Canada Law Journal.

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DIARY FOR SEPTEMBER.

2. Fri..Beauharnois, Governor of Canada, 1726.
3. Sat..Trinity Term ends.
4. Sun..*12th Sunday after Trinity.*
7. Wed..Court of Appeal sittings begin.
10. Sat..Sebastopol taken, 1855.
11. Sun..*13th Sunday after Trinity.* Peter Russell, President, 1796.
12. Mon..Frontenac, Gov. Canada, 1672.
13. Tues..Co. Ct. sittings for York begin. Quebec taken by British, under Wolfe 1759.
17. Sat..First U. C. Parliament met at Niagara, 1792.
18. Sun..*14th Sunday after Trinity.*
19. Mon..Lord Sydenham, Gov. General, died, 1841.
24. Sat..Guy Carleton, Lieutenant-Governor, 1766.
25. Sun...*15th Sunday after Trinity.*
29. Thurs..Michaelmas Day.
30. Fri..Sir Isaac Brock, President, 1811.

TORONTO SEPT. 1st., 1881.

A CORRESPONDENT sends us a communi cation on the subject of magisterial abuses. As it has already been published, we do not of course reproduce it. It is the old story of rapacity and ignorance on the part of country justices, better told by Shakespeare than it has been since, and as true now as in his time. The darkness of the middle ages seems to cling to the skirts of this grotesque ghost of law and order.

THE following question in one of the papers at the recent Law Society examinations: "Explain how in some cases a Court of Equity in exercising their jurisdiction to restrain a party from doing an act, is in effect *compelling* a specific performance of *that act?*," reminds us of rather a good thing quoted by Sir Henry Maine in his Early History of Institutions, which shows that even in the eleventh century the faculty for making bulls was fully developed, at any rate in Ireland. An ancient Brehon text-writer, after asking the question, "How many kinds of contracts are there?" gives the answer, "Two, a valid contract, and an invalid contract." A mode of classification which, as Sir Henry Maine observes, would scarcely have pleased Bentham or Austin.

READERS of Mr. Todd's admirable work on Parliamentary government in the British Colonies will be much interested at the news of the conclusion of the lengthy "deadlock in Victoria,"—the history of which is so graphically set out by him. It appears from Melbourne advices up to June 21st ult. that a Reform Bill had at length passed both Houses. On the one hand the Council have consented to dispense with their claim to have two members in every Cabinet, and also to reduce the qualification for membership to £100 rating instead of £150, their previous minimum. On the other hand the Assembly have abandoned their demand to have the franchise for mere occupiers reduced from £25 to £10 rental. The result appears fully to justify the steadfast refusal of the Imperial Government to apply the *Deus ex machinâ.*

WE commence in the number for this month what we hope to make a permanent and very special feature of our Journal. It is a selection from English Reports of such current practice cases as illustrate and interpret our Judicature Act and Orders. At the heading of each case

will be found a reference to the general orders affected, and at the foot a note stating whether the Imperial and Ontario Orders concerned are or are not identical. Such English cases as concern parts of the English Acts or orders which we have not adopted will of course not be noticed. The judgments will be in most cases given in full.

The statement of facts and arguments of counsel will be stated as concisely as is consistent with precision and clearness. It is confidently hoped that this new feature of the CANADA LAW JOURNAL will greatly enhance its value to the profession.

IT is too soon yet to speak of the working of the Judicature Act. The procedure of our two systems was rapidly tending towards fusion, and the profession were gradually being prepared for some such measure as the present; and it was felt, moreover, that it had to come to that sooner or later, but it cannot be said that there was any call from the country at the present time for the sweeping change that has been made. However, it is, perhaps, as well to have the agony over at once. There has, of course, been a period of dark uncertainty. This, however, could not well have been otherwise, even were the Act more perfect than it is. Those who have to initiate the administration of the law at Osgoode Hall are thoroughly competent for the task, and they will be assisted by an intelligent and industrious profession. There will, at first, be much worry and loss of time, but as practitioners resign themselves to the inevitable and knuckle down to their task, it is to be hoped that they may find the difficulties they dread fading away as they approach them.

