DIARY FOR APRIL.

3. Sat. ..Last day for notices of Primary Examinations.
4. SUN..*Low Sunday.*
5. Mon..County Court Term begins. Canada discovered, 1499.
8. Thur..Hudson's Bay Company formed, 1692.
10. Sat. ..County Court Term ends.
11. SUN..*2nd Sunday after Easter.*
13. Tues..Storming of Magdala, 1868.
18. SUN..*3rd Sunday after Easter.*
23. Frid..St. George's Day.
24. Sat. ..Earl Cathcart Governor-General, 1846.
25. SUN..*4th Sunday after Easter.*
26. Wed..Imprisonment for Debt abolished, State of New York, 1831.
27. Tues..Toronto captured (battle of York), 1813.

CONTENTS.

THE

Canada Law Journal.

Toronto, April, 1875.

We are glad to see that the Government of the Dominion has apparently seen the propriety of legislation on the subject of our mercantile marine. Several bills have been introduced on the subject. Years ago we called attention to this subject. Whether the bills introduced are well framed, we are not at present in a position to judge, but it is something that a beginning has been made.

Mr. J. W. Huddleston, Q. C., M. P., has been appointed to the Judgeship in the Common Pleas, rendered vacant by the resignation of Mr. Justice Honyman. The *Law Times* simply states that he has been "a most successful Nisi Prius advocate, but his appointment must be regarded as mainly political." The *Law Journal* is a little more elaborate in its notice, (see p. — post) though the tone of its remarks would seem intended to combat the possibility of his appointment not being entirely acceptable to the profession.

While the Attorney-General is making laudable efforts to consolidate the Statute Law of Ontario and place it within the reach of every one, we think that the benchers might well bestir themselves in a somewhat similar manner. It is well known that the earlier volumes of the Ontario Reports: Queen's Bench, Common Pleas and Chancery are from their scarcity and exorbitant price practically beyond the means of young practitioners. Now the benchers would confer an invaluable benefit upon the profession if they would take steps to procure a reprint of these volumes at moderate prices, (say from two to three dollars a volume,) so that

they might find a place in every lawyer's library. We make the suggestion, let some bencher immortalize himself by working out the scheme practically.

The Court of Error and Appeal at its last sittings (15th March, 1875), gave judgment in *Herbert* v. *Parker*, in appeal from the Common Pleas, allowing the appeal, *and that with costs*. His Lordship, Mr. Justice Strong, said that this was the first case in which that Court had so disposed of the costs. It was, however, a course which had been adopted in the Court of Chancery and had long been in force in the Privy Council—the Supreme Court of Appeal in all Colonial causes. He was glad that the Court had seen fit to adopt this rule, which proceeded on the fair and equitable principle that the party succeeding in litigation should, in ordinary circumstances be awarded all his costs. The Chief Justice and the other Judges concurred. The anomaly to which we called attention on a former occasion (vol. 9, p. 306) has thus been removed and the practice of the highest Court in this Province is now in accord with all the other Courts upon the question of costs in appeal.

PATENTS OF INVENTION.

Nine years ago we discussed this subject, urging many weighty reasons in favour of an alteration in the Patent Laws in the direction of their repeal. In this matter, as we flatter ourselves in many others, we have been a little ahead of the age.

It is a question which is becoming more and more debated, and especially in England, whether, in the interests of manufacturers, of inventors themselves and of the community generally, patent laws should exist. The system of granting patent rights to inventors is purely artificial, and is the last vestige of the monopolies which became so great an evil in the days of James I. and Elizabeth. The day is probably not far distant when the question will be decided in England against the continuation of patents. Public opinion is not considered yet ripe for the change, and in the meantime the Lord Chancellor, who agrees with Lords Selborne, Hatherley, Derby, Granville, and other eminent persons in condemning patents altogether, has brought in a bill for the amendment of the present laws. The main purpose of the bill is to diminish the number of worthless and insignificant patents which are constantly issued. It is proposed to accomplish this by the creation of a Board of Examiners, selected from persons experienced in the various branches of art and manufacture, whose duty it shall be to take care that so-called inventions of no value shall not obtain the protection of a patent grant. The injury done to the manufacturing interests by the grant of patents for pretended inventions or improvements, by which manufacturers are met and hampered at every step, is obvious.

In our own country manufactures are in their infancy, and the evil is not so seriously felt and so heartily condemned. But a glance at some of the periodical lists of patents granted at Ottawa, and a very slight experience on the subject, will convince anyone that we are not behind England or the United States in the liberality with which we encourage monomaniacs to waste their time and means in pursuits which are about as profitable as the attempts to discover perpetual motion, or to square the circle. Sooner or later we shall probably find it beneficial to follow the example of England in improving the law relating to patents.

LAW OF MORTMAIN IN THE COLONIES.

"Alienation in mortmain (*in mortua manu*)," says the great commenatator, "is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal": Black. 208. The statutes extending from the Charter of Henry III. down to the fifteenth of Richard II., were intended to prevent the acquisition of land by *corporations*. It is probable that those laws owed their origin entirely to feudal reasons and they are properly called the "Mortmain Acts." The next legislation was the passing of a statute (23 Hen. VIII. c. 6,) at the dawn of the Reformation, by which grants of land to *unincorporated* trustees for superstitious purposes were prohibited. With these exceptions, down to the year 1736, all owners of land in England possessed the power of giving their property to *unincorporated* trustees for any charitable purpose, not superstitious. In that year was passed the Statute of 9 Geo. II. c. 36, commonly styled, *par excellence*, "The Mortmain Act," although technically improperly so called. The object of this Act was to prevent lands from being given to charitable uses, whether in the hands of corporations or of unincorporated trustees.

We propose to speak particularly of this last Statute. It has been said that the reason of the passing of this Act is one of the mysteries of legislation. Although the preamble indicates the existence of a wide-spread mania among languishing and dying landed proprietors, manifesting itself in charitable benefactions to the disherison of their lawful heirs, yet no record of any such epidemic is to be found in contemporaneous annals.* The select committee on Mortmain, which sat in 1844, report that, "though they have endeavoured to make themselves acquainted with the causes which led to the enactment of 9 Geo. II. c. 36, they have failed to arrive at any certain knowledge of the true grounds on which the Act was passed."

Lord Hardwicke has made some observations on the policy of this Act which are pertinent to our present purpose. His Lordship's views are entitled to be received with the very greatest deference, for special reasons. He is supposed to have had a hand in the framing of the Act. He says: "I was by at the making of this Statute": *Sorresly* v. *Hollins*: 9 Mod. 223. He was appointed Lord Chancellor a year after the passing of the Act, and presided in the Court of Chancery for nineteen years thereafter. His judgment, therefore, are "contemporaneous exposition" of the highest value. He says, "the particular views of the legislature were two; first, to prevent the locking up land and real property from being aliened, which is made the title of the Act; the second, to prevent persons in their last moments from being imposed on to give away their real estates from their families. By means of the latter, in times of popery, the clergy got almost half the real property of the kingdom into their hands; and indeed I wonder they did not get the rest, as people thought they thereby purchased heaven. As to the other view, it is of the last consequence to a trading kingdom; to which the locking up of lands is a great discouragement. This indeed, has not so much relation to the Statutes of Mortmain as is thought; which had another view, viz., of services of the crown; and therefore the reasoning producing this Act, is more like the political reasoning relating to the Statute of Westminster II. of Intails:" *Attorney-General* v. *Day*, 1 Ves. Sr. 222.

The fact that this Statute resulted from

* It was about the year this Act was passed that Pope penned his well-known couplet:

"But thousands die, without or this, or that,
Die, and endow a college, or a cat."

considerations of local expediency, is still more pointedly brought out in a famous judgment of Sir William Grant, Master of the Rolls. In *The Attorney-General* v. *Stuart*, 2 Mer. 143, he passed upon the question whether this Act was applicable to the Island of Grenada, in the West Indies. He laid down the proposition, that there was no doubt that the English law was the received and acknowledged law of the Island. Then he points out the various reasons for regarding the statute in question as being a law growing out of local circumstances and meant to have merely a local operation. And he concludes his judgment with these words: "Framed as the Mortmain Act is, I think it quite inapplicable to Grenada, or to any other Colony. In its causes, its objects, its provisions, its qualifications, and its exceptions, it is a law wholly *English*, calculated for purposes of local policy, complicated with local establishments, and incapable without great incongruity in the effect, of being transferred as it stands, into the code of any other country." Sir William Grant's words have also peculiar weight, not only from his eminence as a Judge, but from his Colonial experience, of no ordinary kind. For he was at one time a member of the Canadian bar, practiced in the city of Quebec, and ultimately became Attorney-General of the Province.

This decision was in 1817; in 1851 the same question as to the extension of this Statute to the Colonies arose in *Whicker* v. *Hume*: 14 Beav. 524, in which case the land was situated in New South Wales. By a Colonial Statute it was expressly provided that all laws and statutes in force in England should be applied in the administration of justice in the courts, so far as the same could be applied within the Colony. Lord Romilly followed *The Attorney-General* v. *Stewart*, and held that the Mortmain Act was not applicable to the Colony, and that it was not intended by the local statute that all the laws of England should apply to New South Wales, without any limitation or qualification, whatever. This decision was affirmed by the Lords Justices, in 1 De G. M. & G. 506, and afterwards by the House of Lords in 7 Ho. L. C. 124, (1858.)

Sir Wm. Grant had suggested various reasons against the application of such a statute to a Colony, unless the legislature of the Colony had thought fit *expressly* so to apply it. This position is adopted by Knight Bruce, L. J. in *Whicker* v. *Hume*. When this case was carried to the Lords, the counsel for the appellants pointedly raised the question, as to the anthority of Sir Wm. Grant's decision. It was contended that inasmuch as he founded his judgment on the reasoning that the Mortmain Act was passed in England on account of circumstances of a peculiar character, and those circumstances did not exist in the colony, that his argument was fallacious and his conclusions unsound. But the Law Lords unanimously upheld the decision impeached and Lord Cranworth observed that it did not appear that the evil which the statute was meant to remedy, namely, the increase of the disherison of heirs was at all an evil which was felt, or likely to be felt in the colonies (p. 161).

(*To be Continued.*)

THE LIABILITY OF INNKEEPERS.

In this age of travel the law relating to innkeepers and carriers is of such importance as to be the subject of legislative enactments, and of many reported judgments. Every one, moreover, is interested in knowing the law which protects him and his property in the hotel or railway train; in knowing the extent of the liability of those in whose hands he is for the time being placed, and the amount of caution which is required of himself in order to make that liability arise. We propose to

consider briefly the law relating to the liability of innkeepers. That term, in truth, is one known only to the law, for inns and innkeepers, on this side the Atlantic at least, do not exist. The modern hotel, with its comfortless splendour, has taken the place of the old-fashioned, home-like inn; and "mine host of the Garter" has given way to the "gentlemanly proprietor," who deputes the duties of hospitality to an equally gentlemanlike and courteous clerk.

"Call'st thou me Host?
Now, by this hand, I swear I scorn the term."

The chambermaid with cherry-coloured ribbons and complexion to match, has been deposed for a sable African, who does nothing for love, and very little for money. All things are changed since the days when Calye's case was decided. The law has changed least of all, but even its rigour has been abated in favour of the gentlemanly proprietor.

In 26 Elizabeth it was resolved *per totam curiam* (of King's Bench) that an innkeeper is bound by law to keep the goods and chattels of his guests without any stealing or purloining: and it is no excuse for the innkeeper to say that he delivered the guest the key of the chamber in which he is lodged, and that he left the chamber-door open; but he ought to keep the goods and chattels of his guests there in safety. And although the guest doth not deliver his goods to the innholder to keep nor acquaint him with them, yet if they be carried away or stolen, the innkeeper shall be charged; and though they who stole or carried away the goods be unknown, yet the innkeeper shall be charged. The innkeeper may, however, protect himself by requesting the guest to place his goods in a special chamber, where he will warrant their safety, which, if the guest neglect to do, the loss shall be his own: *Calye's case*, 8 Coke 32. Thus it will be seen that in those days the law was severe enough to the innkeeper, deeming it the only way to make the lives and property of travellers tolerably safe. The law, as laid down in Calye's case, is still the law in cases not coming within the Act which is hereafter mentioned. It holds the innkeeper liable for the default of himself and his servants, and the result of that and the later cases may be summed up by saying that where no default is shown in the guest, and where the loss has not occurred through the act of God or the Queen's enemies, default will be implied in the innkeeper.

There must be no default in the guest who would recover against the innkeeper, and the question now arises what conduct in the guest will amount to default. In other words, what acts of the guest will be considered as contributory negligence which will relieve the innkeeper from the suspicion of neglect? This is a matter which travellers will do well to make themselves familiar with.

