to charge any person upon any agreement that is not to be performed within the space of one year from the making thereof," &c. In this case the defendant entered into a certain employment for a term of three years on certain terms, and at the end of the period continued in such employment upon the like terms, except as to the period, until 1877. Then occurred the breach alleged. The defendant pleaded the statute, and

the plaintiff demurred. The agreement sued upon, viz., the one established after the expiration of the three years, was therefore one the duration of which was co-extensive with the defendant's life, and might be broken by him at any time. Nevertheless, Mr. Justice Hawkins held it was not within the Statute of Frauds. This the *Law Times* maintains is inconsistent with Mr. Justice Hawkins' own statement in the case of the general principle on which the section is interpreted, viz., that "a contract which *prima facie* and from its terms may be performed within a year, however improbable that it will be so, does not fall within the statute, and it is immaterial that the performance of it is by the natural course of events delayed for a much longer period." This general statement the *Law Times* entirely accepts, as supported by a long series of decisions and *dicta*. It thinks that these decisions, a résumé of which is contained in the judgment, instead of supporting his Lordship's conclusion in the case, bear out the opposite conclusion, with one exception. This exception is *Eley* v. *The Positive Life Ass. Co.* (L. R. 1 Ex. Div. 20) in which there certainly is *an expression of opinion* by the Court of Exchequer that the analogous case of a contract by which it was agreed that plaintiff should be solicitor to the Company, and should not be removed from his office except for misconduct, was within the Statute. Of the other cases cited, the *Law Times* maintains that *Farrington* v. *Donohoe* (Ir. Rep. 1. C.L. 675) when a parol agreement to maintain a child of about five years old until she should be able "to do for herself," could not be sued on, though the child might die within the year, does not really support Mr. Justice Hawkins, because the ultimate time fixed for the completion of the contract—*i. e.*, when the child should be able "to do for herself"—was necessarily more than one year distant, while *Murphy* v. *O'Sullivan* (11 Ir. Jur. N.S. 111) directly establishes the *Law Times'* view of the question. The writer selects *Fenton* v. *Emblers*, 3 Burr. 1278, a case more than a hundred years old, and frequently followed and relied upon as especially strong in favour of his contention that in *Davey* v. *Shannon* ubi. sup. the judgment should have been for the Plaintiff. Summing up he declares that in all those cases "in which writing was held necessary it will be found on examination that the period primarily appointed for performance, though perhaps not definitely fixed, was of a certainty more than a year distant, while in those in which a parol agreement has been held sufficient, such period might have arrived within the year."

In a recent article the *Albany Law Journal* discusses and classifies the various classes of cases in which photographs have been admitted as evidence. These it enumerates as follows: (1) From necessity, as e. g. to present accurate copies of public records which cannot be permitted to be withdrawn from the files: *In re Stephens*, L.R.G.C.P. 187; *Leathers* v. *The Salvor Wrecking Co.*, 2 Wood, 682; *Daly* v. *Maguire*, 6 Blatch. 137; *Luco* v. *U. S.* 23 How. 515. (2) For the purpose of identification of an individual: *Udderzook* v. *Commonwealth*, 76 Penn. St. 340; *Luke* v. *Calhoun Co.*, 52 Ala. 118; *Ruloff* v. *People*, 45 N.Y. 213. In all these cases there were other evidences of identity. See also *Washington Life Ins. Co.* v. *Schaible*, 1 Weekly Notes of Cases, 369. (3) To identify and describe premises in dispute: *Blair* v. *Pelham*, 118 Mass. 421; *Cozens* v. *Higgins*. 33 How. Pr. 439; *Church* v. *Milwaukee*, 31 Wis. 512. In this last case the action was to recover damages for an injury to plaintiff's premises by reason of the change of a grade of a street, and the Court held, (citing *Ruloff* v. *The People*, 45 N.Y. 213) that a photograph of the premises proved to be correct was properly admitted, it being impracticable for the jury to view the premises. *Locke* v. *The S.C. & P.R. Co.*, 46 Iowa, 109 is also in point. (4) As an aid upon questions of disputed hand-writings in addition to the writings themselves. The general practice is to receive enlarged photographs of the writings, which serve to point out and emphasize peculiarities of the hands. Thus *Marcy* v. *Barnes*, 16 Gray 161. But even in this class of cases such evidence has not universally been tolerated; e. g. *re Foster's Will*, 34 Mich. 21. Here the Court said: "The original and not the copy is what the jury must act

upon, and no device can properly be allowed to supersede it. * * * It would be an unauthorised assumption to hold that Courts should be compelled to receive additional and supplementary proofs which are neither necessary nor admissible before, and which are at best merely convenient aids to enable juries to dispense with the primary evidence." So too *Tome* v. *Parkersburgh Branch R.R. Co.*, 39 Md. 603. Here the photographs were rejected, the Court observing: "As a general rule, as the *media* of evidence are multiplied, the chances of errors or mistake are increased. Photographs do not always produce exact *fac-similes* of the objects delineated." Letter-press copies have generally been rejected: *Commonwealth* v. *Eastman*, 1 Cush. 189; *Commonwealth* v. *Jeffries*, 7 Allen, 561; *Wilkins* v. *Earle*, 44 N.Y. 172. The *Journal* remarks that, in respect to letter-press copies, it is a little troublesome to discover the objection to them where there is no question of genuineness of hand-writing, but where the object is simply to introduce the contents of an undisputed document or letter. Lastly in *Eboru* v. *Zimpleman*, 47 Tex. 503; s. c., 26 Amer. Rep. 315, the case which apparently suggested the long article we have analysed, on a question of the hand-writing of A in Texas, the Court held that the depositions of witnesses in another State testifying that if certain photographic copies of the writings in question were exact, the original writings were in the hand of A, to be inadmissible: (1) because they were secondary evidence: (2) that the mere fact that the original writings were on file in a Texas Court, and thus could not be produced to the witnesses in the other State, did not authorize their admissions; (3) because the witness did not know the hand-writing of A.

In the *Banker's Magazine* (Amer.) is a long and interesting article on the effect of the death of the drawer of a cheque. The author maintains that the principal writers on Bills and Notes have fallen into a capital error in this matter. They lay it down, more or less positively, that *the death of the drawer is a revocation of the authority*, but that if the bank pay without knowledge of the drawer's death, the money cannot be recovered back, and the payment is good. (Edwards on Bills, p. 546; Byles on Bills, 5th Am. Ed. by Sharswood 101; 2 Parsons, N. and B. 81, 82; Chitty on Bills, 13 Am. Ed. 484.) Morse, in his work on banking, also states the same, but adds: "It must be acknowledged that the cited case of *Tate* v. *Hilbert*, 2 Ves. jr. 111" (decided in 1793), "which the text books all rely upon as their sole authority for the statement, does not touch upon the point, and furnishes no basis for considering that the rule has the support of a single adjudicated case." The writer in the magazine shows that Morse is correct in this, and that it is only from *obiter dicta* of Lord Loughborough that the text writers have deduced the above doctrines. Thus the Lord Chancellor said, as to the holder of the cheque, unpaid at the time of the death of the drawer: "If she had paid this away, either for a valuable consideration, or in discharge of a debt of her own, it would have been good; *or even if she had received it immediately after the death of the testator before the banker was apprised of it*, I am inclined to think no Court would have taken it from her." This is a mere cautious statement of what the Lord Chancellor conceived to be clear, and moreover the text-writers have illogically inferred that, because the cheque holder could have retained the funds if paid her after the drawer's death, and before the banker was apprised of it, and because the banker would have been justified at making payment, when he had no notice of the death, therefore the banker would not have been justified in making the payment if he had been apprised. As to that circumstance the Lord Chancellor simply withheld his opinion, after already going further than was needful to the decision of the case.