SOMETHING will depend upon the rules of Court which, we understand, the Judges are engaged in preparing. It is reassuring in this connection to remember that the judges most recently appointed, Mr. Justice Osler and the Chancellor, were not long ago two of the best practitioners in their respective departments of law, and they possess in a marked degree the confidence of the Bar in matters connected with the subject in hand. In Mr. Dalton, on whom much also will depend, we have a gentleman of large experience, of liberal views, and who will not be afraid of grappling with difficulties. The consideration required in the preparation of these Rules has prevented the Judges completing the tariff which we understood was to have been promulgated last month. It will, however, be ready shortly. In the meantime the old tariffs will be in force, and will doubtless receive a construction which will make them as far as possible in accord with the changed practice.

THERE has been a great deal said (in fact, a great deal too much) in the leading daily papers as to the working of the new Act, and of the action of the judges in relation to it. On the one hand there was ample ground for Mr. Justice Cameron to object to act without the issue of a new commission. He was not alone in this view, and that there was some force in the contention, is evidenced by the fact that new commissions are being issued. On the other hand, it would seem true wisdom to make the best of an Act which doubtless has its share of faults, but is nevertheless the law of the land. Its faults can best be cured by an intelligent criticism of its provisions as points arise, so that the proper remedy may be applied by those who are responsible therefor.

That there has been want of care in the framing of the Act in some minor particulars is already apparent. Let us instance two cases that have arisen. Section 51 of the Act requires the Court seal to be attached to each filing in the offices of the

Deputy Clerk. This necessitates an additional stamp of fifty cents on each paper. This, of course, was never intended, but the Statutes are so plain that the Deputy Clerks have been instructed to insist upon the stamp being affixed in every case. We trust the judges will find or make some way out of the difficulty. At present this will add enormously to the costs of a suit—anything from say $5 to $25 or more.

Again, Rule 222 says that a party may obtain an order of course upon præcipe for discovery and production of documents. Form 125 is drafted on the assumption that an ordinary motion must be made before a judge in Chambers. The discrepancy was doubtless caused by following the English form without reference to the enacting clause.

WE notice reported in the London *Mail* for the 12th inst. an interesting case tried at the Assizes at Swansea, before Mr. Baron Pollock and a special jury. It is the case of *Elliott* v. *The Taff Vale Railway Company*, and is of importance as involving the question of the liability of railway companies for negligence in the management of their engines, whereby fires were caused in the vicinity of their lines. During the hearing reference was made to the cases of *Vaughan* v. *The Taff Vale Ry. Co.*, 29 L. J. Exch. 247: *Powell* v. *Fall*, 49 L. J. App. Q. B. 428: *Pigott* v. *Eastern Counties Ry. Co.*, 3 C. B. 299. The learned judge at the close of a long and elaborate summing up, left the following questions to the jury:—(1). Was the fire occasioned by any act of the defendants or their agents? (2). Did the sparks set fire to the plaintiff's premises immediately, or by setting fire to the grass outside? (3). Were the defendants guilty of negligence in the working and management of their engines and railway? The jury, after a short deliberation, returned the following answers: (1). The fire was occasioned by the act of the defendants. (2). The fire commenced in the plaintiff's premises and not outside. (3). The defendants were not guilty of negligence. A verdict was accordingly entered for the defendants, and judgment given for them.

NEW QUEEN'S COUNSEL.

The following is a list of the gentlemen who were recently appointed Queen's Counsel by the Dominion Executive:—

Richard Martin, Hamilton.
Samuel Smith McDonald, Windsor.
Hon. Alexander Morris, Toronto.
Allan R. Dougall, Belleville.
John Charles Rykert, St. Catharines.
John Creasor, Owen Sound.
Samuel Jonathan Lane, Owen Sound.
Thomas Wardlaw Taylor, Toronto.
George D'Arcy Boulton, Toronto.
Henry Burkett Beard, Woodstock.
Byron Moffat Britton, Kingston.
William Lount, Barrie.
William H. R. Allison, Picton.
Robert Smith, Stratford.
Hon. Wm. Macdougall, Ottawa.
James Kirkpatrick Kerr, Toronto.
Thomas Deacon, Pembroke.
Alexander Shaw, Walkerton.
George Dean Dickson, Belleville.
John McIntyre, Kingston.
Adam Hudspeth, Lindsay.
John Edward Rose, Toronto.
Charles Moss, Toronto.