In *Burgess* v. *Clements*, 4 M. & S. 306, goods belonging to a factor were lost out of a private room in the inn, chosen by the factor for the purpose of exhibiting them to his customers for sale, the use of which was granted to him by the innkeeper, who at the same time told him that there was a key, and that he might lock the door. This the guest neglected to do, although on two occasions, while he was occupied in showing his goods to a customer, a stranger had put his head into the room. It was held that the guest, by his own conduct, had discharged the innkeeper, partly on the ground that the innkeeper was not bound to extend the same protection to goods placed in a room used on the request of the guest for the purposes of trade, as in an ordinary chamber, and further, on the ground that circumstances of suspicion had arisen which should have put the guest upon his guard. "After the circumstances relating to the stranger took place, which might well have awakened the plaintiff's suspi-

cion, in became his duty, *in whatever room he might be*, to use at least ordinary diligence, and particularly so as he was occupying the chamber for a special purpose. *For though, in general, a traveller who resorts to an inn may rest on the protection which the law casts around him, yet if circumstances of suspicion arise, he must exercise at least ordinary care.*"

A late case upon the subject is *Oppenheim* v. *White Lion Hotel Co.*, L. R. 6 C. P. 515. The plaintiff went to a hotel in Bristol, and, while in the Commercial room, took from his pocket a bag containing £27, and took from it sixpence. He then went to bed, but did not lock or bolt the door, and placed his clothes, the bag of money being in one of the pockets, on a chair at his bedside. He also left his window open. During the night some one entered by the door and stole the bag and money. The judge told the jury to consider whether the loss would or would not have happened if the plaintiff had used the ordinary care which a prudent man might reasonably be expected to have used under the circumstances. The jury found for the defendant, and the Court above held that the direction was right, and the verdict warranted by the evidence. Keating J. said "There were other circumstances besides the omission to lock the bedroom-door. Although the plaintiff did not, when in the commercial room, expose his money, he took the bag out of his pocket to take a coin from it; and it would seem that some one saw where the bag was put, for the thief went direct there. * * * The whole of the facts must be looked at. The only question was, whether there was evidence of negligence on the plaintiff's part which contributed to the loss. I think there was." Montague Smith J. said, "I agree that there is no obligation on a guest at an inn to lock his bed-room door. * * * But the fact of the guest having the means of securing himself, and choosing not to use them, is one which, with the other circumstances of the case, should be left to the jury. The weight of it must, of course, depend upon the state of society at the time and place. What would be prudent at a small hotel in a small town, might be the extreme of imprudence at a large hotel in a city like Bristol, where probably three hundred bedrooms were occupied by people of all sorts." Willes, J., referred to such a circumstance as there being races in the neighbourhood as one which would entail greater caution upon the guest. See also *Cashell* v. *Wright*, 6 E. & B. 89, where it is laid down broadly that the rule of law resulting from the authorities is, that the goods remain under the charge of the innkeeper and the protection of the inn so as to make the innkeeper liable, as for breach of duty, *unless the negligence of the guest occasions the loss in such a way as that the loss would not have happened if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances.* In these cases then, though it is of course impossible to frame a definition of contributory negligence, the general rule may be found for the conduct of the judicious traveller; and we may even deduce three cardinal rules which the traveller will do well to bear in mind—rules which are consonant with common sense, and are therefore adopted by the law:

1. Under any circumstances lock your bed-room door when you go to bed.

2. Do not make a display of your money in public places, such as the commercial-room or the bar of the house.

3. Consider whether there are not special circumstances, calling for special caution on your part.

These are rules which, in truth, the man of ordinary prudence will adhere to without legal advice, and the man of or-

dinary prudence is one whom the law loves. We have said that the law as indicated in the decisions cited, applies to cases which do not fall within the Innkeepers' Act. We now come to consider that enactment. It is 37 Vic., c. 11, of Ontario Statutes, and is taken from an Imperial Statute passed in 1863, which seems to have been enacted on account of the judgment in *Morgan* v. *Ravey*, 6 H. & N. 265. That case decided that a default would be presumed in the innkeeper in every case where the loss did not arise from the plaintiff's negligence, the act of God, or the Queen's enemies. This was a just exposition of the law as it then stood, and as it seemed to bear somewhat hardly upon the innkeeper, the Imperial Act to *amend* the law was passed.

The statute (sec. 2) enacts that no innkeeper shall be liable to make good to a guest any loss of, or injury to *goods or property brought to his inn*, not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than $40, except

1. Where such goods or property shall have been stolen, lost or, injured through the *wilful act, default, or neglect* of such innkeeper or any servant in his employ; or

2. Where such goods or property shall have been deposited expressly for safe custody with such innkeeper, who may require, as a condition of his liability, that such goods or property *shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same.*

Innkeepers who refuse to receive goods for deposit, or who neglect to provide a place of deposit, or who neglect to expose a printed copy of section 2 in the manner pointed out, are disentitled from claiming the benefit of the Act. It will be observed that the liability of the innkeeper will still be determined by the Common Law in several cases: 1, where the property in question is a horse, &c.; 2, in any case up to $40; 3, where the innkeeper refuses or neglects to provide a place of deposit; or, 4. where he has not posted up a copy of the 2nd section of the Act. We think we may venture to suggest another important exception from the Act, though there have been no decisions upon it, either in our own or the English Courts. The goods or property referred to do not seem to include personal clothing, jewellery, usually worn upon the person, or such money as a traveller ordinarily carries about him. When it is considered that most losses incurred by travellers are of this sort, the exception, if we are right in deeming it to be so, will appear to be a very material one. An Act of similar import is in force in the State of New York. The substance of the first section is, that the hotel-keeper shall not be liable for loss of money, jewels, ornaments or valuables, when he shall have provided a safe for the custody of such property, and shall have posted a notice to that effect in the room occupied by the guest, and the guest shall have neglected to deposit such property in the safe. In a case upon this Act, plaintiff lost his watch with chain attached, a gold pen and pencil case, and $25 in money. It was found that the sum lost was all reasonable and necessary for travelling expenses. The Court said: "I think it is plain that the exemption was intended to apply only to such an amount of money, and to such jewels and ornaments or valuables as the landlord himself, if a prudent person, and travelling, would put in a safe, if convenient, when retiring at night. Can any one suppose that it was the intention of the Act to exempt the hotel proprietors from this Common Law liability, unless the traveller emptied his pockets of every cent of money, and deposited it, with his watch and pencil case, in the safe, both of which last-mentioned

articles he might have occasion to use after retiring to his room? This would be not only exempting hotel-keepers from their common law extraordinary liability, but requiring extraordinary prudence of their guests. * * The watch and pen and pencil case are certainly valuables, and might be called jewels, but, I think, should be considered a part of the traveller's personal clothing or apparel. The Legislature did not expect the traveller, after retiring, to send down his ordinary clothing or apparel, to be deposited in the safe": *Giles* v. *Libby*, 36 Bar, 70. It has also been held in Louisiana that the innkeeper will be liable for the necessary baggage of the traveller, his watch and personal effects, and for money which he has about him for his personal use, when stolen, notwithstanding a regulation of the inn requiring travellers to deposit certain articles of value in the safe: *Pope* v. *Hall*, 14 La., An. 324. The language of our own Act, and the force of the very common-sense reasoning used in *Giles* v. *Libby*, just cited, inclines us to think that, when it becomes necessary to decide the point, our Courts will put a construction on the Act similar to the interpretation of the New York statute by the Supreme Court of that State.

CONTROVERTED ELECTIONS ACT.

Three bills to amend these acts were introduced this session—one by the Minister of Justice, one by Hon. J. H. Cameron, and one by Mr. Cook. The alterations proposed by the two last were eventually incorporated in the government bill. Mr. Fournier's bill commenced with one section; it next appeared with two; the other bills then each provided a section, making four. It was again amended in committee of the whole, and a fifth and sixth sections added. Again it was brought before the House in committee, when Mr. Cameron added yet two more sections, making eight in all, and so it has been in five shapes since its birth. "There's luck in odd numbers," says Rory O'More. We print it on the supposition that it has at length reached an age when it may be said to have stopped growing. As the Minister of Justice has watched its progress from its infancy he will doubless be able to recognize his offspring, for, otherwise, "its own mother would not know it." If the Cornwall case had been postponed a couple of months this Act would probably have saved the learned Chancellor and his brethren a vast amount of trouble.

The present aspect of the bill is as follows:

In amendment of the Act passed in the 36th year of Her Majesty's Reign, and intituled: "*An act to make better provision respecting Election Petitions, and matters relating to Controverted Elections of Members of the House of Commons*," and of the Act passed in the 37th year of Her Majesty's Reign, and intituled: "*An act to make better provision for the trial of Controverted Elections of Members of the House of Commons, and respecting matters connected therewith*," Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Whenever it appears to the Court or Judge that the respondent's presence at the trial is necessary, the trial of an election petition shall not be commenced during any Session of Parliament, and in the computation of any delay allowed for any step or proceeding in respect of any such trial, or for the commencement of such trial under the next following section, the time occupied by any such Session shall not be reckoned.

2. Subject to the provisions of the next preceding section, and except that it shall not be commenced or proceeded with during any term of the Court of which the Judge trying it is a member, and at which he by law is bound to sit, the trial of every election petition shall be commenced within six months from the time when such petition has been presented, and shall be proceeded with *de die in diem*, until the trial is over, unless on application supported by affidavit it be shewn that the requirements of justice render it necessary that a postponement

of the case should take place: Provided that in any case when the period limited for the commencement of the trial may have elapsed before the prorogation of Parliament at the end of the present Session, such trial may be commenced at any time within two months after such prorogation; provided further, that whenever three months have elapsed after such petition has been presented, without the day for the trial being fixed, any elector may, on application, be substituted for the petitioner on such terms as shall be just.

3. Section 29 of the Act secondly mentioned in the preamble to this Act is hereby amended by striking out the word "immediately," where it occurs in the sixth line of the said section, and inserting the words "within four days" in lieu thereof.

4. In case on the trial of any Election Petition under either of the said Acts, it is determined that the election is void by reason of any act of an agent committed without the knowledge and consent of the candidate, and that costs should be awarded to the Petitioner in the premises, the agent may be condemned to pay such costs; and the Court or Judge shall order that such agent be summoned to appear at a time fixed in such summons, in order to determine whether such agent should be condemned to pay such costs; If at any time so fixed the agent so summoned do not appear he shall be condemned on the evidence already adduced to pay the whole or a due proportion of the costs awarded to the petitioner, and if he do appear, the Court or Judge after hearing the parties and such evidence as shall be adduced shall give such judgement as to law and justice shall appertain; The petitioner shall have process to recover such costs against such agent in like manner as he might have such process against the respondent; and no process shall issue against the respondent to recover such costs until after the return of process against such agent.

5. Whereas doubts have risen as to the proper construction of sections 78, 101 and 103 of the Dominion Election Act, 1874, and as to the effect upon Elections held under the said Act of the avoiding of previous elections, it is hereby enacted that elections held under the said Act, as well as elections already held as elections hereafter to be held, shall be deemed and taken, as respects both candidates and voters, to be new elections in law and in fact, to all intents and purposes whatsoever; except as to the personal acts of the candidates and the acts of agents of candidates, done with the knowledge and consent of such candidates.

6. The next preceding section shall also apply to Controverted Elections tried under the Controverted Elections Act, 1873, as to the effect upon the status of the candidate of the acts of agents done without the knowledge or consent of candidates, but no further or otherwise.

7. The sixty-seventh section of the said secondly recited act is hereby amended by striking out therefrom, wherever they occur, the words "and who is not a member of the House of Commons."

8. In every case of an election petition presented under the Controverted Elections Act, 1873, in which twelve months shall have lapsed since the said petition was presented, and it shall then be untried, the respondent may require, and the petitioner within six days after demand, shall give new security in accordance with the terms of the Dominion Controverted Elections Act, 1874, for the payment of all costs, charges and expenses that may become payable by the petitioner in respect of such petitioner.

THE OUTLAWRY OF LOUIS RIEL.

The case of Louis Riel, the would-be member for Provencher, the alleged murderer of Thomas Scott, has been discussed by the lay press *ad nauseam*, and in the House of Commons most fully, if not always well or wisely. For our part we shall be content to record for our readers, as a matter of historical legal interest, the "exemplification of the proceedings and judgment of outlawry of Louis Riel," as it appears in a return printed by order of Parliament. It is as follows:

The Queen v. *Louis Riel.*

Winnipeg, February 10th, 1875.

Sir,—Judgment of outlawry on an indictment for the murder of Thomas Scott, at Fort Garry, on the 4th of March, 1870, was this day pronounced in open Court at Winnipeg against Louis Riel, and a record of the proceedings to judgment to outlawry, and the judgment was duly filed and enrolled in Court. The judgment of outlawry in capital cases amounts to a conviction of the crime of which the defendant is indicted as much as if he had been actually tried and found guilty by the verdict of a jury; and if the defendant be apprehended and committed to prison (and any one with or without warrant may take and deliver him to prison)

the Justices of gaol delivery may at once, without any previous proceedings, award execution against him.