The writer than proceeds to examine the question on principle. (1) The authorities agree in describing a cheque as a species of bill of exchange. But in the case of a bill of exchange the death of the drawer is no revocation of the request to accept, and the drawee may accept and pay. (Chitty on Bills, 13 Am. Ed. 325. 1 Parsons, N. and B. 287.) Parsons saw the inconsistency, and in vol. I., p. 287, note 6, after quoting th

passage from Chitty, and the statement of Byles, that "the death of the drawer of a cheque is a countermand of the banker's authority to pay it," says the two propositions are irreconcileable. (2) A cheque is a negotiable instrument, and as such carries the presumption that it was given to the payee for value (Dan. on Negotiable Instruments § 1,646). This being so the payee may sue the drawer, if it be not paid, or his executor if he be dead; and any person may buy the cheque, or receive it in discharge of a debt, and recover upon it against the drawer. Is it not then curious and illogical to hold that the bank, under the like circumstances, should not pay it? It has never been intimated that a third party cannot acquire a cheque without inquiry after the drawer's death. Why, then, may not the banker pay it? (3) It has been urged that the death of the drawer is "a revocation of the banker's authority to pay the cheque," as if it were an instrument to be governed by the law of agency—a mere mandate. (Thomson on Bills, 244). A cheque is more than this. If it is an authority to the banker to pay the amount,—it is also an authority to the payee or other holder to receive the amount. As a negotiable instrument it imports a valuable consideration, therefore it is presumably an authority coupled with an interest. As such it is irrevocable. Therefore we reach this paradoxical conclusion: "that an authority coupled with an interest may be practically revoked and annulled by the revocation of another authority not coupled with an interest," which, says the writer, is a *reductio ad absurdum*. (4) It is universally conceded that a cheque operates as an assignment of the fund *pro tanto*, as soon as the bank consents to it, by certification or payment. The drawer has given the holder a written instrument authorizing the latter to apply to the drawer for the assignment of certain funds. It is hard to see how the death of the party who has consented can annul the right of another to acquiesce and concur in his act. Professor Parsons evidently takes this view. (2 Parsons N. and B. 287 note.) (5) No doubt if the cheque were a gift to the payee, and the banker knew that fact, the death of the drawer would operate as a revocation of the banker's authority to pay it. But in such case the authority to donee to collect, as well as that of the banker to pay, is not coupled with such an interest as to continue them in force: *Burke* v. *Bishop*, 27 La. An. 465 (1875). But the banker is not to presume that a cheque is a donation.

Cutts v. *Perkins*, 12 Mass. 206, appears correctly to state the law; and *Billing* v. *De Vaux*, 3 Man. & G. 565, seems to be direct authority as against the inferences which have been drawn from *Tate* v. *Hilbert*. The writer sums up his conclusions thus: "Rights accrue upon the delivery of a bill or cheque to the payee. They are not varied by the subsequent death of the drawer. The drawer of the bill may accept and pay it; the drawee of the cheque may also honour it; for it is presumably given for consideration, and its payment operates for the benefit of the estate of the deceased, which, upon its dishonour, would be bound for its payment and of general assets."

NOTES OF CASES.

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

QUEEN'S BENCH.

SINGLE COURT.

Attempt to obtain information as to voting —R. S. O. ch. 174, sec. 162—Conviction—Costs—Amendment.

There is no general power to award costs upon a conviction under an Ontario Statute where such power is not given by the Statute itself; and therefore where, on a conviction under sec. 162, ch. 174, R. S. O., for attempting to obtain information at the polling place, as to the candidate for whom a voter was about to vote, costs were awarded against the defendant, the conviction was ordered to be quashed, the Court refusing to amend the same in this respect, as it had been brought up on certiorari.

Milligan for plaintiff.

R. M. Fleming, contra.

IN BANCO.

NASMITH v. DICKEY ET AL.

R. W. Co.—Action by judgment creditor against shareholder.

N. D., one of the defendants, having a claim against a railway company for $1,000, assigned it to one H. by an instrument absolute in form, but really in trust, to enable H. to sue first the railway company and then the defendants, as shareholders of unpaid stock of the company. H. accordingly recovered judgment against both the company and the defendants, but made no effort to realize on that against the latter. After the commencement of this action, however, which was by a judgment creditor of the railway company against the defendants as shareholders of the company, for their unpaid stock, defendant's solicitors gave a cheque for the $1,800 to H., who, after retaining $127, the amount of a claim he had against N. D., handed over the balance to him, and the defendants then set up as a defence to the action this payment under the judgment recovered by H. against them; but, *held*, on the facts in evidence, that the judgment so recovered against the defendants and alleged payment thereon, constituted no defence to the claim of an ordinary judgment creditor, and that in fact the stock of the present defendants had not been paid up to the extent of $1,800, which was therefore liable to plaintiff's claim.

Held, also, HAGARTY, C. J., diss., that plaintiff could recover the interest on the calls made by the company for that amount of the stock.

Proctor for plaintiff.

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

MITCHELL v. GOODALL.

Equitable assignment of non-existing fund—Assignment of chose in action—R. S. O. ch. 116.

One W., plaintiff's tenant, being in arrear for rent, and having wheat in the barn, had a settlement with the plaintiff, when the plaintiff told him he must give him security before he would allow him to ship his grain. It was agreed that the plaintiff should see the defendant, to whom W. had been in the habit of shipping his produce, and ascertain whether he would accept an order from W. for the grain. The defendant agreed to accept the order which he drew out, mentioning, however, no amount. Plaintiff and W. then saw the defendant, when W., in the defendant's presence, signed an order on the defendant for $299.85 in the plaintiff's favour, which the defendant said he would pay as soon as he realized on the grain. There was conflicting evidence as to whether the plaintiff did or did not tell the defendant that, unless he got the order, he would not let the grain go; but he admitted that he drew the order, and its execution by W., and that he told the plaintiff he would pay it. The grain had not at that time been, but was on the 4th of October following, shipped to the defendant, who subsequently sold it and paid the proceeds to W., who had verbally instructed him before the receipt of the grain not to pay the order in the plaintiff's favour, though written instructions to that effect did not reach him till after its receipt.

Held, that the plaintiff was not entitled to recover as on an assignment of a chose in action under R. S. O. ch. 116, but, *Held*, CAMERON J., dissenting, that the property was stamped with the equitable right, and that the defendant was not merely cognizant of such claim, but had promised to co-operate in enforcing it, and that when the property reached his hands he was bound to carry out the trust, and no interference on W.'s part could relieve him from the obligation.

Per ARMOUR, J.—That the plaintiff was entitled to succeed on the common counts.

Per CAMERON, J.—That at the time of the order claimed by the plaintiff to constitute an equitable assignment, there was no fund in existence upon which it could operate, and no contract proved that W. would deliver the grain to the defendant; that W. was, therefore, at liberty to make any arrangement he pleased with defendant, and when he delivered the grain to him, after notifying him not to pay the order, the defendant must be held to have received it

on the understanding that he would not pay it.

Rose for plaintiff.

McMichael, Q.C., contra.

Backus v. Smith.

Easement.

Plaintiff, tenant for years, sued for injury to his stock-in-trade, caused by his wall falling from defendant's excavation on an adjoining lot. The wall had been over twenty years old, but there had been unity of seisin of both lots for a year, about the middle of the period. The plaintiff's landlord sold defendant's lot in fee.

Held, that no easement had been acquired by lapse of time.

Held, also, Cameron, J., diss., that there was evidence of negligence in fact, causing damage, and that the plaintiff could therefore recover, irrespective of any acquired easement.

Held, also, that lateral support to land in its natural state is a right of property; that right to support for buildings is an easement; and that such an easement is not within the Prescription Act.

Quære, whether, on the authorities, the landlord, when he conveyed defendant's lot, did, by implication of law, reserve the right of support to his then existing wall, and guaranteed thereby assent to such reservation.

Remarks on the law as to damages, where the land is weighted with buildings.