Some few of these should have been appointed long since, and the reason for appointing some of the rest is not very plain, but on the whole the list has been accepted by the profession as satisfactory.

LEGISLATIVE PRECEDENTS.

McLAREN v. CALDWELL

It appears somewhat strange that in this pre-eminently "legislating" age, it should be hard to know where to go in order to lay one's hand on legislative precedents. We are not aware of any well-known practical treatise on legislation, in which can be found recorded a history of the course taken by various legislatures in special cases. For example, the public benefit may appear to require the passing of an Act which shall have a retroactive operation detrimental to vested rights. Where can a book be found which sets out the various kinds of retroactive acts which have been passed by various legislatures, and the circumstances of their passing?

The somewhat hackneyed subject of the legislation and judicial decisions in this Province on the subject of Rivers and Streams, affords an opportunity of illustrating what is meant. Some twenty years ago it was decided in the Court of Common Pleas, and subsequently confirmed by later decisions, that the clause in C. S. U. C. c. 48, which gives "all persons" the right to float saw-logs and timber down "all streams," only applies to rivers and streams which are naturally capable of being used for running timber, and not to those which have been rendered thus navigable by artificial improvements. On the faith of the law as thus declared (as it must be presumed), the owners of timber limits in different parts of the Province expended money in rendering various streams capable of being used for this purpose, expecting to be protected in the exclusive enjoyment and benefit of these improvements. Now, in 1881, the Court of Appeal gives judgment that the previous decisions promulgated an erroneous view of the law, and lumberers who have acted on the faith of the prior decisions find themselves in a false position. Members of the legislature might be supposed to desire to see how other legislatures, as for example, the English Parliament, had acted under similar circumstances.

What their desire was in this case it is not our proviuce to enquire, but we can refer them to at least one interesting precedent in point in the history of English legislation. It has reference to the history of special resignation bonds in England. The 31 Eliz., c. 6., enacted that if any patron of a living in England, for any corrupt consideration, by gift or promise, directly or indirectly, should present or collate any person to any ecclesiastical benefice or dignity, such presentation should be void, and the crown should present. It became, however, a common practice where a living became vacant during the minority of a son of a patron intended for the church, for the patron to present a clergyman, who executed a bond conditioned in a penal sum to resign when the patron's son should be of age to hold the preferment. And in *Johnes* v. *Lawrence*, Cro. Jac. 248, it was decided that these special resignation bonds did not offend against the provisions of the statute of Elizabeth. Many years afterwards, however, namely in 1826, a decision was come to by the House of Lords in the case of *Fletcher* v. *Lord Sondes*, 3 Bing. 501, which overturned the decisions which had previously taken place in favour of such special resignation bonds. "But," says Mr. J. W. Smith, in his work on contracts, "as the consequences of this would have been exceedingly hard upon persons who had executed special [resignation bonds at the time when they were looked upon as legal," the Archbishop of Canterbury immediately brought in a bill, which afterwards passed into law. It is the 7–8 Geo. IV., c. 25, which confirms special resignation bonds, if made before April 9th, 1827, the day of the decision in *Fletcher* v. *Lord Sondes*, a course, it may be observed, the very reverse of that pursued by the Ontario Legislature in the late session.

The history again of one of the English Factors' Acts, affords a precedent of interest in connection with recent events in this Province. In *Johnson* v. *Credit Lyonnais* Co., L. R. 2 C. P D., 224, 3 C. P. D. (C. A.) 32, one Hoffmann, a broker in the tobacco trade and also an importer of tobacco, imported a quantity of that article, and left it in bond in certain warehouses, receiving the usual dock warrants, and the tobacco was entered in the books of the Company in Hoffmann's name. This tobacco Hoffmann sold to the plaintiff, but the plaintiff not finding it convenient to take it out of bond, left it in bond in Hoffmann's name, and the warrant in Hoffmann's hands, and took no steps to have any change made on the books of the Dock Company as to the ownership of the goods. Being thus ostensible owner, Hoffmann fraudulently obtained advances on the pledge of a portion of it from the Credit Lyonnais Co., the defendants, who acted in good faith. Denman J. gave judgment for the plaintiff for the value of the tobacco pledged to the defendants. The case went to appeal. After, however, the decision of Denman J., and it appears owing chiefly to that decision, but before the appeal the Imp. 40–41 Vict., c. 39, was passed, sec. 3 of which altered the law as determined by Denman J. in the above case, but sec. 6 specially declared that:—"This Act shall apply only to acts done and rights acquired *after the passing of this Act*:" and the Court of Appeal subsequently confirmed the decision of Denman J., in the case referred to.