The case would, therefore, seem to fall under 32-33 V., c. 29, sec. 107, as amended by 36 V., c. 3, sec. 1, by which I am required forthwith to report the case for the information of His Excellency, in order that the pleasure of the Crown may be known thereon.

I, therefore, in addition to what I have stated, transmit under cover herewith for the information of his Excellency, and that His Excellency's pleasure may be known in respect of the same, an exemplification of the proceedings and judgment of outlawry in this case, as the same are contained of record in the Court of Queen's Bench at Winnipeg, all which you will be good enough to lay before His Excellency.

I have the honour to be, Sir,
Your obedient servant.
E. B. WOOD.

The Honourable the Secretary of State for Canada, Ottawa, Ontario.

CANADA.

MONDAY, 22nd February, 1875.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith.

To all to whom these presents shall come GREETING:—

L.S.]

KNOW YE, that amongst the Pleas of the Crown before ourself in our Court of Queen's Bench at Winnipeg, in our Province of Manitoba, in our Dominion of Canada, in the thirty-eighth year of our Reign.

It is contained as follows:

In the Queen's Bench, between
OUR LADY THE QUEEN,
Plaintiff,
and
LOUIS RIEL,
Defendant.

Pleas before our Lady the Queen, at Winnipeg, in the Province of Manitoba, in our said Court of Queen's Bench.

Amongst the Pleas of the Queen:

MANITOBA, } Be it remembered that
County of Selkirk, } on the fifteenth day of November, in the year of Our Lord one thousand eight hundred and seventy-three, in the Court of our said Lady the Queen, before the Queen herself at Winnipeg, in the County and Province aforesaid, upon the oath of twelve jurors, good and lawful men of our said Province of Manitoba, then there sworn and charged to enquire for our said Lady the Queen for the body of our said Province; it was presented as follows, that is to say:—

CANADA, } The Jurors for our
Province of Manitoba, } Lady the Queen upon their oaths present that Louis Riel, on the fourth day of March, in the year of Our Lord one thousand eight hundred and seventy, at Upper Fort Garry, a place then known as being, lying and situate in the district of Assiniboia, in the Red River Settlement, in Rupert's Land, and now known as lying, being and situate at Winnipeg, in the County of Selkirk and Province of Manitoba, Dominion of Canada, feloniously, wilfully, and of his own malice aforethought, did kill and murder one Thomas Scott against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her Crown and dignity. Wherefore, the Sheriff of the said Province by our writ of *capias ad respondendum* bearing date the nineteenth day of November, in the year of Our Lord one thousand eight hundred and seventy-three, was commanded by the said writ of our said Lady the Queen, that he should not forbear by reason of any liberty in his bailiwick, but that he should enter the same, and take the said Louis Riel, of the Parish of St. Vital, in the County of Provencher, in our said Province of Manitoba, gentleman, if he should be found in his said bailiwick, and him cause to be safely kept, so that he might have his body before our Justices of our said Court sitting in term at Winnipeg aforesaid, in the County and Province aforesaid, for the trial of causes, criminal and civil, and holding Assize of Oyer and Terminer, and General Gaol Delivery for the Province of Manitoba on the tenth day of February, then next ensuing, to answer unto us concerning the said felony and murder whereof he is indicted as aforesaid; on which tenth day of February, which was in the year of Our Lord one thousand eight hundred and seventy-four, the said Sheriff of the said Province returned the said writ endorsed as follows, that is to say: That the said Louis Riel was not found in his said bailiwick whereby he could be taken, as by the said writ he was commanded; and thereupon the said Sheriff by another writ of our said Lady the Queen, called an *alias* writ of *capais ad respondendum* bearing date the tenth day of February, in the year of Our Lord one thousand eight hundred and seventy-four, was commanded as before he had been commanded, that he

should not omit by reason of any liberty in his bailiwick, but that he should enter the same and should take the said Louis Riel, of the said Parish of Saint Vital, in the County of Provencher, in our said Province, gentleman, if he should be found in his said bailiwick, and him cause to be safely kept, so that he might have his body before our Justices as aforesaid, sitting in term at Winnipeg aforesaid, in our said Province, for the trial of causes, civil as well as criminal, and holding Assize of Oyer and Terminer and General Gaol Delivery for our said Province, on the tenth day of June, in the year of Our Lord one thousand eight hundred and seventy-four, to answer unto us concerning a certain felony and murder whereof he is indicted as aforesaid; on which said tenth day of June in the year of Our Lord last aforesaid, the said Sheriff returned the said last-mentioned writ endorsed as follows, that is to say: That the said Louis Riel was not found within his said bailiwick whereby he could be taken as by the said writ he was commanded. And thereupon the said Sheriff by another writ of our said Lady the Queen, called a pluries writ of *capias adrespondendum*, was commanded, as often before he had been commanded, that he should not omit by reason of any liberty in his bailiwick, but that he should enter the same, and should take the said Louis Riel, of the Parish of Saint Vital, in the County of Provencher, in our said Province, if he should be found therein, and him cause safely to be kept, so that he might have his body before the Justices of our said Court, at Winnipeg aforesaid, in and for our said Province sitting in term for the trial of causes, civil as well as criminal, and holding Assize of Oyer and Terminer and General Gaol Delivery for our said Province, on the tenth day of October in the year of Our Lord one thousand eight hundred and seventy-four, to answer unto us concerning a certain felony and murder of which he is indicted; on which said tenth day of October in the year last aforesaid, the said Sheriff returned the said last-mentioned writ endorsed as follows, that is to say:

That the said Louis Reil was not found within his said bailiwick whereby he could be taken, as by the said writ he was commanded; whereupon, by the writ of our said Lady the Queen called a writ of *Exigent*, bearing date the tenth day of October in the year of Our Lord one thousand eight hundred and seventy-four, the said Sheriff of our said Province of Manitoba was commanded that he cause to be exacted the said Louis Reil, of the said Parish of Saint Vital, in the County and Province aforesaid, from County Court to County Court for four successive County Courts in the said Province, and then at the succeeding Court of Queen's Bench, to be holden at Winnipeg, in our said Province, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*. The last exaction being the *Quinto Exactus* until he should be outlawed according to the law and custom of England, if he should not appear; and if he should appear, then the said sheriff was commanded to take him and him safely keep, so that he might have his body before us in our said Court at Winnipeg, aforesaid, in our said Province, on the tenth day of February, in the year of Our Lord one thousand eight hundred and seventy-five, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, to answer to us for a certain felony and murder of which he is indicted, and in respect whereof the said Sheriff hath, on divers times before, returned unto our said Lady the Queen that the said Louis Reil was not found in his said bailiwick; and, thereupon, at the same time to wit, on the tenth day of October, in the year last aforesaid, by the Writ of Proclamation of our said Lady the Queen, in which said Writ it is recited, "That our said Lady the Queen by her Writ of *Exigent*, having the same day of teste and return as that of her said Writ of Proclamation, had commanded the said Sheriff that he should cause to be exacted the said Louis Riel from County Court to County Court for four successive County Courts, and then at the succeeding Courts of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*—the last exaction being the *Quinto Exactus*—until he should be outlawed according to the law and custom of England, if he should not appear; and if he should appear, that then he should take him and him safely keep, so that he might have his body before our Lady the Queen at Winnipeg, aforesaid, in the Province aforesaid, on the tenth day of February, in the year of Our Lord one thousand eight hundred and seventy-five to answer unto us for a certain felony and murder whereof he is indicted as aforesaid." The said sheriff in and by the said last-mentioned writ was commanded that, by virtue of the statute in that case made and provided, he should cause three Proclamations to be made according to the form and statute in that case made and provided in the form following, that is to say, One of the same Proclamations in the open County Court, to be begun and holden in the County of Selkirk, in the Pro-

vince aforesaid, on the fourth day of January, in the year last aforesaid. And another of the same Proclamations to be made at the succeeding sitting of the County Court to be begun and holden in and for the County of Lisgar, in the Province aforesaid, on the seventh day of January, in the year last aforesaid, and one other of the same Proclamations to be made one month at least before the *Quinto Exactus* by virtue of the said writ of *Exigent* at or near the most usual door of the Roman Catholic Church, in the Parish of St. Norbert, in the County of Provencher aforesaid, upon a Sunday, immediately after Divine service and sermon, if any there be, and if no sermon there be, then forthwith after Divine service, that he, the said Louis Riel, should surrender himself into the custody of him, our said Sheriff of Manitoba, before or at the time when he should be the fifth time exacted, so that he, the said Sheriff, might have his body before our said Court on the aforesaid tenth day of February, in the year last aforesaid, at Winnipeg aforesaid, to answer to us for the felony and murder aforesaid, whereof the said *Louis Riel* is indicted as aforesaid; on which said tenth day of February, in the year last aforesaid, before our said Lady the Queen, at Winnipeg aforesaid, the said Sheriff returned the said writ of Proclamation executed and endorsed as followeth, that is to say: At the County Court holden in and for the County of Selkirk, in the said Province, on the fourth day of January in the year last aforesaid, at the County site of the said County, in open County Court, he did make the first Public Proclamation; and at the succeeding County Court holden in and for the County of Lisgar, in the Province aforesaid, on the seventh day of January in the year last aforesaid, at the County site of the said County, in open County Court, he did make the second Public Proclamation; And on the fourth day of January in the year last aforesaid, at and near the most usual door of the Roman Catholic Church, in the Parish of St. Norbert, in the County of Provencher aforesaid, upon a Sunday, immediately after Divine service and sermon, he did make another Public Proclamation, that the said Louis Riel should render himself to answer to our said Lady the Queen, according to the exigency of the said writ, as he the said Sheriff was commanded; And on the same tenth day of February, in the year last aforesaid, the said Sheriff of the said Province of Manitoba, returned unto us in our said Court at Winnipeg aforesaid, that by virtne of our said Writ of *Exigent*—he did, at the County Court holden at Winnipeg, in and for the County of Selkirk, in the Province of Manitoba, on the fourth day of January, one thousand eight hundred and seventy-five, in open County Court, demand the said Louis Riel a first time and that he did not appear; And at the County Court holden at the County site in and for the County of Lisgar, in the Province aforesaid, on the seventh day of January, in the year last aforesaid, he did in open County Court demand the said Louis Riel a second time, and that he did not appear; And at the County Court holden in and for the County of Provencher, in the Province aforesaid, on the eleventh day of January in the year last aforesaid, at the County site in the said County, in open County Court, he did demand the said Louis Riel a third time, and that he did not appear; And at the County Court holden at the County site in and for the County of Marquette East, in the Province aforesaid, on the thirteenth day of January in the year last aforesaid, in open County Court he did demand the said Louis Riel a fourth time, and that he did not appear; And at the Court of Queen's Bench, sitting as a Court of Oyer and Terminer and General Gaol Delivery and of Assize and *Nisi Prius*, holden at Winnipeg aforesaid, in our said Province, and in and for our said Province, on the tenth day of February, in the year last aforesaid, in open Court he did demand the said Louis Riel a fifth time, and that he did not appear as by the said writ he was commanded. Therefore, by the Judgment of Curtis James Bird, Esquire, Coroner for our said Lady the Queen, in and for the said Province of Manitoba, the said Louis Riel, according to the law and custom of England, is outlawed." All and singular which said premises, by the tenor of these presents, we command to be exemplified.

In testimony whereof we have caused these presents to be signed by Daniel Carey, Esquire, the Clerk of the Crown and Pleas of our said Court, and the seal of our said Court to be hereto affixed.

Witness, the Honorable Edmund Burke Wood, Chief Justice of our said Court at Winnipeg, in our said Province, this the tenth day of February, in the year of Our Lord one thousand eight hundred and seventy-five, and of our reign the thirty-eighth.

Fyled in open Court, this tenth day of February, 1875.

Daniel Carey,

Prothonotary and Clerk of the Crown and Pleas.

SELECTIONS.

THE NEW JUDGE.

Mr. J. W. Huddleston, Q. C., has been appointed to the judgeship in the Common Pleas vacant by the resignation of Sir George Honyman, Bart Mr. Huddleston was called to the bar so long ago as 1839, and, during his career of thirty-six years as an advocate, he has had as large forensic experience as could well fall to the lot of any counsel. Whatever may have been the defects in the learned gentleman—and that he had defects would hardly be gainsaid—they were not intellectual, nor were they such as, by any possibility, could be prejudicial to his clients. Neither could any one accuse him of lack of zeal or industry, or of indifference or carelessness in the conduct of business. Mr. Huddleston may have had some few superiors in legal learning and acumen; and some of his rivals could at times, and on great occasions, rise to higher flights of eloquence. But, tested by the every-day work of the bar, few, indeed, were his equals. He was always, so to speak, up to the mark. No matter whether he was contesting a claim for £25 or for £2,500, whether he was engaged in a trumpery running-down case, or in a cause of vital importance to the character and property of his client, he evinced the same resolution, the same vigour, the same honest exertion to win the day. He was an admirable speaker, very powerful in cross-examination, and both upon issues of law and of fact lucid in exposition, correct and precise.