Per Cameron, J., that the evidence did not disclose negligence, entitling plaintiff to recover.

Atkinson for plaintiff.

C. Robinson, Q. C., contra.

COMMON PLEAS.

IN BANCO.

[Sept. 17.

Hovey v. Cassels et al.

Cheque or order on firm—Acceptance by partner not in firm name—Bona fides—Liability.

The defendants R. S. and W. G. Cassels, and A. B. Campbell carried on business in partnership as stock brokers and financial agents, under the name of Cassels, Son & Co. By the articles of partnership it was required that all bills, drafts, cheques, promissory notes, &c., should be signed in the name of the firm by some one or more of the said partners or the majority of them, for that purpose. It appeared that Campbell and one L. were engaged in some private transactions in no way connected with the business of the firm, and of which the other members had no knowledge, and in the course thereof, L., who had no funds in the firm's hands for the purposes thereof, drew the following order on the firm:

"Toronto, June 27, 1878.

"Cassels, Son & Co.

"Pay to A. Henry Hovey, Esq., or order $600."

(Sd.) "R. C. Lean."

which he took to Campbell, who, without any authority from the firm, marked across it "good, A.B.C.," and then procured the plaintiff to discount, at a discount of 30 per cent. per annum, and to hold it for one month, at the expiration of which, the firm having been dissolved in the mean time, the plaintiff presented the order, and it was refused, when he brought an action against the firm.

Held that the plaintiff could not recover, for the acceptance was not by the firm; but even if it was, the evidence showed that it was not taken by plaintiff in good faith.

McMichael, Q.C., for the plaintiff.

J. K. Kerr, Q.C., *and W. G. Cassels* for the defendants.

[Sept. 17.

Donley, Assignee, v. Holmwood.

Joint-stock Co.—Power of directors to make assignments in insolvency without consent of shareholders.

Held that the directors of a joint-stock company, incorporated by letters patent under the Joint Stock Letters Patent Act, 32 and 33 Vict., ch. 13, D., and subject to the provisions of the Insolvent Act of 1875, cannot, without the consent of the shareholders, make a voluntary assignment under that Act.

McCarthy, Q. C., for the plaintiff.

Falconbridge for the defendants.

[Sept. 17.

Ayre v. Corporation of Toronto.

Municipal corporation—Depositing ashes on street—Notice—Evidence.

Action for injuries sustained by the plaintiff by reason of the carriage in which he was driving coming in contact with a quantity of ashes and rubbish left by one S., on one of the streets of the City of Toronto, on the evening before the accident occurred, to be removed by the city scavenger carts on the following morning. There was no evidence of express notice to or knowledge by the defendants of the ashes being there : but it was urged that notice must be implied because the corporation officials whose duty it was to remove them had sanctioned the practice of so depositing ashes, &c., by permitting it to be done on former occasions, but the evidence failed to substantiate it.

Held, under these circumstances, the plaintiff could not recover

J. Reeve for the plaintiff.

McWilliams for the defendants.

[Sept. 17.

Merchants' Bank v. McDougall.

Promissory note—Notice of protest—Sufficiency of proof of sending—New trial.

In proof of the sending of notice of dishonour to defendant, an endorsee of a note, the receipt of which was denied by the defendant, the plaintiffs produced the notarial protest shewing that the note was presented for payment and protested on the 3rd of February, 1879, the day on which it fell due, and that notice of dishonour was sent on the same day to the maker and endorsers of the note. The notary's clerk stated that the protest was in his handwriting, and that he had no doubt but that he mailed the notices to the endorsers. He produced the office book, or notarial register, containing the date of the protest and particulars of the note, with the notarial and postage charges, and the time of mailing, with the initials of the person by whom the note was presented and the notices mailed, the latter being his own, but he had no recollection of such mailing except from what appeared in the book, and his practice was to make the entries just before mailing, when he would take out his watch, note the time, and then go to the post.

Held, that there was sufficient evidence of the mailing the notices, and the jury having found for the defendant, a new trial was ordered.

H. J. Scott, for the plaintiffs.

Meek and *Norris*, for the defendant.

[Sept. 17.

Kneeshaw v. Collier.

Promissory note in settlement of indictment for assault and civil action therefor—Validity of—Fraud—Duress.

To an action against defendants C. and B., as maker and endorser respectively of a note for $1000, the defendant C. pleaded—1. Fraud. 2. That he was induced to make the note by the duress of the plaintiff, namely, by his unlawfully imprisoning and detaining him in prison until he made the note ; and both defendants pleaded, 3. Setting up in substance illegality of consideration ,namely, that the giving of the note was the result of an illegal compromise of an indictment for an assault occasioning actual bodily harm, and for common assault ; and also of a civil action against C. for such assault.

Held, upon the evidence set out in the case, none of the pleas had been proved and that plaintiff was therefore entitled to recover.

B. B. Osler, Q. C., for the plaintiff.

Robertson, Q. C., for the defendant.

[Sept. 17.

Walton v. County of York.

Ways—Accident—Negligence.

In an action for injuries sustained by the plaintiff's horse and buggy falling into a ditch on the side of a road in the County of York, known as the Kingston Road, the plaintiff claimed that there was negligence on the part of the defendants, because the ditch was too near the travelled part of the road, and was too deep : that the ditch should have been graded down to the bottom, as is done in cities and towns, and further, that the ditch should have been fenced.

It appeared that the road which ran east and west was 59 feet wide between the fences, the actual travelled part being 30 feet, bounded on either side by a ditch; the southerly 10 feet of which, and 18 inches from the ditch in question, was macadamized. The ditch was about 4 feet wide at the top, sloping to about 2½ feet at the bottom, and its depth was 15 inches from the edge of the ditch; 22½ inches from the extremity of the macadamized part, and about 28 inches from the crown of the road.

Held, that there was no evidence of negligence, for that the ditch was proved to be where ditches are usually placed in county roads, and was not deeper than was necessary to carry off the water; that it was not incumbent to so grade the ditch, for that it had been tried and found not to answer, because waggons and cattle passing over the road caused it to be filled up; nor were they required to fence it, for not only was it most unusual to do so, but also, it would be most expensive, and it would be impossible to keep up the fences or repair them; and that such fences would be more dangerous and a greater nuisance than the ditch itself.

Donovan for the plaintiff.

J. K. Kerr, Q.C., for the defendants.

[Sept. 17.

Lee v. Bank of British North America.

Deposit receipt—Payment after death without knowledge thereof to holder—Action by administratrix—Pleading.

Action by plaintiff, as administratrix of one L., deceased, to recover $100, deposited by L., in his lifetime, with defendants.

Second plea: That the moneys claimed are claimed under the deposit receipt and not otherwise, which receipt was, after L.'s death, and before defendants had any notice or knowledge thereof, duly presented to defendants, properly endorsed by L., and that defendants, in due course of business and in their usual course of dealing with such receipts, paid the sum mentioned therein to the persons presenting the same with L.'s endorsement thereon, and defendants took up and ever since held the same, as they were entitled to do.

Third plea: After stating, as before, that the moneys were claimed under the deposit receipt, alleged that L., in his lifetime, endorsed and delivered the said receipt to B. L., his wife, and afterwards his widow, who being possessed thereof by virtue of the endorsement, presented it to defendants, who, without any notice or knowledge of L.'s death, duly paid the same to her.

Held, both pleas bad, as constituting no defence to the action.

Ferguson, Q.C., for the plaintiff.

McMichael, Q.C., for the defendants.

[Sept. 20

Lewis et al v. Tudhope et al.

Insolvency—Proof by surety—Action by creditor.