It is superflous to point out how different was the course pursued in a similar case by the Ontario Legislature in the last session. There, while *McLaren* v. *Caldwell* was before the Courts, and on its way to the Court of Appeal, the Legislature proposed to alter the law in accordance with which it was decided in the Court below, and so deliberately to take the case out of the hands of the proper arbiters by a despotic act of legislative power. As our readers are aware this Act was disallowed by the Governor in Council.

THE ACTS OF LAST SESSION.

ONTARIO: 44th VICT.

A concise summary of such of the Provincial enactments of last session as are of special importance to the practical lawyer may be of some use and may direct attention to points which might otherwise be overlooked in the hurry of business.

Passing by chap. 2, which introduces some slight amendments into the Act respecting the sale and management of Timber on Public Lands (R. S. O., c. 26),—chap. 3. which amends the Act respecting the expenditure of Public Money for Drainage Works (R. S. O., c. 33), chap. 4, which amends the Act respecting the Assessment of Property (R. S. O., c. 180), and also the Act respecting the Registration of Births, Marriages and Deaths (R. S. O., c. 36), chap. 5, which compromises the Judicature Act,—and chap. 6, which amends the Jurors' Act of 1879 (42 Vict. c. 14),—the first Act which demands special attention is chapter 7, entitled an Act respecting Interpleader. Section 4 provides that this Act is to be read with and form part of the Act respecting Interpleading, R. S. O., c. 54. It will be remembered that sec. 22 of that Act provides that in case any claim is made to any goods taken under an attachment or execution, under process issued out of any County Court, al the proceedings under the Act shall be taken in the County Court of the County in which such goods were so taken, or before the judge thereof; or such Court or Judge may on the return of the rule or order, should it be deemed proper, order the said proceedings to be taken in the County Court from which such process issued, or before the judge thereof. The Act of last session provides (sec. 1) that when the amount claimed under an execution or attachment issued out of one of the Superior Courts of law does not exceed $400, exclusive of interest and sheriff's costs, or when the goods seized are not deemed to be of a greater value than

$400, the order directing an issue may direct that it be tried in the County Court of the County in which it would be tried under the said sec. 22 of R. S. O., c. 54: and thereupon it shall be tried and all subsequent proceedings shall be had in the County Court, which shall have as full jurisdiction as though the writ of execution or attachment issued out of a County Court.

The next Act, chap. 8, regulates the fees of certain officers and others, making, amongst other changes, certain alterations in the fees payable to County Court clerks under the Act respecting mortgages and the sales of personal property (R. S. O., c. 119). Chapter 9 is of a private nature, being an Act to make provision for the administration of justice in the County of Dufferin. The next Act, however, chap. 10, calls for more special attention. It is an Act to amend sec. 69 of the Act respecting the Registration of Instruments relating to Lands: (R. S. O., c. 111). Sec. 69 of R. S. O., c. 111, provides that where a married woman is a mortgagee, or the assignee of a mortgage, the certificate of discharge for registration must, if given after the passing of that Act, be executed jointly by the married woman or her husband, or pursuant to "The Married Woman's Real Estate Act" (R. S. O., c. 127). The ambiguity attaching to conveyances by married women under the Revised Statutes is well known, and attention has been called thereto by Messrs Leith and Smith in their recent edition of Blackstone. Any difficulty, however, resulting therefrom in connection with the above section of the Registry Act, is removed by the Act of last session, which expunges the clause relating to the mode of execution of such certificates of discharge, and enacts that it shall not be necessary to their validity that the husband be a party, or execute; and that any discharge of mortgage heretofore executed by a married woman alone (and duly registered) shall be as effectual as if executed by husband and wife conjointly.