Such having been his character at the bar, can we not fairly look forward to a successful career for him on the bench? We have a right to expect in him as a judge the same grasp of facts, the same perception of the points of the case, the same energy, the same resolution to carry the case through to the proper end, the same same capacity for explanation. A month ago, on the elevation of Mr. Field to the bench, we said that Mr. Huddleston "had long ago earned his title to promotion, and that he had most of the qualifications required in a common law judge." That statement we now repeat in the confident belief that events will prove the truth of it.—*Law Journal.*

DISQUALIFICATION OF MITCHELL.

We hope that we at all times entertain a profound respect for lawyers in exalted positions; but we do confess to an eager desire to ask Her Majesty's Attorney-General and Solicitor-General whether, if a convict be condemned to be hanged, and the rope be broken in the process, the criminal is free, or whether the rope may be again put round his neck. There is an old popular superstition that the criminal under such circumstances is entitled to be released; but the better opinion, which indeed has been acted on, is that, he must be hanged *till he is dead*. Now if transportation for fourteen years be substituted for hanging till death, does escape from transportation before the full punishment has been endured work immunity to the criminal, if only he can manage to keep out of the hands of justice until fourteen years by the calendar have expired? So far as we understand the law officers of the Crown, they seem to think it does; and, if so, why should not the breaking of the rope work similar good luck to the man condemned to be hanged? There has been much debate as to what transportation means. We venture to suggest what it does *not* mean. It cannot be that the criminal is *to be liable* to be kept in a distant colony for so much of fourteen years, reckoned from the date of sentence, as the authorities can manage to detain him there? Yet that is the interpretation suggested by the Crown lawyers. Let us go back to a date antecedent to any statutes making escape from prison, or prison-breach, a substantive indictable offence. Does any one suppose that, if a gaoler saw a prisoner running off, he could not in those days have seized him, and restored him to gaol? How could that right have been diminished by the amount of time during which the criminal had been clever enough to elude pursuit? If he had been condemned to six months' imprisonment, and had got out at the end of three, common sense teaches that, whenever caught, he could be put back to serve out his term. The truth is that the statutes —which, of course, were passed to deter by new and heavy penalties prisoners from attempts to escape—have induced a disregard of what must have been the

state of things before the statutes. Now in Mitchell's case it is not doubted that, when he was riding off after resigning, as he himself puts it, his parole, he would if captured, have been brought back to his assigned place of abode, and compelled to serve out the rest of his sentence. How could that liability be affected by mere lapse of time? How could his own wrong be taken to have made him a free man? *Nullum tempus occurrit regi* is an undoubted maxim in civil matters. Is the Crown barred by mere lapse of time in matters criminal? It may be said, then, is Mitchell at this moment liable to be arrested, and remitted to serve out the residue of his sentence? We should certainly reply in the affirmative, and if to-morrow he were taken into custody for that purpose, we should look forward with considerable confidence to the discharge of a rule for a writ of *habeas corpus* to release him. Now, if such be his liability, in what way is his case to be distinguished from that of O'Donovan Rossa? Even if Rossa's case be put upon the ground that Rossa, being actually in *custodia legis*, could not serve in Parliament, which, in our opinion, is not the true ground, Mitchell, being potentially *in custodia legis*, could scarcely claim to be in a better plight. A man who, having been convicted, is in gaol, and a man who, also having been convicted, may be arrested and sent to gaol on his way to Westminster Hall, appear to us to be equally disqualified from serving in the House of Commons.

Ever since the debate on the 18th inst., the researches of lawyers as exhibited in the daily press, and the comments of the press itself, have been steadily tending towards the opinion we have expressed; and there can be no doubt that, if the law officers of the Crown had been enlightened to the extent that the public has now been, the House would never have gone to a division on the question of adjournment. All the hesitation of the opposition arose from the strange statement of the Attorney-General that Mitchell could not now be arrested and be remitted to his punishment, and was only liable to indictment for a misdemeanor at common law. Many members naturally thought that a man in that position could hardly be treated as if still under sentence, for there was the logical contradiction that he had not served out his sentence, and yet could not be made to serve out his sentence. That the Government should not now wish to arrest Mitchell is natural enough. He is advanced in years and feeble in health, and probably he has suffered quite enough in the course of his career. But if the Attorney-General had told the House that the Government could, though it would not, arrest him, the minority who voted for the adjournment of the debate would have been nearer 2 than 102.—*Law Journal.*

DIGEST.

DIGEST OF ENGLISH LAW REPORTS,

FOR MAY, JUNE AND JULY, 1873.

(*From the American Law Review.*)

Action.—The defendant purchased certain shares in a company from the plaintiff, and directed that they should be transferred and registered in the name of his son G., who was an infant, of which fact the plaintiff was ignorant. Subsequently G. brought an action by his father, as next friend, against the plaintiff, charging him with fraud in selling the shares; and the action was compromised on the terms of G. withdrawing all charges of fraud, and having the purchase-money repaid to him. The company was wound up, and the plaintiff's name placed upon the list of contributories in place of G.'s. The plaintiff then filed a bill alleging that the defendant was the real purchaser of said shares, of which fact he was not aware when he entered into said compromise, and he prayed that it might be declared that the defendant was the real owner of the shares, and was liable to indemnify the plaintiff from all liability in respect of them. *Held*, that said compromise was a bar to the suit.—*Maynard* v. *Eaton*, L. R, 9 Ch. 414.

See Covenant, 2; Specific Performance.

Administration.—*See* Executors and Administrators.

Affidavit.—*See* Interrogatory, 1.

Agency.—*See* Interrogatory.

Agreement.—*See* Contract.

Annuity.

1. A testator bequeathed his property to K., on condition that he should pay out of the rents and profits a certain annuity. K., who had paid the annuity for sixteen years, gave a check for a half-yearly instalment. The check was dishonored, and the annuitant filed a bill for a receiver. Bill dismissed on the ground that, as the estate was sufficient, the annuitant might have recovered his annuity by distress, or he might have sued on the check.—*Kelsey* v. *Kelsey*, L. R. Eq. 495.

2. An annuity given to a trustee for so long as he should execute the office of trustee under a will, was held to cease with the payment of the trust property to a person absolutely entitled.—*Hull* v. *Christian*, L. R. 17 Eq. 546.

ANTICIPATION.—*See* LEGACY, 2.

APPOINTMENT.

1. A testatrix, who had power of appointment in favor of five persons, or their respetive issue, gave three of them £5 each, and gave all the rest and residue of her property, of whatever kind, and wherever situate, and over which she had any power of appointment, to the other two. *Held*, that the legacies of £5 were charged upon both the testatrix's personal property and the property over which she had the power of appointment, and that therefore the power was well exercised.—*Gainsford* v. *Dunn*, L. R, Eq. 405.

2. A testatrix appointed "all funds and properties, whatsoever or wheresoever, which have been or shall be purchased out of the savings of property to which I have been or shall be entitled for my use," to certain persons. *Held*, that a balance at the testatrix's bankers, which arose from savings from her separate estate, did not pass under the appointment.—*Askew* v. *Booth*, L. R. 17 Eq. 426.

3. R. had a power of appointment over two funds of £37,000 and £800 consols. R. made several appointments, and finally made a deed revoking all prior appointments, and directing his trustees to stand possessed of said sums of £37,000 and £800 consols, "or other the stores, funds and securities of which the same now consist, or hereafter may consist," upon trust as to £7,000 consols, for A. R. then made similar appointments for other persons of sums amounting to £37,000 consols, and he appointed the residue to C. At the date of said deed the trust-funds had been reduced by sales and reinvestments by the trustees to £27,000 consols and £8,000 cash. *Held*, that the appointment in favor of C. was of the residue, and not of a specific sum, and therefore failed altogether.—*De Lisle* v. *Hodges*, L. R. 17 Eq. 440.

See TRUST, 2.

ASSIGNEE.—*See* DISTRESS; LEASE, 2.

BAITING ANIMALS.

A match took place between two dogs, at £25 aside, as to which could take the greatest number of rabbits by running after them, in a field so walled around that the rabbits could not escape. *Held*, that such recreation was not "baiting animals."—*Pitts* v. *Millar*, L. R. 9 Q. B 380.

BANKRUPTCY.

1. A debtor against whom execution had been issued handed to the sheriff on July 24th a bill of exchange, a check, and three bank-bills, in part payment of the debt, and the remainder was paid by another person in money. The creditors assented to this arrangement. On July 26th the debtor filed a petition in liquidation, and an injunction was granted restraining the creditor and sheriff from proceeding farther; but the sheriff delivered the bill, check, bank-bills, and money to the creditor on July 28th. The trustee, under the liquidation, requested that the bill of exchange, check, and bank-bills, be delivered up to him. *Held*, that the bill of exchange, check and bank-notes were delivered under pressure, and might be retained by the creditor.—*Ex parte Brooke. In re Hassall*, L. R.9 Ch. 301.

2. By statute, a husband shall not by reason of marriage be liable for the debts of his wife contracted before marriage; but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy such debts as if she had continued unmarried. Judgment was obtained against a married woman for a debt contracted before marriage. The woman had no separate property. *Held*, that the woman could not be adjudged a bankrupt.—*Ex parte Holland. In re Heneage*, L. R. 9 Ch. 307.

3. An action was brought upon an overdue bill against the acceptors. The defendants obtained leave to defend the suit, on paying £880 into court to abide the event of the suit. The defendant subsequently filed a petition in liquidation. *Held*, that the plaintiff in said action was a secured creditor, and that an inquiry must be made to ascertain how much of said £880 he was entitled to.—*Ex parte Banner. In re Keyworth*, L. R. 9 Ch. 379.

BEQUEST. See APPOINTMENT, 1, 2; ILLEGITIMATE CHILDREN; MARSHALLING ASSETS; WILL.

CARRIER.

The defendant's horse was sent to S. on the plaintiff's railway, and on its arrival was sent to a livery stable, as there was no one at the station to receive it, and the plaintiff had no accommodation for horses. The defendant's servant came soon afterwards and demanded the horse, which the stable keeper said he might have on payment of 1s. 6d. The servant went away, and the defendant came to the station, where the station-master said he would pay all charges; but the defendant went away without the horse, and subsequently refused to receive him unless he were paid for his loss of time. The horse remained at the stable four months, incurring a bill of £17, which the plaintiff paid, and then sent the horse to the defendant, who received it. *Held*, that the defendant was liable for all of said livery charges.—*Great Northern Railway* v. *Swaffield*, L. R. 9 Ex. 132.

See STATUTE, 1.

CATTLE.

Pigs are cattle.—*Child* v. *Hearn*, L. R. 9 Ex. 176.

CHARGE.—See APPOINTMENT, 1.

CHARITY.—See MARSHALLING ASSETS, 2.

CHECK.—See DOCUMENTS, PRODUCTION OF.

COLLISION.

1. A steam ferry-boat ran across a river in a dense fog, with the knowledge that there

were three vessels in its path, and, though using all ordinary care, ran into one of said vessels. *Held*, that the ferry-boat alone was to blame for the collision.—*The Lancashire*, L. R. 4 Ad. & Ec. 198.

2. In a collision suit the plaintiff must begin, although the only defence is inevitable accident.

It is the duty of a steam-vessel in a dense fog to come to anchor, if over a proper anchorage ground. It is not sufficient for the vessel to go dead slow.—*The Otter*, L. R, 4 Ad. & Ec. 203.

Common Carrier.—*See* Statute 1.

Company.

A company, which had exhausted its capital, raised new capital by issuing shares, which were to be subject to calls for the purpose only of payment of the company's debts. The original shares were fully paid up; but 6s. only were paid on the new shares of £1 each when the company was wound up. A surplus remained after all debts were paid. *Held*, that the surplus must be divided between the old and the new shareholders in proportion to the amounts they had respectively paid on their shares.—*In re Eclipse Gold Mining Co.*, L. R. 17, Eq. 490.

Compromise—See Action.

Construction.—See Appointment; Contract; Covenant; Executors and Administrators; Illegitimate Children; Lease, 1; Legacy; Marshalling Assets.

Contract.