The defendants having become insolvent, the plaintiffs who were creditors having refused to prove, G. F., who was surety to the plaintiffs for the amount of their claim, without having paid the debt, proved against the estate therefor, fearing, as he alleged, that, unless he did so, the claim would be unrepresented, and that in the event of his being compelled to pay plaintiffs, he would have no recourse against the estate. One R., who was surety for other creditors, proved in like manner. The proof of these claims was received without objection, and a deed of composition and discharge executed, and subsequently confirmed by the County Judge. It was admitted that unless one or other of these claims was counted, the deed was not executed by creditors whose claims amounted to three-fourths in value of the liabilities so as to make the deed binding on non-assenting creditors. By the deed the insolvents covenanted to give each of the creditors promissory notes for the composition payments. After the deed of composition had been confirmed, and the estate handed back to the insolvents, the plaintiffs sent to the assignee proof of their claim, valuing their security, which the assignee refused to accept, on the ground that the estate had passed out of his hands.

The plaintiffs sued defendants under the common counts for the whole amount of their claim, alleging that the deed was fraudulent and void, as against them; and in a special count for the amount of the

composition, alleging neglect of the defendants to give plaintiffs the said notes.

Held, under the circumstances and state of the record, the plaintiffs could not recover the whole amount of their claim; but that they were entitled to recover the amount of the composition on their claim after deducting the value of their security.

McMichael, Q. C., for the plaintiffs.

McCarthy, Q. C., for the defendants.

[Sept. 20.

Starling v. Grand Junction R. W. Co.

Railways—Agreement for compensation for lands taken in the absence of notice, or of proceedings taken under the Act—Validity of—C. S. C., c. 66.

In an action against defendants, a railway company, for compensation for land taken by them, it appeared that in 1864 the railway company without giving any notice, or taking any proceedings for acquiring the land under the provisions of the Railway Act, Consol. Stat. C., ch. 66, entered upon the land and constructed their railway. No settlement was made with plaintiff, though he frequently demanded compensation until 1878, when on his threatening to take proceedings against the company the president, on authority therefor from the board, instructed the secretary to make a settlement, and he, after seeing plaintiff and making a valuation of the land, entered into an agreement with plaintiff, whereby plaintiff agreed to accept $1775, and interest at 6 per cent. from the time the land was taken, making in all $2199, the valuation being shown to the president who expressed no dissent. The written memorandum of the valuation was given to the plaintiff, and a copy placed amongst the records of the company. No resolution of the board was passed in regard to the valuation, nor was any formal contract ever drawn up, but it appeared that the valuation was before the board when making their contracts for the construction of the road. It also appeared that the defendant tendered a conveyance of the land to the company, and their only objection thereto was that they were unable to pay the money.

Held, that, under the circumstances, the plaintiff was entitled to recover the amount so agreed upon as compensation for the land, and interest.

Britton, Q. C., for the plaintiff.

McCarthy, Q. C., for the defendant.

VACATION COURT.

Osler, J.] [August 22.

Walker v. Beaver, &c., Ins. Co.

Insurance—Action on policy—Right to appeal on merits—Cancellation—Evidence.

In an action on a fire insurance policy, the learned judge at the trial by consent of the parties directed a reference, which did not contain any agreement, allowing an appeal on the merits. *Held*, by *Osler*, J., that such an appeal would not lie.

Semble, that except by consent of parties there is no power in such case to direct a reference.

Semble also, that the evidence set out in the case sustained the finding of the arbitrators herein, that at the time of the loss the insurance in defendants' company had been cancelled, and a new and valid insurance effected in another company.

Ferguson, Q.C., for the plaintiff.

Robinson, Q.C., for the defendants.

CHANCERY.

The Chancellor.] [Sept. 3.

Hepburn v. Patton.

Injunction—Debtor and Creditor.

This Court will not restrain a debtor from dealing with his property at the instance of a party representing himself to be a creditor, but who is not in a position to ask for a decree establishing his claim against the defendant.

The Chancellor.] [Sept. 3.

Dewar v. Mallory.

Fixtures—Freehold or Chattels.

The owner of a mill, originally constructed for the purpose of sawing, afterwards added to it machinery for planing the lumber, and subsequently executed a mortgage of the land and a chattel mortgage of the machinery, treating and calling it "chattels." *Held*, that the mortgagee of the

realty had no right to look to the machinery as security for his claim, although in the absence of the acts of the owner in severing the machinery from the realty it would have been considered part of the freehold.

The Chancellor.] [Sept. 3.

GRIFFITH v. BROWN.

Easement—Absolute Title—Statute of Limitations.

The plaintiff, for the purpose of obtaining ready access to the upper part of his house, constructed a platform, stairway, and landing on the outside of his building, and the defendant, the adjoining owner, never took any proceedings against the plaintiff, or protest against the user of the premises. *Held*, that after the lapse of the time prescribed by the statute of limitations, the plaintiff had acquired not only an easement in the premises but a title to the land covered by the platform, stairway and landing; and the fact that during the time the plaintiff was in possession the defendant had, for the purpose of carrying out some works on his own lands, temporarily taken up the platform, and removed a portion of the stairway, had not the effect of stopping the running of the statute, the acts referred to not being shown to have been done in assertion of any right on the part of the defendant.

The Chancellor.] [Sept. 3.

THE CANADA LIFE ASSURANCE CO. v. PEEL GENERAL MANUFACTURING COMPANY.

The holding of shares by one trading company in another trading company is not ultra vires.

The rule that, in the absence of fraud on the part of a vendor of land, a deficiency in quantity—small in proportion to the quantiyt sold—that which is deficient not being necessary to the enjoyment of what the vendor can make title to, is not a bar to specific performance at the suit of the vendor with compensation to the purchaser, applies also to sales of stock or shares in a trading company. Therefore, where a contract was entered into for the sale and transfer of 360 (out of 400) shares of stock in such a company, and upon a bill being filed to enforce the sale and purchase, it appeared that the plaintiffs could validly assign 343 out of the 360 shares, the Court at the hearing held the vendors entitled to a decree for the sale and payment of such a number of shares as they could make a good title to.

The Chancellor.] [Sept. 3.

DEEKS v. DAVIDSON.

Presbyterian Churches—Church Property—Dissent from Union.

In pursuance of notices duly given from the pulpit by the officiating clergyman, a a member of the United Presbyterian body and belonging to the Presbytery, a meeting of the congregation was held, at which the members unanimously passed a vote of dissent from the union. *Held*, that such dissent entitled the congregation to hold its property as it had held it before the Act of the Legislature was passed for the purpose of uniting the several bodies of Presbyterians in Canada.

The Chancellor.] [Sept. 3.

FAIR v. YOUNG.

Husband and Wife—Fraud.

Where the evidence showed that a husband had received moneys from his wife, for which she claimed to be his creditor, these moneys having in great part been produced by sale of her lands, and she subsequently obtained moneys from her husband, which she expended in the purchase of land; a bill, filed by a creditor of her husband, seeking to enforce his claim against the property so purchased, was dismissed with costs, the Court being satisfied with the *bona fides* of the dealings between the husband and wife, although there were some slight discrepancies in their evidence.

The Chancellor.] [Sept. 3.

CORPORATION OF HOUGHTON v. FREELAND.

Liability of Collectors for money destroyed by fire.

The defendant being collector of rates, kept a large amount of his collections in his house, there being no proper place for depositing the same provided by the munici-

pality, and there being no bank inthe county within a distance of thirty-five miles. *Held*, that under these circumstances the defendant was not liable to make good to the county the amount of loss sustained by the accidental burning of his house, and the destruction therein of moneys of the municipality.

The Chancellor.] [Sept 3.

SILLS v. BICKFORD.

Wharfinger—Lien for Wharfage.

It is not necessary that the proprietor of a wharf or quay upon navigable waters, used for the loading and unloading of vessels, should have a warehouse or shed or other convenience for the storage of goods and protection thereof from the weather ; and as such wharfinger he is entitled to a lien on goods, for money due to him for wharfage.

Proudfoot, V. C.] [Sept. 4.

FRASER v. GUNN.

Dower—Agreement to divide rent.