The next Act, chap. 11, is the now notorious Act for Protecting the Public Interest in Rivers, Streams and Creeks, which has been already commented on in this Journal, and which, having been disallowed, need not be further noticed. Chap. 12 introduces a fresh amendment of the much amended Act respecting Mortgages and Sales of Personal Property (R. S. O., c. 119). It will be remembered that sec. 10 of the Revised Statute, which provides for the periodical renewal of mortgages of chattels, was repealed by the 43 Vict. c. 15, sec. 2, which substituted a new section in its place. This new section provides that every mortgage, though duly filed, shall cease to be valid as against creditors and *bonâ fide* purchasers for value after the lapse of one year, unless within thirty days next preceding the completion of that period a statement exhibiting the interest of the mortgagee, or his representatives, and the amount due for principal and interest and all payments made, is again filed in the office of the clerk of the County Court of the county wherein the goods mortgaged are then situate, with an affidavit of the mortgagee or assignee or of his agent duly authorized in writing (a copy of which authority shall be filed) that such statement is true, and that the said mortgage has not been kept on foot for any fraudulent purpose. The Act of last session now makes an additional provision, viz., that another statement in accordance with the said 43 Vict., c. 15, sec. 2, duly verified as required by that section, shall be similarly filed within thirty days next preceding the expiration of a year from the day of filing the first statement, or else such mortgage shall cease to be valid against creditors and *bonâ fide* purchasers for value,—and so on from year to year: thus apparently giving legislative sanction to the principle under which in *Kissock* v. *Jarvis*, 9 C. P., 156, it was decided that a mortgagee, to retain his priority, must under 12 Vict., c. 74, continue to refile his mortgage after the first refiling at the end of the first year.

Chap. 13 introduces a small amendment into sec. 11, of the Act respecting the registration of co-partnerships and business firms (R. S. O., c. 123.) That section provides that "*every member of any partnership*" who fails to comply with the requirements of the Act shall forfeit a penalty of $100. The Act of last session inserts after the word "partnership,"—the words "or other person required to register a declaration under the provisions of this Act."

Chapter 14 is entitled an Act to further provide for the Release of Dower of Married Women in certain cases, and supplements and interprets certain sections of the Act respecting dower (R. S. O., c. 126). Sec. 1 of the new Act empowers an owner of land to apply for a Judge's order enabling him to *mortgage* his land free from dower, notwithstanding the dissent of his wife, where his wife has been living apart from him for two years under such circumstances as by law disentitled her to alimony, and thus this section extends the provisions of R. S. O., c 126, sec. 10., as added to by 41 Vict., c. 8, sec. 13, to the case of mortgages as well as sales. But it may be worth while to remark that there does not appear anything in the Act of last session extending to mortgages *mutatis mutandis* the amendment introduced into R. S. O., c. 126, sec. 10, by 43 Vict., c. 14, sec. 4., viz: that the said section shall apply to any case in which an agreement for sale had been made, a conveyance executed by the husband before the passing of the Act and part of the purchase money retained by the purchaser on account of dower, or an indemnity given against such dower.

Sec. 2 of chapter 14 enlarges the powers given to a Judge under R. S. O., c. 126, secs. 8 and 9, of making an order barring dower on the sale of land, notwithstanding non-concurrence of the wife, in cases where she is of unsound mind and confined in an asylum, by extending a similar power to cases where, though not so confined, the gaol surgeon of the district where she resides, and another medical man to be named by the Judge, duly certify that they have personally examined such married woman and believe her to be insane, and where the said Judge certifies to the same effect. There appears, however, to be this difference, that where the application is made to a County Court Judge, under R. S. O., c. 126, secs. 8, 9, it is to be made to the Judge of the county where the owner of the land resides, whereas, applications under sec. 2 of the Act of last session are in such cases to be made to the Judge of the County Court where the woman resides. There is also a further restriction, viz., that the examination and certificates, in cases under the said section, must be made and granted within one calendar month, and the application must be made within one month of the day upon which the last of such examinations took place.