1. Five persons contracted to build a harbour, and soon afterward one of the contractors died. The four survivors then signed an agreement, in which the executors of the other contractor were parties; but blanks were left for their names until they should be appointed. The deceased contractor had named three persons as executors; but one disclaimed, and the other two proved the will, and subsequently signed said agreement. The four surviving contractors offered evidence to show that they would not have signed said agreement if they had known that the third person named as executor, as aforesaid, would disclaim. *Held*, that the estate of the deceased testator was entitled to share in the profits of said contract, which were to be ascertained when said contract was completed; and that said agreement between the surviving contractors and the two executors of the deceased contractor was binding, and that the evidence offered was inadmissible.—*McLean* v. *Kennard*, L. R. 9 Ch. 336.

2. The defendants caused plans and specifications of a bridge to be prepared by an engineer. The plaintiff contracted to build the bridge in accordance with said plans and specifications, which were shown to him by the defendants. *Held*, that there was no implied contract, by the defendants, that the bridge could be erected in accordance with said plans and specifications. — *Thorn* v. *Mayor of the City of London*, L. R. 9 Ex. 163.

3. The defendant contracted to sell the plaintiffs 250 tons of iron, half to be delivered in two weeks, remainder in four weeks. Payment, net cash fourteen days after delivery of each parcel. The defendant failed to deliver the first half of the iron until long after the time agreed upon, and, when he demanded payment of the plaintiffs, they refused, claiming to set off damages for the defendant's breach of contract. The plaintiffs subsequently demanded delivery of the remaining 125 tons, but the defendant refused to deliver. *Held*, that the plaintiffs had not repudiated the contract by refusing to pay for the first 125 tons of iron.—*Freeth* v. *Burr*, L. R. 9 C. P. 208.

4. The plaintiff, a weaver, worked for the defendants, and received wages regulated by the number of pieces which he wove and delivered to the defendants. His wages were ascertained and fixed on Thursday in each week, but were not paid until Saturday. The plaintiff was obliged by his contract to give fourteen days' notice before leaving, such notice to be given at the time of booking-up on Thursday. If he left without notice, he was to forfeit all wages due. The plaintiff entered 15s., in a week ending Thursday, April 25th, and such sum was fixed at that time; and he then worked the afternoon of Thursday and the morning of Friday, earning 7s. during that time; and he left the defendant's service on said Friday, without giving any notice. *Held*, that the plaintiff forfeited the whole 22s.—*Walsh* v. *Walley*, L. R. 9, Q. B. 367.

See Annuity, 2; Carrier; Damages; Frauds, Statute of; Interest; Trust, 2.

Covenant.

1. Three mines of coal, of which A. was the upper, B. the middle, and C. the lower, were demised to the defendant, who covenanted to work the mines with their utmost care, with a competent number of workmen, and in the most effectual manner, and according to the usual practice of carrying on collieries with effect. The lessor filed a bill, alleging that the defendant had abandoned working the A. mine and had worked the C. mine beyond the B. mine; and praying that the defendant be restrained from working the C. mine until he had extended the B. mine to the same point as the C. mine, and that he be restrained from working the B. and C. mines without working the A mine. It appeared that the defendant had worked the mines as well as practicable, and according to the usual manner. Injunction refused. — *Lord Abinger* v. *Ashton*, L. R. 17 Eq. 358.

2. In 1844, the defendant leased certain coal mines for twenty-one years, and a portion of the mines were worked out in September, 1845. In October, 1845, the defendant sold the land containing the worked-out mine, with covenants of title, quiet enjoyment, and against incumbrances, to J., who sold to the plaintiff in 1846. In 1848, within twenty years before action brought, the lessees under said lease entered the mine under the plaintiff's land, and remove some

fire-clay and several loose pieces of coal. In 1865, the plaintiff's house subsided in consequence of the mining operations carried on before 1846. *Held* (by Bramwell and Cleasby, B B., Kelly, C.B., dissenting), that the fact that the coal was worked out before the conveyance to J., was no breach of covenant for title, as such coal formed no part of the land which was sold; that the subsistence of said lease did not constitute a breach of covenant; and that, if there was any breach, it was complete at the time of the conveyance to J., and was barred by the Statute of Limitations, as the subsidence in 1865 gave no new cause of action.—*Spoor* v. *Green*, L. R. 9 Ex. 99.

3. A lessee covenanted that he would not assign the premises without the written consent of the lessor, such consent not being arbitrarily withheld; provided that if the lessor should assign without such consent, "but such consent is not to be arbitrarily withheld," then it should be lawful for the lessor to enter. *Held*, that there was no covenant on the part of the lessor not to withhold his consent arbitrarily; but that, if he did so refuse consent, the lessee might assign without his consent.—*Treolar* v. *Bigge*, L. R. 9 Ex. 151.

See Contract, 2; Easement, 1; Lease, 1.

Damages.

The plaintiff was the lessee of an inn, part of which was underlet to the defendant, who had contracted for the purchase of the fee of the inn and other adjoining premises. The plaintiff agreed to surrender part of his leasehold to the defendant, who agreed to lease to the plaintiff a new entrance from a portion of the land contracted for by the defendant, with a covenant in the lease that the plaintiff should enjoy the premises without disturbance from the defendant or those claiming under him. The plaintiff accordingly surrendered a portion of his premises; and such portion was torn down by the defendant, who made a new entrance for the plaintiff according to his agreement. Immediately after the new entrance was opened, it was closed by parties having a title to the land covered by the new entrance superior to that of the defendant's vendors. *Held*, that the plaintiff was entitled to damages to the extent of the pecuniary amount of the difference between the condition in which he was left and that in which he would have been if he had got a title to the new entrance.—*Wall* v. *City of London Real Property Co.*, L. R. 9, Q. B. 249.

See Negligence; Specific Performance, Statute 1.

Decree.—See Mortgage, 1.

Delivery.—See Trust, 2.

Devise.

A testator devised certain real estate to trustees, to the use of the first and other sons of M. in tail male, and devised the residue of his real estate over. Four months after the testator's death, the first son of M. was born. *Held*, that the residuary devisees were entitled to the intermediate rents. "It is singular that such a question should come before the court in the year 1874."—*In re Mowlem*, L. R. 18 Eq. 9.

See Appointment, 1, 2; Illegitimate Children; Marshalling Assets; Will.

Disaffirmance.—See Contract, 3.

Distraint.—See Common.

Distress.

Upon a demise of mines, a power of distress for the rent reserved was granted to the less or over "any lands in which there shall be, for the time being, any pits or openings by or through which the coal or culm by the said deed demised shall for the time being be in course of working by the lessees, their executors, administrators, and assigns." The plaintiffs, assignees of the lease with notice, sued the lessor for distress, under said power, after the assignment at pits not included in the demise, but then worked by the lessees. *Held*, that said assignees with notice took subject to said power.—*Daniel* v. *Stephney*, L. R. 9 Ex. (Ex. Ch.) 185; s. c. L. R 7, Ex. 327.

Documents, Production of.

In a suit wherein the genuineness of a testator's signature was in question, the defendant was ordered to produce any checks in his possession signed by the testator. The defendant produced certain checks, but said that he had other checks, which, as their signatures were forgeries, he did not produce. *Held*, that the production of the forged checks could not be ordered, unless their signatures were proved to be in the handwriting of the testator.—*Wilson* v. *Thornbury*, L. R. 17 Eq. 517.

See Interrogatory, 1.

Easement.

1. Where a warehouse was demised, with all lights and easements thereto belonging, with a covenant that the lessee should hold and enjoy the premises without let or hindrance, it was *held* that the lessee acquired nothing but the ordinary right or easement to light, and was not entitled to an injunction to prevent the erection, by the lessor, of a wall which did not substantially diminish said light.—*Leech* v. *Schweder*, L. R. 9 Ch. 463.

2. A public house which had maintained a sign-post on a common opposite the house for forty years, was held to have acquired the right to maintain the sign-post, and that this right was an "estate, interest, or right" in the common.—*Hoare* v. *Metropolitan Board of Works*, L. R. 9. Q. B. 296.

Equity.—See Annuity, 1; Easement, 1; Specific Performance; Vendor and Purchaser.

Estate Tail.—See Devise.

Evidence.—See Contract, 1; Statute, 1.

Executors and Administrators.

1. The nearest relative of minor children having been abroad without being heard from

for seven years, the court ordered administration to issue to the guardian elected by said children, without first citing said next of kin.—*In the Goods of Burchmore*, L. R. 3 P. & D. 139.

2. A testatrix appointed A. her sole trustee, and directed that he should be paid as attorney the same as if he were not a trustee. A's only duties under the will were those of trustee. *Held*, that A. was not entitled to probate as executor.—*In the Goods of Lowry*, L. R. 3 P. & D. 157.

See Contract, 1; Lease, 2; Marshalling Assets, 1.

Executor de son Tort.—See Lease, 2.

False Return.

A sheriff had received two writs against B. to levy £63 and £44, respectively, and made a levy under each writ. He then received a third writ against B. to levy £125, but made no levy, and returned *nulla bona*. B. owned property to the value of £50. Said two writs were fraudulent. *Held*, that it was the duty of the sheriff to have levied on said third writ, when the plaintiff therein could have disputed the validity of the said writs.—*Dennis* v. *Whetham*, L. R. 9 Q. B. 345.

Ferry Boat.—See Collision, 1.

Fog.—See Collision.

Forfeiture.—See Contract, 4.

Forgery.—See Documents, Production of.

Frauds, Statute of.

1. T. agreed in writing, July 6, 1870, to purchase the plaintiff's in a leasehold house. A lease was accordingly prepared, but with a covenant inserted that T., the lessee, would not carry on the business of a grocer on the premises. T. died suddenly before the lease was executed. The plaintiff testified that it was distinctly understood between T. and himself that said covenant should be inserted; and the plaintiff's solicitor testified that he had shown said lease to T. in August, 1873, and that T. had said it was all right and in accordance with the arrangement between him and the plaintiff. After T.'s death the plaintiff prayed that T.'s administrator be ordered to execute the counterpart of said lease to T. *Held*, that, under the Statute of Frauds, T.'s administrator could not be compelled to execute said lease containing such a variation from the written agreement.—*Snelling* v. *Thomas*, L. R. 17 Eq. 303.

2. "Proprietor" is sufficient description of the vendor of real estate, whose name is not mentioned, to satisfy the Statute of Frauds.—*Sale* v. *Lambert*, L. R. 10 Eq. 1.

Otherwise with "vendor."—*Potter* v. *Duffield*, L. R. 18 Eq. 4.

Gift.—See Trust, 2.

Handwriting.—See Documents, Production of.

Husband and Wife.—See Bankruptcy, 2.

Illegitimate Children.

A testator who had married the day before the date of his will, gave his wife power to dispose by will of his property amongst their children; and, in default of such disposal, the testator gave his property equally between his children by his said wife. At the date of the will the testator had two illegitimate children by his said wife. *Held*, that said children would take, in default of disposal as aforesaid by the wife.—*Dorin* v. *Dorin*, L. R. 17 Eq. 463.

See Legacy, 1.

Incumbrance.—See Vendor and Purchaser, 2.

Indictment.—See Trial.

Injunction.

A railway company, which had running power over another railway, applied for an injunction to restrain the latter railway from preventing the former's exercising such powers. *Held*, that, inasmuch as an injunction would involve an order that the second railway company should properly work its switches and signals, which was a continuous act involving labor and care, the injunction could not be granted.—*Powell Duffryn Steam Coal Co.* v. *Taff Vale Railway Co.*, L. R. 9 Ch. 331.

See Covenant, 1; Easement, 1.

Insurance.

A policy of insurance, effected by the plaintiff upon the life of another person, contained a proviso that the policy should be void if the declaration concerning the insured, made out by the plaintiff, was not in every respect true. An answer to a question in said declaration was untrue, though not to the plaintiff's knowledge. *Held*, that the policy was void.—*Macdonald* v. *Law Union Insurance Co.*, L. R. 9 Q. B. 328.

Interest.

A contract between a railway company and a contractor provided that payments should be made monthly. There was no provision as to payment of interest. The contractor demanded a sum alleged to be due, with interest thereon. The account being disputed, the contractor filed a bill, and proved that a sum less than half that demanded was due him. *Held*, that the contractor was not entitled to interest.—*Hill* v. *South Staffordshire Railway Co.*, L. R. 18 Eq. 154.

Interrogatories.

1. In an action against a partnership the partners were interrogated as to who their customers were, and in their answer the partners set out the names of their customers in a long schedule. A summons was then taken out, calling on the partners to state what partnership books and documents they had. The judge declared that he was convinced that there must be such documents, although the partners had not admitted possessing the same; and he ordered the partners to admit that such documents were in their possession.—*Saull* v. *Browne*, L. R. 17 Eq. 402.

2. The plaintiff filed a bill, praying that a certain business, good-will, and assets, al-

leged to have been abstracted from the business of the plaintiff's deceased husband, were assets of her husband's estate. Two of the defendants had been in partnership with the plaintiff, who had carried on her husband's business; but they left the plaintiff, and established a similar business with the third defendant. The plaintiff filed an interrogatory, asking whether any of the defendants had drawn out of their business any money on his own account, either in respect of capital or profits. Said third defendant refused to answer until the plaintiff had established her right to a decree. *Held*, that said defendant must answer the interrogatory.—*Saull* v. *Browne*, L. R. 9 Ch. 364.