The rule of law is that if a woman accepts an assignment of dower against right she will be bound by it ; but where the heir-at-law and widow agree to lease the realty and pay the widow one-third of the rent reserved in lieu of dower, which was carried out by their executing a lease of the premises, and the subsequent payment to her of her agreed proportion of the rents during the continuation of the lease,

Held, That the right subsequently to claim dower was not barred by the Statute of Limitations.

Proudfoot, V. C.] [Sept. 4.

MOFFAT v. SCHOOL TRUSTEES.

School trustees—Change of school site—Specific performance.

Where the Board of Education formed by the Union of High School and Public School Trustees contracted for the purchase of land from the plaintiff for the purpose of changing the place of the school.

Held, That the plaintiff was entitled to call for a specific performance of the agreement for purchase, although no by-law of the Council authorizing the purchase had been made, nor had the Lieutenant-Governor in Council approved of the change, and although proceedings had been instituted by a ratepayer to restrain the change of site.

Proudfoot, V. C.] [Sept. 4.

RE YARMOUTH.

Welsh mortgage—Statute of Limitations.

A conveyance was made by way of security declaring that the mortgagee should retain possession until the sum of $75 was paid.

Held, that the title of the mortgagee did not become absolute under the Statute of Limitations, the conveyance in effect amounting to a Welsh mortgage under which the possession of the mortgagee gives no title under the statute ; every receipt of rent or every year's occupation of the premises being a receipt of interest under the mortgage, the right of redemption is thus kept alive.

Blake, V. C.] [Sept. 11

MCINTOSH v. BESSEY.

Will—Construction of—Extrinsic evidence—Latent ambiguity.

A testatrix devised certain parts of her estate to her "daughter." In fact the testatrix at the time of making her will had two daughters, one of whom had some years before married against the will of her mother, and with whom, in consequence, she had ever since ceased to have any social intercourse. Under these circumstances the Court admitted parol evidence to prove that the unmarried daughter, who had continued to maintain friendly relations with the mother, was the party intended to be benefited by the testatrix.

Blake, V. C.] [Sept. 19.

WHITE v. LANCASHIRE INSURANCE COMPANY.

Insurance agent—Liability of company.

An insurance agent cannot, without the express sanction of his principals, grant an insurance in his own favour binding on the company ; and the same principle prevails in the case of a second insurance, although the prior policy had been granted with the express sanction of the company.

Blake, V. C.]

THE ATTORNEY-GENERAL v. THE INTERNATIONAL BRIDGE CO.

Demurrer—Parties—Nuisance.

An information alleged that the International Bridge Company had constructed and completed the said bridge, and the same was adapted to the passage of railway trains and foot passengers; but that the defendants prevented "persons on foot to cross the said bridge, although willing and offering to pay the lawful tolls provided by the said Act," and that the defendants' intention was "to maintain the said bridge as a railway bridge only, and not as a carriage or foot bridge"; and prayed an injunction to restrain the defendants "from preventing Her Majesty's subjects from using the foot-way of the said bridge at their will and pleasure on the payment of lawful tolls" . . or binding them from using in the same manner the foot-paths thereof. The information also prayed the removal of the bridge in the event of its not being constructed in the manner contemplated by the Act of Incorporation. In view of the fact that a large sum of money had been expended in the construction of the bridge as it was built, and which had been so built in accordance with the provisions of their Act of Incorporation, the Court allowed a demurrer for want of equity; but, in so far as the information showed an unlawful exclusion of the public from the use of the foot-paths of the bridge, the demurrer was overruled; but, under the circumstances, without costs to either party.

To such an information, a railway company who had become lessees of the bridge, were held to be proper parties.

Blake, V. C.] [Sept. 24.

THE WESTERN INSURANCE CO. v. THE PROVINCIAL INSURANCE CO.

Re-insurance—Agent of company—Non-payment of premiums

The agent of the plaintiffs effected a re-insurance with the agent of the defendants, but did not pay the amount of the stipulated premium, the plaintiffs alleging that it was the custom of agents to give each other credit for such premiums, and settle at the end of the month, when the balance, if any, was paid by the one to the other. The existence of this custom was denied by the defendants, and it was shown that the defendants required all premiums on re-insurances to be paid to their agents in cash, the same as in ordinary insurances, before the insurance should be considered binding, and this was known to the agent of the plaintiffs. A loss having occurred, the plaintiffs sought to compel payment of the amount of such re-insurance; but the Court, under the circumstances, held that the defendants were not bound by what had taken place between the agents, and dismissed the bill with costs.

Full Court.] [Sept. 24.

THE GRAND TRUNK RAILWAY COMPANY v. THE CREDIT VALLEY RAILWAY COMPANY.

Injunction—Right of way—License of occupation—Practice.

The principle upon which the Court interferes by injunction is to preserve property in its actual condition until the legal title thereto can be established; and although under the present practice this Court can determine legal rights, still it will not do so upon interlocutory application. Therefore, where two railway companies were in actual possession of a strip of Ordnance lands, 100 feet in width, and along which their tracks were laid, and a third railway company applied for and obtained from the Government of the Dominion a license of occupation of the same strip of land for the purpose of running their track thereon—such license stating that it was not to "operate to imply any covenant or agreement on the part of the Crown to give possession to the licensees, but that such license shall be accepted by them subject to any legal rights, which either the Grand Trunk or the Northern Railway (the two railways so in possession) may hereafter establish in respect of the one hundred feet or any part thereof,"—and in pursuance of such license, the licensees entered upon such strip and proceeded to lay their rails thereon, whereupon a motion was

made by one of the other companies for an injunction to restrain the licensees from disturbing their possession, and which on notice was granted, and a motion made to dissolve the writ was (by Proudfoot, V. C.) refused with costs; on re-hearing this order was affirmed by the full Court with costs.

CANADA REPORTS.

MARITIME COURT OF ONTARIO.

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

The "Nithsdale."

"Dredge" not within Act.

The owner of the Dredge *Nithsdale* was indebted to the petitioner for services performed on board the said dredge, and this cause was instituted against the dredge to recover the amount due.

The owner of the dredge set up, as a defence, that a dredge was not a ship or vessel within the meaning of the Maritime Jurisdiction Act of 1877, and that the Maritime Court of Ontario had no jurisdiction *in rem*.

Held, That the Maritime Court of Ontario had no jurisdiction.

[Toronto, 19th Feb. 1879.

Mackenzie, Co. J.—This is a cause of wages instituted in this Court by Robert McGraw to recover $757.00 against the dredge *Nithsdale*. The owner, William Pearce, who intervenes as a defendant, alleges, among other things, for answer that the dredge *Nithsdale* is not a ship or vessel within the meaning of any of the Acts of Parliament giving jurisdiction to this Court. The *Nithsdale* is represented as a scow, partially covered with deck, containing boiler, engine and machinery for raising mud, sand, and dirt from the bottom of harbours and waters; she is not propelled by sails, oars, or engine. She has to rely upon tugs or external aid for locomotion, and she has no internal power in herself for navigation. Captain Wyatt states she has propelling powers in harbours, but not *outside* them in open lakes.

The jurisdiction of the Maritime Court is given by 40 Vict., cap. 21. By Section 1 it is enacted:—

"Save as by this Act excepted, all per-
"sons shall have, in the Province of On-
"tario, the like rights and remedies in all
"matters, including cases of contract and
"tort and proceedings *in rem* and *in per-*
"*sonam* arising out of or connected with
"navigation, shipping, trade, or commerce
"on any river, lake, canal, or inland water
"of which the whole or part is in the Pro-
"vince of Ontario, as such persons would
"have *in any existing British Vice-Admir-*
"*alty Court* if the process of such Court
"extended to this Province;" and by Section 2, "The Court, &c., shall have as to
"the matters aforesaid all such jurisdiction
"as belongs in similar matters within the
"reach of its process, to *any existing Brit-*
"*ish Vice-Admiralty Court.*"

The nearest existing British Vice-Admiralty Court is that of Lower Canada, now the Province of Quebec; also, in the Provinces of New Brunswick and Nova Scotia, the jurisdiction of the existing Vice-Admiralty Courts must be gathered from the Royal Commission creating the Vice-Admiralty Courts and the Letters Patent appointing the Judges thereof, and from the Imperial Statutes passed to regulate the jurisdiction and practice of such Courts explained by adjudicated cases. I have before me a copy of the Imperial Commission directed to "our beloved James Murray, our Captain General, and Governor-in-Chief in and over our Province of Quebec," dated 19th March, 1764.