Sec. 3 then goes on to extend sec. 2 and R. S. O., c. 126, sec. 8, so as to make them apply to mortgages as well as sales. Sec. 4 provides for subsequent orders of the same kind as those authorized by R. S. O., c. 126, sec. 8, 9, and by secs. 2, 3 of the Act under review, and provides that the Judge may afterwards make orders in respect of other sales or mortgages on the like evidence, or on any other evidence which may satisfy him, of the continued insanity of the married woman. Sec. 5, then, does for this Act, and for R. S. O., c. 126, sec. 10, what 43 Vict. c. 14, sec. 4, does for R. S. O., c. 126, sec. 9, viz., extends their application to any case where any person owns or has the right to sell or mortgage (whether as trustee or otherwise) land which is subject to the dower of a lunatic, whether such dower is inchoate or complete, and whether the person applying is or is not the husband of the lunatic. Sec. 6 and last then provides, as does R. S. O., c. 126, sec. 10, that secs. 6, 7, 8 and 10 of the Married Woman's Real Estate Act, (R. S. O., c. 127), shall apply to orders made under this Act.

It will thus be seen that the principal effect

of chap. 14 of the Acts of last session is to extend the cases in which, under R. S. O., c. 126, orders may be made barring dower, notwithstanding the non-concurrence of the doweress, to mortgages as well as sales.

Chap. 15 repeals sec. 15 of the Act to secure to wives and children the benefit of assurances on the lives of their husbands and parents, and substitutes a new section for it. This new section enables not only any person who effects a policy under the Act, *but also any person who has or may duly declare a policy effected on his life to be for the benefit of his wife or children*, to require the assurance company not only, as before, to apply the bonus or profits accruing in reduction of the premiums, or to add them to the policy, but also *to pay them, or portions of them, to the insured.* And sec. 2 enacts that the Act shall apply retrospectively as well as to future policies.

Chap. 16 virtually extends the Act respecting guardians of infants (R. S. O., c. 132) to cases where the father is living, by providing that the Surrogate Court may appoint the father of the infant to be his guardian; or may, with the father's consent, appoint some other person or persons to be the guardian or guardians of such infant: but (sec. 3) if the infant is over fourteen years of age his consent is needed.

Chap. 17 is of great interest to the profession, since it defines the powers of the Law Society in reference to matters of discipline, conferred upon it in the persons of the Benchers by R. S. O., c. 138, secs. 38 and 41. This it does by definitely enabling the Benchers to disbar, expel, or refuse to admit any barrister, solicitor, student or articled clerk found "guilty of professional misconduct, or of conduct unbecoming a barrister, attorney, solicitor, student-at-law, or articled clerk," after due inquiry by a committee of their number or otherwise.

Chap. 18 is an Act to extend the powers of companies incorporated under the Joint Stock Companies' Letters Patent Act (R. S. O., c. 150), and is to be read as part of that Act. The effect of sec. 1 is to extend the power of increasing the capital stock given to directors by R. S. O., c. 150, sec. 16 (which is by sec. 6 repealed), inasmuch as it is no longer necessary before this can be done that the whole capital stock of the company shall have been taken up, and fifty per cent. thereon paid in; but it is under the new enactment sufficient if nine-tenths of the capital stock has been taken up, and ten per centum thereon paid in. Under sec. 2 the name of the Province of Ontario, or of some locality therein, is to constitute part of the name of every company incorporated under the Act. By sec. 3 the Lieutenant-Governor in Council may, in pursuance of a resolution passed by a two-thirds vote, issue supplementary letters patent embracing all or any of the following matters:—

(1) Extending the powers of the company to any objects, within the scope of the said Act, which the company may desire;

(2) Limiting or increasing the amount which the company may borrow upon debentures or otherwise;

(3) Providing for the formation of a reserve fund;

(4) Varying any provision contained in the letters patent, so long as the alteration desired is not contrary to the provisions of the said Act;

(5) Making provision for any other matter or thing in respect of which provision might have been made by the original letters patent.