3. The plaintiff filed a bill to establish the agency of the defendant in a transaction. The court refused to order the defendant to exhibit the accounts of his private business, and of his transactions with other people.—*Great Western Colliery Co.* v. *Tucker*, L. R. 9 Ch. 376.

Landlord and Tenant. — See Distress; Vendor and Purchaser, 1.

Lease.—See Covenant, 2, 3; Vendor and Purchaser, 2.

Lease.

1. A. leased to B., without a covenant against underletting without A.'s consent. B. agreed to lease to C. upon the same terms upon which A. leased to him. *Held*, that the person whose consent to underletting was required by the terms of the second lease was A.—*Williamson* v. *Williamson*, L. R. 17 Eq. 549.

2. A lessee died, and his widow took out administration, and became assignee of the term. The widow left a daughter, who was the mother of the defendant, who entered into possession of the premises which he underlet, paying the ground rent to the lessor, and the balance to his mother in her lifetime, and, after her death, appropriating the balance to his own use. *Held*, that, whether the defendant was executor *de son tort* or not, he was assignee of the term and liable for the non-performance of covenants in the lease.—*Williams* v. *Heales*, L. R. 9 C. P. 177.

See Covenant, 2, 3; Distress; Vendor and Purchaser, 2.

Legacy.

1. A testatrix who had married P., the husband of her deceased sister, bequeathed her property to all her children by the said P. The testatrix had one child born before the date of the will, and one born ten years afterward, and about a month before the death of the testatrix. The child was registered as the son of P. and the testatrix before the latter's death. *Held*, that the second child was entitled to a share of said property.—*In re Goodwin's Trust*, L. R. 17 Eq. 345.

2. A testatrix bequeathed to A., a woman, a sum of bank annuities, and then directed that all gifts and provisions (whether absolute or limited) by her will made for any female should be for her separate use and (while she should be under coverture) without power of anticipation. *Held*, that A. could only have the income of said annuities during coverture.—*In re Ellis's Trusts*, L. R. 17 Eq. 409.

3. A testator bequeathed a sum of money to his executors, upon trust to apply the interest to keeping in good repair all the tombstones and headstones of his relations and himself in the churchyard of G.; and he directed that any surplus money, which might remain after defraying yearly the expenses as before stated, should be given yearly to poor, pious members of the Methodist Society in G. above the age of fifty. *Held*, that the gift for keeping the tombstones in repair being invalid, the whole of said sum went to the Methodist poor as above provided.—*Dawson* v. *Small*, L. R. 18 Eq. 114.

4. A testator gave by his will the residue of his personal estate to his wife, for her own absolute use and benefit; and in a subsequent portion of his will he gave "all the money, if any, that shall be remaining after payment of the just debts and funeral expenses of my wife," to certain persons. *Held*, that the testator's widow was absolutely entitled to the said residue.—*Perry* v. *Merritt*, L. R. 18 Eq. 152.

See Appointment, 1, 2; Illegitimate Children; Marshalling Assets; Will.

Light and Air.—See Easement, 1.

Limitations, Statute of.—See Covenant, 2.

Married Woman.—See Bankruptcy, 2.

Marshalling Assets.

1. In the administration of an estate, when the personal estate is insufficient for the payment of debts, specifically devised real estate is not liable to contribute until the residuary real estate is exhausted.—*Lancefield* v. *Iggulden*, L. R. 17 Eq. 556.

2. A testator, who owned pure and impure personal property, directed his trustees to convert his personal estate into money, and out of the proceeds to pay his debts and legacies, and to pay the income to his wife for life, and, after her death, to purchase certain annuities. The testator then gave a legacy to a school, and bequeathed the residue of his personal estate to three charities, in equal portions; and he directed that the latter three legacies should be respectively paid out of such part of his personal estate as could lawfully be applied to the payment thereof, which should be reserved by his trustees for that purpose. *Held*, that the testator's assets must be marshalled in favor of said three charities, and that the testator's debts and legacies other than those above mentioned must be paid out of the impure personalty; but that such a proportion of the legacy to said school would be paid as the pure personalty bore to the impure. The legacies to said three charities were directed to paid out of the pure personalty.—*Miles* v. *Harrison*, L. R. 9 Ch. 316.

Master and Servant.—See Contract, 4.

Mines.—See Covenant, 1.

Digest of English Law Reports.

MORTGAGE.

1. The court allowed an order taken *pro confesso*, and decreed but not drawn up, for foreclosure of a mortgage, to be altered to an order of sale, on the application of a third mortgagee, with consent of the first and second mortgagees, although the mortgaged property was out of the jurisdiction.—*Woodford* v. *Brooking*, L. R. 17 Eq, 425.

2. The court in England has jurisdiction to make a decree in a foreclosure suit depriving the mortgagor of land, in the island of Nevis, West Indies, of his right to redeem. Such a decree is *in personam* only.—*Paget* v. *Ede*, L R. 18 Eq. 118.

NEGLIGENCE.

The plaintiff's cattle were being driven along a road which crossed a railway, and, while crossing the railway, the servants of the railway company negligently let some trucks run down the railway, and frightened the cattle. Several of the cattle escaped and ran along said road about a quarter of a mile, and then got into an orchard, and through a defective fence, on to the railway, where they were discovered dead about four hours after their escape, having been run over by a train. *Held*, that the railway company was liable for the value of the cattle which were killed. —*Sneesby* v. *Lancashire and Yorkshire Railway Co.*, L. R. 9 Q. B. 263.

See COLLISION, 1 ; STATUTE, 2.

NOTICE.—See VENDOR AND PURCHASER, 2.

PARTNERSHIP.—See INTERROGATORY, 2.

PIGS.—See CATTLE.

POWER.—See APPOINTMENT, 1 ; DISTRESS.

PRACTICE.—See COLLISION, 2 ; INTERROGATORY, 3.

PRINCIPAL AND AGENT. — See INTERROGATORY, 1.

PRODUCTION OF DOCUMENTS. — See DOCUMENTS, PRODUCTION OF.

RAILWAY.—See CARRIER ; INJUNCTION ; NEGLIGENCE ; SPECIFIC PERFORMANCE.

REMAINDER.—See RESIDUARY ESTATE.

RENT CHARGE.—See DISTRESS.

RESIDUARY ESTATE.

A testator before his death settled shares in a company upon trustees, in trust for his wife for life, remainder to his children ; and he also made said trustees the executors of his will. On settling the estate, after the testator's death, the executors distributed the residuary estate, with knowledge that there was a possibility that calls might be made in respect of said shares, if the company should fail before the remainder-men became entitled to the shares ; in which case if the remainder-men disclaimed, the executors, as trustees, would be liable to pay the calls. The company did so fail, and the trustees paid the calls. *Held*, that the residuary legatees must refund to the trustees the amount of said calls. Said testator had covenanted in a marriage settlement to bequeath a certain share of his residuary estate to his daughter, which share was to be paid over to the trustees of said settlement. The testator bequeathed said share accordingly. *Held*, that the trustees of said settlement must refund, as well as the other residuary legatees.—*Jarvis* v. *Wolferstan*, L. R. 18 Eq. 18.

RESIDUARY GIFT.—See DEVISE ; LEGACY, 3, 4.

RESIDUE.—See APPOINTMENT, 3.

SALE.—See FRAUDS, STATUTE OF ; VENDOR AND PURCHASER.

SECURED CREDITOR.—See BANKRUPTCY, 3.

SHAREHOLDER.—See COMPANY.

SHERIFF.—See FALSE RETURN.

SHIP.—See COLLISION.

SPECIFIC FUND.—See APPOINTMENT, 3.

SPECIFIC PERFORMANCE.

A railway company agreed to erect "a station" upon a certain lot of land belonging to the plaintiff. The company subsequently declined to erect the station, and began to build one two miles distant from said land. The court refused to decree specific performance, on the ground that justice could be better done by an award of damages in an action at law.—*Wilson* v. *Northampton and Banbury Junction Railway Co.*, L. R. 9 Ch. 279.

See FRAUDS, STATUTE OF, 1 ; INJUNCTION ; VENDOR AND PURCHASER, 1.

STATUTE.

1. Common carriers are by statute exempt from liability for loss of undeclared jewelry, unless the loss arise from the felonious acts of the carrier's servants. It was held that to charge a common carrier, it was not necessary to give evidence which would convict a particular servant of felony, but only to convince the jury that some servant of the carrier had been guilty of the felony.—*Vaughton* v. *London and Northwestern Railway Co.*, L. R. 9 Ex. 93.

2. By statute, where sheep are carried by sea, certain precautions are to be taken to prevent the spread of disease. The defendant carried the plaintiff's sheep, which were washed overboard. The sheep would not have been lost, if the precautions directed by said statute had been taken. *Held*, that, inasmuch as said precautions were ordained solely for the purpose of protecting against disease, the plaintiff could not recover.—*Gorris* v. *Scott*, L. R. 9 Ex. 125.

See BANKRUPTCY, 2 ; EASEMENT, 2.

SUIT.—See ACTION.

SURPLUS.—See LEGACY, 3.

TITLE.—See TRUST, 2.

TRIAL.

When a true bill has been found, and the indictment removed into the Court of Queen's Bench, and a day fixed for trial, the case is

pending.—*Queen* v. *Castro. Onslow and Whalley's Case*, L. R. 9 Q. B. 219.

Trover.

The plaintiffs forwarded barley to the defendant, and sent him an invoice by mail, describing the barley as sold by G. as broker between buyer and seller. The defendant had not ordered the barley, and, at the request of G. indorsed a delivery order to him. G. obtained a delivery of the barley and absconded. The jury found that the defendant had no intention of appropriating the barley to his own use, and had indorsed the order with a view of returning the barley to the plaintiffs. *Held*, that the defendant had, by an unauthorized act, deprived the plaintiff of his property, and was guilty of conversion.—*Hiort* v. *Bott*, L. R. 9 Ex. 89.

Trust.

1. A trustee, holding a fund in trust for his children, became insolvent, and was largely indebted to the trust. One of said children died intestate, and a small sum was carried over to his account. The court ordered said sum to be paid over to the other children, and not to the trustee. — *Jacubs* v. *Rylance*, L. R. 17 Eq. 341.

2. A trustee, with power of sale, holding in trust for A. for life, remainder to B. for life, remainder over, was authorized to appoint new trustees, with consent of the tenant for life. He appointed A. and B. co-trustees. B. survived the other two trustees, and contracted to sell the trust estate; but the purchaser refused to complete the purchase, on the ground the ground that the appointment B. as a trustee was invalid. *Held*, that said trustee had properly appointed A. and B. co-trustees.—*Foster* v. *Abraham*, L. R. 17 Eq. 351.

3. D., who was possessed of a mill, with machinery and stock in trade, indorsed upon his lease of the premises, "This deed, and all thereto belonging. I give to R., from this time forth, with all the stock in trade. D." *Held*, that there was neither a valid gift nor declaration of trust in favor of R.—*Richards* v. *Delbridge*, L. R. 18 Eq. 11.

See Annuity, 2; Executors and Administrators, 2; Legacy, 3; Residuary Estate.

Vendor and Purchaser.

1. The conditions of sale of a public-house described it as in the occupation of a tenant. The defendant paid a deposit, and signed an agreement for the purchase, which contained no reference to the lease. The house was subject to a lease for eight years, of which fact the defendant was ignorant when he signed the agreement, and he refused to complete the purchase. *Held*, that the defendant was not bound to inquire into the nature of the tenancy of the tenant, and that specific performance must be refused.—*Caballero* v. *Henty*, L. R. 9 Ch. 447.

2. The defendants were devisees for sale of an estate in H. county, subject to a verbal lease. It is usual in this county for valuations of hay, straw, &c., between outgoing and incoming tenants, to be made at fodder value, which is less than market value. The defendants gave the tenant notice to quit, and, at the same time, agreed to pay the tenant at the termination of his lease the market value of his hay and straw. The estate was subsequently put up for sale, and the particulars of sale specified certain incumbrances, but did not refer to said agreement; and there were conditions that the property should be taken as described as to quantity and otherwise, and that, if any error or omission in the particulars or conditions should be discovered, the same should not annul the sale, nor should any compensation be allowed therefor. The plaintiff purchased said estate, with knowledge of said lease, but without knowledge of said agreement. He subsequently paid the tenant for his hay and straw at market value, without prejudice to his right to indemnity from the defendants, and now brought this action to recover the difference between the fodder and market value of said hay and straw, and contended that said agreement formed no term of said tenancy. *Held*, that the terms of the contract did not limit the claims of the tenant to fodder value; that said agreement formed a term of the lease; and that notice of the tenancy was notice of the tenant's equities as between vendor and purchaser.—*Phillips* v. *Miller*, L. R. 9 C. P. 197.