This Commission gives the Governor jurisdiction to investigate Maritime Causes according to the Ordinances and Statutes of the High Court of Admiralty in England, within the ebbing and flowing of the sea or high water within the maritime jurisdiction of the Province.

I have also copy of Letters Patent issued in the High Court of Admiralty of England, dated the 27th October, 1878, appointing Hon. Henry Black, Commissary or Judge of the Vice-Admiralty Court in the Province of Lower Canada. The jurisdiction is in substance the same as that given to Governor Murray; there was but one Province of Quebec; but afterwards in 1791, the Province of Quebec was divided under the Imperial Act, 31 Geo. III. cap. 31, into Upper and Lower Canada. Hence Letters Patent

issued to Mr. Justice Black and directed to him as "Our Commissary in our Vice-Admiralty Court in Lower Canada."

The Imperial Act 26 Vict., cap. 24, was passed 8th June, 1863. It is entitled:

"An Act to facilitate the appointments "of Vice-Admirals and of officers in Vice-"Admiralty Courts in Her Majesty's pos-"sessions abroad, and to confirm the past "proceedings to extend the jurisdiction and "to amend the practice of those Courts." The Act is intituled, "The Vice-Admiralty Courts Acts, 1863." The second Section contains the Interpretation Clauses in regard to ships or vessels—"'Ships' "shall include every description of ves-"sel *used in navigation, not propelled by "oars only*, whether British or Foreign." This Imperial Act in a great measure must govern the rights and remedies contemplated by our "Maritime Jurisdiction Act, 1877."

Whether the *Nithsdale* is a vessel within the meaning of the Dominion Act or the Imperial Act, it may not be out of place to inquire the kind of vessels recognised by Maritime Law as coming within Admiralty Jurisdiction. "Ship" is a general term and, in law, is equivalent to "vessel." It is defined "*a locomotive machine adapted to transportation*" on and over rivers, seas and oceans.

It has been remarked by Benedict, that whether the old tradition that the first idea of the canoe was suggested by the split reed floating on the water, be true, or whether the simple raft was not the first instrument of maritime locomotion and transportation, it is not necessary to enquire; or whether the tiny sail of the Nautilus or the web foot of the water fowl suggested the first means of propulsion. It is, however, certain that ships and vessels in all their variety of construction, and all their modes of propulsion, are but the more or less perfect combinations of the canoe or raft, the sail and the paddle, as human ingenuity and science, in the progress of civilisation and art have removed difficulties and suggested new expedients, till vessels are the most perfect and wonderful productions of human art.

Questions have arisen how far size, capacity, shape and purpose, and mode of propulsion must enter into the definition of a ship or vessel under the Maritime Law. Each nation has its own mode of construction, rigging and navigation, and its peculiar kind of craft; but all are ships or vessels, which are manned by a master and crew, and are devoted to the purposes of transportation and commerce. It is not the form or the construction or the mode of propulsion that establishes the jurisdiction, but the business, purpose and capacity of the craft as an instrument of naval transportation and locomotion on and over rivers, lakes, canals, seas and oceans. Such is a general idea of the kind of craft recognized by maritime law generally. They must have instruments or craft adapted to naval transportation or navigation; but, in the present case, the question seems to be narrowed to the definition of a ship or vessel used in navigation as explained in the interpretation clause of "The Vice-Admiralty Court Act of 1863." In the General Rules formed for the Court of Passage for the borough of Liverpool under the Imperial Act 31 & 32 Vict. cap 71, known as the "County Courts Admiralty Jurisdiction Act, 1868," I find in the interpretation clause the following definition of a vessel: "Vessel shall include every description of a vessel *used in navigation*," so that vessels within the jurisdiction of the Maritime Court must be adapted to the purposes of navigation and transportation. Is the dredge *Nithsdale* one of this description? The original meaning attached to the word dredge, I believe to be a net or drag for taking oysters: it is now called a machine for cleansing canals and rivers. To dredge is to gather or take with a dredge—to remove sand, mud and filth from the beds of rivers, harbours and canals with a dredging machine. What is here called "dredge" is sometimes called "dredger," which Worcester calls "a sort of open barge used in removing sand, mud, silt, etc., from the beds of harbours, rivers and canals—a dredging machine." In Wright's Dictionary the word "dredger" is used instead of "dredge," and defined to be a sort of open barge for removing sand, silt, mud, or the like, from the beds of rivers, docks and harbours.

My attention was directed to the case of *Everard* v. *Kendall*, L. R. 5 C. P. 428, where it was held that collision between two barges in the river Thames was not within the jurisdiction of the Admiralty Law. The definition of a ship or vessel in "the Admiralty Court Act of 1861" is the same as given in the Vice-Admiralty Court above stated. These barges were propelled by oars.

Ex parte Ferguson, L. R., 6 Q. B. 280 was cited, where the English Queen's Bench held that a *fishing coble* employed in the herring fishery, being about 24 feet long, 7 feet beam, 10 tons' burthen, drawing about 18 inches of water, with a main and mizen mast, and a bowsprit to ship and unship and a jib mainsail and mizensail, was a "ship" within the meaning of the Act. Sir Colin Blackburn in giving judgment said: "It is "said the coble cannot be a ship: she is 24 "feet long; she is not entirely decked over "—she has two masts and a rudder which "are removable, and she may be propelled "by four oars; she goes out well to "sea and though the oars are used "to get her out of harbour they "are merely auxiliary to the use of "sails. It is said on behalf of the Board of "Trade, that she is a ship or vessel. The "chief argument against the proposition is "by referring to the interpretation clause "which says 'ship' shall include every de-"scription of vessel *used in navigation* not "propelled by oars. And the argument "against the proposition is one I have "heard very frequently, viz., where an Act "says certain words shall include a certain "thing, that the words must apply exclu-"sively to that which they are to include. "That is not so. The definition given of a "'ship' is in order that 'ship' may have "more extensive meaning. Whether a ship "is propelled by oars or not it is still a ship "unless the words 'not propelled by oars' "exclude all vessels which are ever propel-"led by oars. Most small vessels rig out "something to propel them, and it would be "monstrous to say that they are not ships. "What, then, is the meaning of the word "'ship' in this Act? It is this: that every "vessel that substantially goes to sea is a "'ship.' I do not mean to say that a little "boat going out for a mile or two to sea "would be a ship; but where it is the busi-"ness really and substantially to go to sea, if "it is not propelled by oars, it shall be con-"sidered a ship for the purpose of this Act. "Whenever the vessel does go to sea, "whether it be decked or not, or whether "it goes to sea for the purposes of fishing "or anything else, it would be a ship, you "see. The facts stated are that this vessel, "though of small size, yet goes out 20 or 30 "miles to sea, does go there almost en-"tirely with sails, does stay out many "hours, and I think it is probable that it "goes out for days and nights. This "makes it impossible to say that it is not "*a sea-going vessel*, and consequently a "'ship,' coming within the 'Act,' without "the aid of the interpretation clause."