The next Act, chap. 19, is one for the incorporation by letters patent and the regulation of Timber Slide Companies. This Act works great havoc with the Act respecting Joint Stock Companies for the transmission of timber (R. S. O., c. 153), since, besides various amendments, it repeals (sec. 28) the first twenty-six sections, and also sections twenty-nine to forty inclusive of that Act. By sec. 3 it provides that every company incorporated under its provision shall be sub-

ject to the provisions of the said R. S. O., c. 153, as so amended.

Of the next Act, chap. 20, we need say little. It is entitled an Act to give increased stability to Mutual Fire Insurance Companies, and (sec. 29) is to be read as part of the Act respecting Mutual Fire Insurance Companies (R. S. O., c. 161) into which it introduces several amendments. Among these there appears a curious one introduced by sec. 27, which amends R. S. O., c. 161, sec. 61. This last-named section, it will be remembered, provides that no execution shall issue against the Company upon any judgment until after the expiration of three months from the recovery thereof. This is now amended by excepting any judgment recovered on any policy or undertaking of the company *heretofore issued or given* where more than fifty per cent. of the premium was paid in cash at the time of the insurance: and a judge or referee in chambers is, on application, to certify as to these facts. This then, will only apply to policies issued before R. S. O., c. 161. (36 Vict. c. 44). Sec. 28 makes the provisions of the Fire Insurance Policy Act (R. S. O., c. 162) apply to mutual fire insurance companies.

Chap 21, entitled an Act respecting returns from Incorporated Companies, is, if we are not mistaken, intended to prevent the recurrence of such a scrape as certain companies incorporated by letters patent under R. S. O., c. 150, got into some time ago, by not duly making the yearly returns required by sec. 49 of that Act. Under subs. 6. of the said sec. 49, any company making default is liable to a penalty of twenty dollars per day during the continuance thereof, and so is every director, manager, and secretary. As under the authorities such penalty would probably be held to be accumulative, defaulting companies were apt to find themselves saddled with very heavy liabilities. Now, however, by virtue of sec. 2 of the Acts of last session, the whole amount of the penalty recovered is not to exceed $1000, and if several actions are brought against the company or its officers the court or judge may consolidate, or stay the later of them as seems just.

Chapter 22, entitled an Act to make provision for the safety of railway employees and the public, calls for little notice here, though it is of interest in these days when we hear so much of proposed alterations in the law affecting the liability of masters for injuries sustained by servants in their employ. This Act would appear to deprive railway companies, wilfully neglecting to comply with its provisions, of any defence on the ground that the injured servant of his own will incurred the risk.

Passing by chapter 23, which is an Act respecting aid to certain railways, chap. 24, entitled the Municipal Amendment Act of 1881, is to be read as part of the municipal Act (R. S. O., c. 174), and introduces a great number of amendments into that Act. It may be worth while to notice here that under sec. 35 no municipality shall sell or lease its market fee for a period beyond April 1, 1882, till further authorized. In like manner chap. 25, the Assessment Amendment Act 1881, contains, with new enactments, several amendments of the Assessment Act (R. S. O., c. 180). Of the remaining public Acts it will be sufficient to mention the titles. Chap. 26 is an Act respecting snow fences; chap. 27 is an Act to give increased efficiency to the laws against illicit liquor selling, which it does partly by a variety of amendments to the Liquor Licence Act (R. S. O., c. 181); chap. 28 is an Act to prevent the spread of yellows among certain trees; chap. 29 is more interesting to small birds than to lawyers, and amends the Act for the protection of insectivorous birds (R. S. O., c. 201); and lastly, chap. 30 is an Act for further improving the School Law, small boys being attended to after small birds.

All the remaining Acts of last session are of a private character, except chap. 33, which repeals secs. 23 and 24 of the Prison and

Asylum Inspection Act (R. S. O., c. 224) One of these private Acts is of more than usual interest, viz., the Act to amend the Acts incorporating the Toronto Gravel Road and Concrete Company. In this Act, the legislature again interferes with vested rights, and in a manner that practically works a great injustice, but in one respect they show more tenderness than was shown in the case of the Rivers and Streams Act, and sec. 2 is a provision very different to anything contained in the latter Act, inasmuch as it provides that "nothing in this Act contained shall prejudice or affect the rights or contention of either the said Corporation of the County of York or the said company in a certain cause now pending . . . and the matters in the said cause shall be disposed of and determined as if this Act had not been passed."