See Frauds, Statute of.

Wages.—See Contract, 4.

Warranty.—See Contract, 2.

Will.

By will dated 1869, a tetatrix gave certain legacies to her relatives, and the remainder of her property to her daughter, whom she constituted her sole executrix and residuary legatee. In 1871, the testatrix executed another instrument purporting to be her last will and testament, in which she gave all her property to her daughter for life, and, upon her death, directed legacies to be paid to some of the legatees mentioned in the earlier will, and added other legacies in the same terms; and she appointed her daughter her sole executrix. There was no express revocation of the former will in the latter. *Held*, that the two instruments must be admitted to probate as together containing the will of the testatrix.—*In the Goods of Petchell*, L. R. 3 P. & D. 153.

See Appointment, 1, 2; Executors and Administrators, 2; Illegitimate Children; Marshalling Assets.

Winding-up.—See Company.

Writ.—See False Return.

Words.

"*Baiting Animals.*"—See Baiting Animals.

"*Purchased.*"—See Appointment, 2.

REVIEWS.

The Criminal Law Consolidation and Amendment Acts of 1869 for the Dominion of Canada, as amended and in force on 1st November, 1874, in Ontario, Quebec, Nova Scotia, and Manitoba, and on 1st January, 1875, in British Columbia with Notes, Precedents, etc., by Henry Elizear Taschereau, one of the Judges of the Superior Court for the Province of Quebec. Vol. I. Montreal: Lovell Printing and Publishing Co. 1874. pp. 796.

This compilation contains the full text of the Criminal Statutes Consolidation Acts of 1869, with a synopsis under each clause of the law and the rules of pleading practice and evidence applicable to it. At the end of each clause will be found cited the corresponding clause of the Imperial Statute, and any material difference is stated. The learned editor makes some very pertinent observations as to some errors that have crept into the Statutes of 1869. His note on sec. 110, of the Larceny Act, is very interesting. He falls foul of this enactment on several grounds. One difficulty as to the section is that it is so wide in its scope that it is of little use, the magistrate fearing that perhaps after all he may be wrong in supposing it to be as wide as the words would seem to justify. But the ways of the thief in the nineteenth century are "past finding out," and we should not grumble if it catch some unwary sinner who thinks he has discovered some manner of cheating his neighbour which is not covered by the Criminal Law. It is not likely that its power will be abused nor a conviction had under it without the clearest evidence. A number of English authorities are cited on the different sections, taken from the annotations made by Mr. Greaves, Q. C., who was the framer of the English Acts.

The second volume is to consist of the Procedure Act of 1869, with annotations, the General Repeal Act of 1869, and the Criminal Consolidation Statutes of Manitoba, British Columbia, and Prince Edward Island. Judge Taschereau, however, annexes a condition to the publication of the second volume, which is, that the expenses incurred in the first be reimbursed. We cannot imagine that there will be any difficulty on this score. The book should be in every lawyer's shelf, and will be as useful in Ontario as in Quebec. A few defects appear in the "get up" of the book, but they are of no practical moment, and none but a critic would notice them. We should, however, in this country aim at the highest standard, and it is only in this view we speak of it.

The Law of General Average (English and Foreign.) By Richard Lowndes, Author of the Admiralty Law of Collisions at Sea. Second edition. London: Stevens & Sons, 119 Chancery Lane, 1874.—pp. 466.

Mr. Fitzjames Stephens, Q. C., in an address to the Law Amendment Society, said: "The fact is that we have already the best of all possible digests, (not referring merely to the works which pass under that title.) I refer to the innumerable text-books of every branch of the law." These words were not used by the learned Q. C. in disparagement of the many invaluable works he spoke of—quite the contrary; but how many text-books are *merely digests of cases*, strung together with more or less ingenuity—nothing more. As digests their practical usefulness cannot be over-estimated, but as treatises which enable the reader to fully comprehend the whole scope and bearing of the law affecting any particular subject, whence it sprang, whither it leads, wherein it fails or can be amended, the general principles involved, and how they are applicable to undecided cases, too many of them are of no value. We have no hesitation in saying that the work of Mr. Lowndes to a remarkable extent a scientific and well considered treatise as well as an invaluable repertory of authorities. His research is very great, his style clear and attractive, and his deductions logical and sound.

A work on General Average must necessarily be somewhat different in its nature and treatment from one wherein foreign law need be but sparingly referred to, if at all. To make the work valuable it should bring together, as the author says, the materials for forecasting the numerous undetermined points which arise in practice. When we reflect upon

the origin of our law on this subject the truth of this becomes manifest. And as to this we cannot do better than quote the language of the author in his introduction—

"For nearly two thousand years it was the practice for merchants to sail with their wares from place to place, in company with the master and owner of the ship. In modern Europe, the Crusades first gave a stimulus to sea-traffic, necessitating what would now be termed a transport and sutlery service on a large scale, and bringing the different nations of Europe into close communication with each other. The same fusion of nationality was engendered by the practice of frequenting, at stated seasons, certain seaports which were marts or emporiums of commerce. Thus there were brought together, at intervals, those who could arrange together, with some authority, as principals, the rules by which their sea-traffic should be regulated. What was settled at such gatherings was naturally regarded as of a wider than municipal authority. Tradition ascribes to the Crusades the sanction thus given to the Rolls or Judgments of Oleron, and, to an assemblage of merchants at the fair or roadstead of Wisby in the Baltic, the so-called Laws of Wisby; beyond doubt the most authoritative expositions of what has been termed the ancient 'common law of the sea.'

"The tenacity and universality of maritime customs are exemplified in a high degree by this rule of general average with which we are at present concerned. It is traced back to the Rhodians, that is to say, probably, to about seven hundred years before the Christian era. From the materials collected by M. Pardessus, we may conclude that the Rhodian rule concerning jettison had not only become general amongst the mariners and traders of the Mediterranean but had been adopted into the Roman law, and expanded by lawyers, in times earlier than the Code of Justinian; and that the law of Rome, in this matter, followed much the same course as our own common law has since taken; that is to say, first adopted, and then systematised and expanded into a science, that which it found existing in the form of maritime custom. Be this as it may, we find in the Digest of Justinian a body of law concerning general average which, when arranged, exhibits a complete and symmetrical system, scarcely if at all inferior to any of modern times. These rules were translated without alteration into the Basilicas, and constituted the law of the whole Roman Empire, west and east: that is to say of all the then civilized world.

"After the fall of the Roman Empire, its laws, in the deep barbarism which ensued, fell into absolute forgetfulness. The knowledge even of their existence was, at any rate for the greater part of Europe, lost for centuries. Maritime legislation had to make a fresh beginning."

"We find that, just as jettison is the only instance of general average which can be distinctly traced back to the Rhodians, so it was with jettison that the second growth of a law of general average began. The older sea-laws of modern Europe name only two cases of general average, jettison of cargo, and the cutting away of a mast. The Code which far surpassed all others in authority, the Rolls of Oleron, and which, in England, as in many other countries, was for some centuries regarded as an authoritative exposition of the 'common law of the sea,' mentions only these two. The ancient law of Wisby was limited in the same way. For four or five centuries at least we find the framers of sea-laws for the several countries of Europe content to transcribe, either verbally or in substance, the rules of one or the other of these codes, without addition. Afterwards, in later codes, other examples of general average were added, one by one, no doubt as the occasion arose, and thus, by degrees, in an unscientific manner, one country borrowing rules from another, and without any statement or definition of the general principle which underlay them, the modern law of general average grew up, for a certain time, entirely independently of the law of Rome, but on the same fundamental principle. In still later times, and particularly in the Guidon de la Mer, a fusion of the modern and ancient systems was effected. An important step in this fusion was made by the Ordonnance of Louis XIV., in which the principle of general average was reduced, it may be said for the first time, to a clear and self-consistent definition. This definition was imported into the law of England by Mr. Justice Lawrence, in *Birkley* v. *Presgrave*, and is at the present day the basis and the test of general average."

His definition is in these words: "All loss which arises in consequence of extraordinary sacrifices made, or expenses incurred, for the preservation of the ship and cargo, comes within general average, and must be borne proportionally by all who are interested." This decision was the first in which the right to recover general average contributions in a Common Law Court was discussed, and formally recognized.

Mr. Lowndes has faithfully acted up to his suggestion of the necessities of the

case by collecting an immense mass of information on the subject from the archives of all maritime nations.

The comparative table of the law of general average as it obtains in thirteen different countries, is most elaborate in its detail and of great interest, and we doubt not, of much practical utility.

It is still, we believe, a moot point what position Canada holds in the roll of maritime powers. Whether it is fourth fifth, sixth, or seventh, it is certain that not the least part of her importance will be as a daughter of the sea-girt Isles. Bounded on the north by Arctic Seas, on the west by the Pacific, on the east by the Atlantic, and partly on the south by great inland seas, of which the world has no equal, and by the mighty St. Lawrence, it is meet that her children should not be unacquainted with the laws which govern perils of the sea, and for this reason, if for none other, we have the more pleasure in renewing our acquaintance with the interesting work before us, and in recommending it to our readers.

It is scarcely possible that there will, in this Province, be any large sale for this book to the professsion alone, but apart from the fact that it is a standard authority on the subject treated of, it is a book that may be read with interest by numbers who are not lawyers. To those who "occupy their business in great waters" it is invaluable, and no library of general literature should be without it.

Like all the publications of Messrs. Stevens & Sons, this book is a masterpiece of typographical execution, and complete in all its parts.

Woman Before the Law. By John Proffatt, LL. B., of the New York Bar. J. P. Putnam & Sons, New York, 1874. Pp. 137.

The Married Women's Property Act, 1870, and Amendment Act, and their Relation to the Doctrine of Separate Use, with Appendix of Cases, Statutes and Forms. By J. R. Griffith, B. A., of Lincoln's Inn, Barrister at Law. Third edition. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1875. Pp. 92; 3rd edition.

"The law of husband and wife," says Mr. Griffith, "cannot as yet be treated in other than a state of transition." He says also, "It is difficult to trace any comprehensive or intelligible principle in the reforms hitherto introduced." Mr. Proffatt, in his very interesting manual, shows historically the truth of the first proposition; and throws light on the second. Mr. Proffatt treats the subject historically, and Mr. Griffith with reference to recent legislation and cases thereon. The two should be read in the order we place them.

Like all American writers Mr. Proffatt "begins at the beginning," and traces the status of married women down to the present time from the earliest period; from the time when a man "took a wife," (*i. e. vi et armis*) to the time when the man submissively took a beating from a "brutal" wife, and then applied for and obtained a divorce on the ground of cruelty: *Bebee* v. *Bebee*, 10 Iowa, 133. Even in ancient times the status of women was very different in different countries. A learned "pundit" or lawyer of the Hindoos thus writes: "A man both day and night must keep his wife in subjection; that she by no means be mistress of her own actions. If the wife have her own free will, she will behave amiss;" and again, "women have six qualities: first, an inordinate desire for jewels; second, immoderate lust; third, violent anger; fourth, deep resentment, &c., &c." But as a set-off to this abuse, it appears that in Egypt women were treated with favor and consideration, for in their marriage contracts husbands were obliged to promise obedience to their wives; and as to this Mr. Alexander in his history of women sadly remarks—"A thing which in our modern times we are often obliged to perform, though it was our wives entered into the promise." Chrysostom, the Christian, on the other hand, was almost as abusive as the Hindoo, for he says, "woman is a necessary evil, a natural temptation, a desirable calamity, a domestic peril, a deadly fascination, and a painted ill." But however this may be, it will scarcely be denied that there was some reform needed from the old laws and customs as to the treatment of women, and Mr. Proffatt is right when he speaks of the law of husband and wife as an inter-

esting study, as it shews by plain gradation "remedial process of law and the method by which law is shaped and directed by enlightened thought." But this is so only up to a certain point, for many of the reforms in the law relating to the property of married women, which have been attempted in Canada as well as in England, are subject to the objection that it is difficult to trace in them any comprehensive or intelligible principle. It must always be so when Acts of Parliament are passed not so much because they are needed, as because the introducers of them feel the need of doing something in the way of legislation, whether needed or not. We are not aware that at any time there was in England any general demand for most of these amendments. We are certain that at no time was there any such general demand in this country, except to provide for cases of drunken husbands. The danger of needless and sweeping legislation is, that it will do more harm than good. Legislators, in their desire to protect the property of the wife, encourage the fraud of the husband. Under such legislation many wives will acquire property that of right belongs to the husband's creditors. To all the world the husband is the head of the house; to the inquisitive who have unsatisfied judgments it will be shown that the wife is "the better man of the two." The butcher, or baker, or hotel-keeper who furnish husband and wife with the necessaries of life on the supposed credit of the husband, may, after a time, find that they have been sustaining two lives, one of which is of little pecuniary value, and the other of much pecuniary but no available value. This is well illustrated by a case of *Bromley* v. *Norton* 21 W. R. 155, referred to in Mr. Griffith's work. Mr. and Mrs. Bromley boarded three months at the Hotel D'Angleterre, a fashionable hotel at Baden Baden. They had their family with them, and lived in the best of style. At the end of three months Mr. Bromley left the hotel suddenly, owing a balance of £400. Mrs. Bromley and the children would have followed the lead, but were detained by the hotel-keeper under some local law. A further debt was in the meantime incurred. Mrs. Bromley, who was possessed of separate property, gave an undertaking to pay the debt, and she and the little Bromleys were released to follow the head of the House of Bromley. A bill filed in England to charge Mrs. Bromley's separate estate was dismissed. Vice-Chancellor Malins, in dismissing the bill, said "when a married woman is separate from her husband, the Court would consider that she was contracting upon the strength of her separate estate. But there is no case where, when the husband and wife are living together, it presumes that there is an intention to resort to a separate estate. The landlord was bound to know that it was not her debt, and she only said it was her debt in order to escape from dues."