In *Everard* v. *Kendall*, already cited, it was held by the whole Court that a barge propelled by oars was not a ship or vessel, within the definition above given. Dredges, or dredgers, like the *Nithsdale*, are described sometimes as scows, other times as barges. According to *Everard* v. *Kendall* she would not be a ship or vessel over which the Court of Admiralty had jurisdiction. The *Nithsdale* has no internal powers of propulsion; she is not propelled by oars or sails; she is flat-bottomed; she is intended to be used in harbours, rivers and docks; she has to be moved to a distance by means of a tug; she has not power of her own to be moved; she is not and cannot be a sea or lake-going vessel; she is not adapted to be an instrument of transportation on and over rivers, lakes and canals, or used in navigation or naval transportation. In my opinion the petition must be dismissed; but as the question raised is a new one, of considerable importance, it will be without costs.

LAW SOCIETY.

TRINITY TERM, 43RD VICTORIÆ, 1879.

The following is a *resumé* of the proceedings of the Benchers during this Term, published by authority.

AUGUST 19th, 1879.

Convocation met.

Special meeting, Aug. 19th, 1879, called on requisition to consider the reception of the Governor-General and Her Royal Highness.

The minutes of last meeting were read and approved.

Mr. Hoskin moved the following, seconded by Mr. Miller,

"That on the occasion of the visit to Toronto of His Excellency the Governor-General and Her Royal Highness the Princess Louise, Osgoode Hall be illuminated, and that the Government of Ontario, as part proprietors of the building, be requested to join in the arrangement. The expenditure on the part of the Law Society, not to exceed the sum of $500 exclusive of gas, and that the matter be entrusted, on the part of the Law Society, to the Finance Committee." —Carried.

Moved by Mr. Crickmore, seconded by Mr. Read and resolved, That it be ascertained on what day it will be convenient for the Governor-General and Her Royal Highness to view the Osgoode Hall, and that the Benchers do attend at the time to be appointed to receive them, and that notice to the Bar be given through the papers, and that the Finance Committee do carry out this resolution.—Carried.

Adjourned.

AUGUST 25th, 1879.

The minutes of last meeting were read and approved.

Report of Legal Education Committee on the cases of G. W. Meyer, C. W. Mortimer, J. Maxwell, and J. Folinsbee, was received and read.

Mr. Hodgins moved that the Report be adopted with the following amendment:— "That Mr. Folinsbee's service be allowed on his producing a certificate from Mr. Upper, corroborative of Mr. Folinsbee's declaration of 23rd August.—Carried.

Report of Examiners on Examination of Candidates for call—received and read.—Adopted.

Ordered, That F. E. Hodgins, J. M. Glenn, G. R. Webster, G. Claxton, C. W. Colter, F. W. Crothers, H. T. W. Ellis, C. W. Mortimer, G. T. Blackstock, P. L. Palmer, J. A. Williamson, and Alexander Jackson, whose cases are reported to be regular by the Secretary, be called to the Bar.

Ordered, That the cases of A. J. McColl and D. A. McIntyre be referred to the Committee on Legal Education for report.

The following gentlemen were called:— Messrs. Glenn, Webster, Claxton, Colter, Crothers, Mortimer, and Palmer.

Report of Examiners on examination of Attorneys was received and read.

Ordered, That the following gentlemen, whose cases are reported to be regular by the Secretary, receive Certificates of Fitness:—F. E. Hodgins, J. M. Glenn, M. A. McHugh, J. Maxwell, W. J. Lavery, A. Jackson, N. Mills, W. J. Ferguson, W. Munro, W. A. Donald, C. W. Mortimer, J. McLean, and J. S. McDonald.

Ordered, That the cases of Messrs. Wright, McIntyre, Comfort and Patterson be referred to the Committee on Legal Education for report.

Ordered, That Mr. Folinsbee's certificate be granted on his producing the certificate referred to in the previous resolution on his case.

Messrs. Blackstock and Williamson were called to the Bar.

The Report of Examiners on Intermediate Examinations was received, read, and approved.

The Secretary reports that all those who have passed the first Intermediate Examinations as both Students-at-Law and Articled Clerks, namely:—A. A. Adair, G. W. Meyer, H. B. Dean, C. J. Leonard, A. H. Lefroy, G. Plaxton, A. Howden, T. A. Snider, D. J. Lynch, B. Sparham, J. A. Robinson, J. M. Ashton, O. M. Jones, W. Smaill, J. A. Gilbert, W. R. Thompson, G. R. Knight, W. T. Williams, T. H. Stinson and W. E. Scott, have passed at the proper time.

Ordered, That the Examinations be allowed as Students and Clerks.

The Secretary reports that all those who have passed the First Intermediate Examintion as Students-at-Law only: Namely, T. C. L. Armstrong, C. W. Oliver, F. H.

King, R. M. Flood, and L. E. Dancy, have passed at the proper time.

Ordered, That their Examinations as Students-at-Law be allowed.

The Secretary reports that all those who have passed the Second Intermediate Examination as both Students-at-Law and Articled Clerks: namely, W.D. Swazie, J. Williams, R. E. Reynolds, J. R. Brown, W. J. Porte, Jas. Scott, D. K. Cunningham, A. H. Manning, W. C. Perry, J. L. Darling, R. W. Wilson, A. Ford, A. Olteir, J. Dowlin, C. C. Going and F. F. Harper have passed at the proper time.

Ordered, That their examinations be allowed as Students and Clerks.

The Secretary reports that the gentleman who has passed his Second Intermediate Examination as a Student-at-Law, namely, G. H. Muirhead, has passed at the proper time.

Ordered, That his examination be allowed.

Report of Legal Education Committee on the Primary Examinations received and read.

Ordered, That the following graduates, namely:

John Young Cruickshank, B. A., Victoria College.

Thomas Arthur Elliott, B.A., Queen's College.

John Campbell Ferrie Brown, B.A., University of Toronto.

Richard Scougall Cassels, B.A., University of Toronto.

John Walter Delaney, B.A., University of Toronto.

Frederick William Aplin Gordon Haultain, B.A., University of Toronto.

Charles Coursolles McCaul, B.A., University of Toronto.

John D. Cameron, B.A., University of Toronto.

Thos. P. Corcoran, B.A., University of Toronto.

John Carruthers, B.A., University of Toronto.

James Chisholm, B.A., University of Toronto.

Ghent Davis, B.A., University of Toronto.

Joseph A. Culham, B.A., University of Toronto, and the following Matriculants of Universities, namely:

John Franklin Palmer, University of Toronto.

James D. S. C. Robertson, University of Toronto.

William. S. Servos, University of Toronto, whose cases are favourably reported on by the Committee, be entered on the books as Students-at-Law.

Ordered, That Mr. E. J. Clarke, whose case was favourably reported on by the Committee, be allowed his examination as an Articled Clerk.

Ordered, That the report of the Committee as to the case of Mr. Haultain be adopted, and that on compliance therewith he be entered on the books as a Student-at-Law.

The petition of Hubert L. Ebbels, for call as an attorney of 10 years' standing was received and read.

Ordered, That it be referred to a special Committee, consisting of Mr. Crickmore, Mr. Smith and Mr. Crombie.

Adjourned.

August 26th, 1879.

Minutes of last meeting were read and approved.

The report of Committee on Legal Education, on cases of D. A. McIntyre and A. J. McColl, for call, received and read.

Ordered, That Messrs. McColl and McIntyre be called.

Report of Committee on Legal Education, on cases of Messrs. McIntyre, Wright, Comfort and Patterson, for admission received, read and adopted.

Ordered, That Messrs. McIntyre, Wright, Comfort and Patterson do receive their certificates of fitness.

The report of Special Committee, on case of Mr. Ebbels, was received and read.

Ordered, To be considered forthwith and adopted.

Ordered, That Mr. Ebbels be called on payment of the usual fees in special cases.

Messrs. H. L. Ebbels, A. Jackson, D. A. McIntyre were called to the Bar.

The letter of Mr. Ince, as to his fees and fines was read.