But whether recent legislation has or has not been useful on the whole (and in some respects it undoubtedly has), it is nevertheless the duty of the profession to master it as far as they may, of the Courts to interpret it, and authors to expound it.

Mr. Proffat divides his work thus: The former status of women; the legal conditions of marriage; the personal rights and disabilities of the wife; rights of property, real and personal; dowry; the reciprocal rights and duties of mother and children and divorce. The writer treats his subject in a very lucid manner, and fulfils his hope of giving to "readers outside of the legal profession a reliable summary of the law, free from the usual technicalities," while it is so far treated in a legal point of view as to afford much assistance to the law student.

Mr. Griffith commences his book with a dissertation on the equitable doctrine of separate estate—the germ of recent legislation for the protection of the property of married women. He traces this creature of equity from its birth to its present growth, showing the expansions from time to time made. We have read this dissertation with pleasure and profit. It is the best essay we have read on the subject treated. It is followed by the Married Women's Property Act, 1870 (33 & 34 Vic. cap. 93), with very full notes of decided cases. The Married Women's Property Act of 1870, Amendment Act, 1874 (37 & 38 Vic. cap. 50) is handled in like manner. In the appendix will be found reports of several leading cases as to the property of married women, and some useful forms. Among the latter are a bill to charge the separate estate of a sale made by creditors holding her note

of hand; a bill against a married woman for specific performance of an agreement to purchase a lease and good will, the trustee of her separate estate being a party to the suit; a bill for the administration of separate estate; a bill by a married woman to restrain an infringement of copyright, a decree for payment of debt secured by note of hand out of separate estate, and a decree for administration of separate real and personal estate.

FLOTSAM AND JETSAM.

Curiosities of the Law Reporters.

Sir Harbottle Grimston wrote of his father-in-law, Sir George Croke, that he was continued one of the judges of the King's Bench, "till a *certiorari* came from the Great Judge of heaven and earth to remove him from a human bench of law to a heavenly throne of glory." Preface to Cro. Eliz.

Sir Francis Palgrave relates this anecdote: Within memory, at the trial of a cause at Merioneth, when the jury were asked to give their verdict, the foreman answered: "My lord, we do not know who is plaintiff or who is defendant, but we find for whoever is Mr. C. D.'s man." Mr. C. D. had been the successful candidate at a recent election, and the jury belonged to his colour. On the authority of the King's Council, p. 143.

The Term Reports, when they use the very language of Lord Kenyon, often contain a series of broken metaphors. For example: "If an individual can *break down* any of those safeguards which the Constitution has so wisely and so cautiously erected, by *poisoning* the minds of the jury at a time when they are called upon to decide, he will *stab* the administration of justice in its most vital parts." Townsend's Lives of Twelve Eminent Judges, Vol. I. p. 79.

"When a man is taken in adultery with another man's wife, if the husband shall stab the adulterer, or knock out his brains, this is bare manslaughter; for jealousy is the rage of a man, and adultery is the highest invasion of *property*." *Regina* v. *Mawgridge*, Kelyng, 137.

"In truth," as was said by Wilmot, C.J., "The common law is nothing else but statutes worn out." *Collins* v. *Blantern*, 2 Wils. 341, quoted by Willes, J., in Pickering v. Ilfracombe Railway Co., L. R. 3 C. P. 250.

In *Commonwealth* v. *Meriam*, 14 Pick, 518 which was an indictment for adultery, it was held that other instances of improper familiarity between the defendant and the same woman, might be given in evidence to corroborate the witness. But such evidence has been rejected, the Court say, "where it tends to show a *substantial act* of adultery on a different occasion." *Thayer* v. *Thayer*, 101 Mass. p. 112.

Holt, C.J.—"If a man solicits a woman and goes gently to work with her at first, and when he finds that will not do, he proceeds to force, it is all one continued act, beginning with the insinuation and ending with the force. And this being an attempt and solicitation to incontinency, coupled with force and violence, it does by reason of the force which is temporal, become a temporal crime in the whole. An indictment will not lie for a plain adultery, but libel in the Spiritual Court will." *Rigault* v. *Gallizard*, Holt, 51.

"Hearsay is no evidence. But it may be admitted in corroboration of a witness's testimony." Gil. Ev. 890. Kelyng Appendix to 3d ed. 92.

In the thirtieth edition of Burn's Justice, vol. III. p. 1031, note, it is said: "It seemeth to savour not much of gallantry that one's ancestors supposed none but women could be guilty of being a common scold; for the technical words denoting the same, whilst the proceedings were in Latin, were all of the feminine gender; as *rixatrix*, *calumniatrix*, *communis pregnatrix*, *communis pacis perturbatrix*, and the like."

A curious instance of the plea, *molliter manus imposuit*, occurs in a case reported in Levinz. *Ashton* v. *Jennings*, 2 Lev. 123. The plea to an action for assault and battery was, that the female defendant, being the wife of an esquire and justice of the peace, the female plaintiff being the wife of a doctor in divinity, assumed to go before her at a funeral at Plymouth, whereupon the defendant gently laid her hands upon her to displace her, as she lawfully might. The Court, without deciding the question of precedence, gave judgment for the plaintiff.

Lord Bacon writes that certainty is so essential to law, that law cannot be even just without it. "For if the trumpet give an uncertain sound, who shall prepare himself to the battle?" 1 Corinth. xiv. 8. So, if the law gives an uncertain sound, who shall prepare to obey it? It ought, therefore, to warn before it strikes. It is well said, also, "That that is the best law which leaves least to the discretion of the judge." Arist. Rhet. i. 1; and this comes from the certainty of it. De Augmentis, viii. Aph 8 Vol. V. p. 90, ed. Spedding.

J. was indicted for battery of L., and sued R. in trespass for the same battery; plea, *son assault demesne*, and issue thereon. T. H., one of those who indicted (found the bill), was of the inquest on the trial of the action of trespass, and gave a verdict for the plaintiff, with twenty shillings damages; and T. H. was committed to the custody of the marshal, and fined for two causes, one of which was that he was one of the indictors of the said J., whom now he has acquitted, and did not challenge himself. Lib. Assis. 40 Edw. III. f. 241 A. pl. 10. See Bro. Ab. Challenge 142; 21 Vin. Ab. 256; Triol (B. b) pl. 14; 8 Ad. & El. 834, note.

Lord Cook says that Moses was the first law reporter. Preface to 6 Rep. p. xv.

If a pauper be non-suited, the usual practice is to tax the costs, and for non-payment to order him to be whipped. Bac. Ab. Pauper D. Salkeld reports: "I moved that a pauper might be whipped for non-payment of costs upon a non-suit, and the motion was denied by Holt, C.J., saying 'he had no officer for that purpose, and never knew it done.'" 2 Salk. 506, pl. 1.

Ascough et al. v. *Lady Chaplin*, Trin. 4 Geo. II. 1730. Cooke 93, 3d ed.; 2 P. Wms. 591; 2 Eq. Cas. Ab. 780; Mosely 391, S. C. A Writ *de ventre inspiciendo*, returnable Tres Mich., on the behalf of Edward Ascough, Esq., and Elizabeth, his wife, Anne Chaplin, spinster, Charles Fitzwilliams and Frances, his wife, co-heirs of Sir John Chaplin, Bart., their brother, against dame Elizabeth Chaplin, widow of the said Sir John; the writ was returned that the lady was with child, and a motion made for the safe custody of her until her delivery; it was suggested that the lady's mother was likewise with child, and therefore neither she nor any other woman with child were proper persons to be with her; and the Court agreed that such a clause should be inserted in the writ, and ladies were named on the part of the prosecutors or heiresses, to attend the lady during her pregnancy and till her delivery, but they must not name any spinister; and the mother was allowed to visit only.

(*To be continued.*)

Judge Allan Park was a most ridiculous man, and yet a good lawyer, a good judge, and in his day a most eminent counsel. He was a physiognomist, and was captivated by pleasant looks. In a certain cause in which a boy brought an action for defamation against his schoolmaster, Campbell, his counsel, asked the solicitor if the boy was good-looking. "Very." "Oh, then, have him in court: we shall get a verdict." And so he did. His eyes were always wandering about, watching and noticing everything and everybody. One day there was a dog in court, making a disturbance, on which he said, "Take away that dog." The officers went to remove another dog, when he interposed, "No, not that dog. I have had my eye on that dog the whole day, and I will say that a better behaved little dog I never saw in a Court of Justice."

The following story is a good example of Lord Plunket's wit. Lord Wellesley's aide-de-camp Keppel wrote a book of his travels, and called it his personal narrative. Lord Wellesley was quizzing it, and said, "Personal narrative? What is a personal narrative? Lord Plunket, what should you say a personal narrative meant?" Plunket answered, "My Lord, you know we lawyers always understand *personal* as contradistinguished from *real*." Parsons was another Irish barrister of that day who was noted for his caustic wit. Lord Norbury on some circuit was on the bench speaking, when an ass outside brayed so loud that nobody could hear. He exclaimed, "Do stop that noise!" Parsons said, "My Lord, there is a great echo here." Somebody said to him one day, "Mr. Parsons, have you heard of my son's robbery?" "No; whom has he robbed?"

A reward of £500 has just been offered for the recovery of the will of the late Lord St. Leonards, which, it appears, cannot be found. It is well known that he made a will; it is believed that even the place of its deposit was a subject of not unfrequent reference by himself, and that codicils have actually been discovered where it was expected the will would be found. There is no reason, however, to suppose that, even if the will is not recovered, the loss will make great difference in the disposition of Lord St. Leonards' estate. There is a strong belief in the neighborhood of Boyle Farm that the missing will of the late Lord St. Leonards, for which the reward is offered, is buried with him. It was seen in his hands a few days before his death; by his express desire, the venerable ex-Chancellor was laid in his coffin in a dressing-gown which he usually wore, and in the pocket of this dressing-gown is supposed to be the will. It is said that steps will speedily be taken to prove the truth or falsehood of this rumour.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 38th Victoria.

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

G. Morrice Rogers.
Warren Burton.
Colin G. Snider.
George B. Gordon.
John Bruce.
Louis W. P. Coulter.
Charles Gamon, under special Act.
W. Darby Pollard, " "

The following gentlemen received Certificates of Fitness:

Haughton Lennox.
J. D. Matheson.
J. T. Lennox.
W. H. Ferguson.
Francis Rye.
John G. Robinson.
F. E. P. Pepler.
T. Caswell.
Alexander Ferguson.
Warren Burton.
David Ormiston.
J. C. Judd.

And the following gentlemen were admitted into the Society as Students of the Laws:

Graduates.

William Malloy.
George F. Shipley.
Eugene Lewis Chamberlain.
——— Nicholls.

Junior Class.

James Haverson.
J. R. Kerr.
Thomas Stewart.
Michael J. Gorman.
Charles Edward Hewson.
John Cowan.
James Alexander Williamson.
J. Pasman Ross.
Henry S. Lemon.
Hugh Blair.
Peter V. Georgen.
Frederick Wm. Gearing.
Daniel Byarde Dingman.
Christopher Wm. Thompson.
Reginald D Pollard.
Peter Stewart Ross.

The following are the days fixed by the general orders or the various examinations:

Preliminary Examinations—Second Tuesday before Term. Intermediate Examinations—Tuesday and Wednesday next before Term. Examination for Certificate of Fitness—Thursday before Term. Examination for Call to the Bar—Friday and Saturday before Term.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3rd year.—Real Property Statutes relating to Ontario. Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, chaps. 10, 11 and 12.

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

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

J. HILLYARD CAMERON,
Treasurer.