Mr. Crickmore moved that Mr. Ince be

relieved from payment of fines, on condition of immediate payment of all arrears of fees.

Mr. Hodgins moved in amendment, that the matter be referred to the Finance Committee with power to act.

The amendment was carried.

The balance sheet for the quarter ending 30th June was presented by the Secretary and read.

Mr. Hodgins moved that the usual notice be given for applications for the office of Examiner in Equity and Real Property, which becomes vacant on the 1st of October next, and that notice be given to each Bencher that the appointment will be made on the last Friday of Term.—Carried.

Adjourned.

August 30th, 1879.

Minutes of last meeting were read and approved.

The report of the Legal Education Committee, on case of Mr. Phippen, was received, read and ordered for immediate consideration.

Ordered, that the examination of Mr. Phippen, as an Articled Clerk be allowed.

Mr. Hodgins moved that the Attorney-General and Mr. Crooks, be associated with the Finance Committee on the reference as to the reception of the Governor-General and Her Royal Highness.—Carried.

Mr. W. E. Hodgins was called to the Bar.

Mr. Crombie moved that the Judges of the Superior Courts be invited to attend on the occasion of the expected visit of His Excellency and Her Royal Highness, and that two tickets for the ladies of his family be issued to each Judge and Bencher, and that the Bar be notified through the newspapers, that they are expected to appear in their robes, and that each Barrister can receive his ticket of admission on application to the Secretary, at any time up to the day before the day fixed for the reception.—Carried.

Convocation Room, Osgoode Hall,
5th September, 1879.

Present, Mr. Thomas Hodgins. This day being the last Friday of Trinity Term, and one of the standing Convocation days, and there being no quorum of Benchers up to the hour of eleven o'clock in the forenoon, the undersigned Bencher, being the only Barrister present, hereby adjourns the meeting of Convocation from this day until to-morrow, Saturday, the sixth day of September, A.D. 1879, to be then holden at the hour of half-past ten in the forenoon.

(Signed) Thomas Hodgins.

September 6th, 1879.

Minutes of August 30th read and approved.

Minutes of 5th September read and approved.

Report of Legal Education Committee respecting Robert Miller's case presented, received, and read.

Ordered for immediate consideration and adopted.

Mr. McColl and Mr. Ellis were called to the Bar.

Report of Legal Education Committee on applications for office of Examiner in Equity and Real Property, received and read.

Ordered for immediate consideration.

Mr. Crickmore moved in amendment as follows:—"That the appointment of an Examiner for call and certificate of fitness in Real Property and Equity be not now proceeded with, and that the consideration of the office of Examiners and the manner of their appointment and salary be postponed till next Michaelmas Term, and that the Committee on Legal Education be directed to frame and report by the first day of next Term, a rule or rules as to examiners and examinations, and as to the manner and term of appointment of the examiners."—Carried.

The Report of the Committee on Legal Education as to the case of H. J. Campbell, was received and read.

Ordered, That Mr. Campbell be entered on the books as a Student-at-Law.

The Report of the Committee on Journals of Convocation was received and read.

The Report of the Committee on Reporting was received and read.

Ordered, To be considered forthwith and adopted.

Letter of Mr. W. R. Mulock as to case of Mr. Dunning, referred to Finance Committee with power to act.

A draft of an address to His Excellency and Her Royal Highness, on the occasion of their visit, was read and adopted.

Ordered, That on the occasion of the reception each Barrister and Officer of the Courts in Osgoode Hall, who applies, be supplied with tickets for himself and one lady.

Adjourned.

FLOTSAM AND JETSAM.

The idea of the representation of minorities is this: that if you have got one thousand electors to elect ten representatives, any hundred of the thousand might combine together to vote for one of the ten, and if they combined you might get the whole thousand electors represented in your ten, each hundred getting a representative. So throughout the whole kingdom the forces might be so distributed that each group will be collected together, and vote for a particular man, sending him to represent them. If that could be realized you would secure the first object of the representative principle: you would get the representation of the whole. The elected body would have the flexibility and the life of the elective body. It would be the electing body itself in miniature. As the people in the country would combine, so the elected representatives would combine, representing every determination of the original body. You have, therefore, under this principle of the representation of minorities, an assured result—namely, the security that in the body elected there will be an accurate reflection of the persons who elected them.—*Nineteenth Century*, July, 1879.

A contributor from the Forest City has sent us what he calls "a sort of rough blazed line through the sylvan shades of the Revised Assessment Act." Like Milton, our legal poet has essayed to sing of "things unattempted yet in ....rhyme," and far be it from us to rob him of immortality, if our columns can grant the boon.

TAX SALES—INSTRUCTIONS TO SEARCH.

First look in the *books of the Treasurer;*
See for what years, as entered there,
The land was sold—for first year see
If land in *Assessment Roll* shall be;
If not there found, why, sharply note
The N. R. Roll, and see if aught
Of wrong description can be found,
And if certificate's safe and sound.
Collector's Roll for self same year
Pray search with care, and see if there
Remarks in the margin do appear
To show why taxes in arrear.
See if a *list to Treasurer* came,
As section 90 doth proclaim.
In the year of sale 'tis best to know
If *three-year list* to clerk did go
Before the first of Febru-*ree*,
And if the Assessor carefully
Has marked the lot, or close beside,
With the fatal words, "not occupied,"
And then made list correct—complete—
By attaching his signed certificate.
Likewise, 'tis best to be discerned
What list to Treasurer was returned,
Or if the Treasurer has had
Remitting by-law, good or bad.
With view of *warrant* don't dispense,
And see if signed and sealed, and glance
At lot's description, if 'tis said
The land was ever patented.
I pray thee now let it be seen
If the lot hath advertised been
For thirteen weeks in a county sheet,
For four in the reg'lar *O. Gazette;*
And did *advert's'ment* clearly state
Land would be sold at place and date
When ninety days and also one
From publication first are done?
If sale adjourned, did Treasurer state
At [a week elapsed] another date,
In local paper—stating when—
And sell for costs and taxes then?
See no "official" bought the lot,
That mortgagee acquired it not—
That taxes 'fore the sale not paid,
And a sale for all arrears was had.
Inspect *certificate of sale:*
The interest sold it should not fail
To show—nor part nor quantity,
And that a deed, at th'expiry
Of a year, to the buyer will be signed,
And a state of costs should be conjoined.
If land were not *redeemed*, a *deed*
The purchaser will surely need.
And now, "ahem," I humbly pray,
Compare said deed with schedule K.

Law Society of Upper Canada.

OSGOODE HALL,

EASTER TERM, 42ND VICTORIÆ.

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

Thomas Stinson Jarvis.
Thomas Taylor Rolph.
Louis Adolphe Olivier.
Malcolm Græme Cameron.
George Edgar Millar.
Nicholas Dubois Beck.
Walter J. Breakenridge Read.
Emerson Coatsworth, Jr.
John Morrow.
James Carman Ross.
Alphonse Basil Klein.
Edward George Ponton.

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

And the following gentlemen were admitted as Students-at-Law and Articled Clerks :—

Graduates.

John Dickinson, B.A.
John McLaurin, B.A.
Antoine P. E. Panet, B.L.

Matriculants.

Charles Reginald Atkinson.
John McCullough.
George William Ross.

Articled Clerks as of Hilary Term.

William Barr.
Edward Utton Sayers.
John Angus McDougal.
James A. Scott.
William Grayson.
John Lawson.
Francis Henry Butler.

Articled Clerk as of Easter Term.

Andrew Joseph Clark.

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

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

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

Articled Clerks.

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

Students-at-Law.

Classics.

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

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

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

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

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

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

Translation from English into Latin Prose.

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

Mathematics.

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

ENGLISH.

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

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek.

FRENCH.

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

or GERMAN.

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

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

INTERMEDIATE EXAMINATIONS.

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

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

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

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

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

SCHOLARSHIPS.

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

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

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

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

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