This completes our review of the acts of the local legislature passed during the last session. We hope speedily to supply our readers with a similar practical review of the Acts and orders in council contained in the latest volume of Dominion Statutes.

SELECTIONS.

INEQUALITY OF SENTENCES.

Sir Watkin Williams, on the 6th inst., presided at an eisteddfod held at Allt Ddu, near Pwllheli. Responding to an address presented to him, he said:—The administration of the criminal law I approached with horror and with dread. Our criminal code has been, and still is, the most severe and sanguinary in all Europe; and a large number of the English people seem to me to be ferocious by nature and to have a very imperfect idea of the only true and legitimate object of punishment; and, while they cry for vengeance, they are infuriated by the moderation and humanity of the most just and experienced of the judges. Lord Campbell, in his autobiography, recording his feelings upon approaching an assize town, remarks that the wretched prisoners awaiting the dreaded presence of the judge little dream how much more the judge often dreads the ordeal than they do. When I see these unhappy creatures, and think over what may have been their infancy and their childhood, and their early associations, and the utter absence of all chance of forming good habits and cultivating happy instincts, they seem to me far more objects of compassion and pity than of vengeance and hatred, and I tremble to think by what an accident of accidents our positions are not reversed. At the same time, our social system, if it is to exist in anything like a civilized form, must be protected, and crime must be punished as a deterrent against repetition, and the criminals must, if possible, be reclaimed. But vengeance is not ours, and to indulge in it is mere savagery and ferocity. I am bound, however, to say that I sympathize to a large extent with the wonder and perplexity in the public mind caused by what strikes them as the inequality and uncertainty of sentences. To a certain extent this inequality is no doubt real. So long as judges have different ideas respecting degrees of criminality and of punishment this must be so; but to a still larger and by far the larger extent their inequality is apparent only, and quite unreal. In the case of most crimes there is great latitude of punishment sanctioned by the law, because there is the greatest diversity and inequality in the possible degrees of criminality; a burglary may be a most alarming and atrocious crime committed by a professional housebreaker or it may be in substance a trivial petty theft; a manslaughter may present features exceeding in villainy and cruelty many murders, or it may be little more than a common assault; and the intermediate degrees between these are infinite. The knowledge of the public is derived from the reports in the public press, and in the vast majority of cases, as I am informed by the most experienced of the judges, it is absolutely impossible to obtain from these reports a faithful or adequate picture of all the features of the case. None but the most skilful of reporters with adequate space at his command can present a true and faithful representation, disclosing the essential points in just perspective with the real lights and shades and colour belonging to the true picture; when the reporter is careless, unskilful, or unfaithful, of course, the case is hopeless, and it is further undoubted fact many repor-

ters form their own theory of a case and in their short abstract unconsciously give undue prominence and weight to those points which tend to support their theory. One of the most experienced of the judges informed me that it was a common experience for him to notice in the reports of cases that facts which he regarded as of great consequence as bearing upon the degree of criminality were wholly unnoticed, whilst others were brought into false and unnatural light. What wonder, then, that the public mind is astonished and perplexed at the inequality of sentences? The subject is one of vast and far-reaching consequence and one well worthy the attention of public men; but if the people wish fairly to judge the judges, they must be careful first to see that they have a true and faithful picture of their actions.—*Irish Law Times.*

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COMMON LAW CHAMBERS.

Wilson, C. J.]

IN RE JOHNSON V. THE TORONTO, GREY AND BRUCE RAILWAY] COMPANY.

Mandamus—Railway bonds—Registration.

The Canadian Bank of Commerce received from various parties bonds of the Toronto, Grey and Bruce Railway to the amount of £106,800, and tendered them for registration at the Railway office in order that the holders might vote thereon. The Secretary of the Railway Company refused to register the bonds unless written transfers from the original holders were produced.

Held, that the Company should register the bonds without the production of the transfers, and the summons for a *mandamus* was made absolute with costs.

McCarthy, Q.C., and *E. Martin*, Q.C., for the applicants.

S. H. Blake, Q.C., showed cause.

Osler, J.] [August 5.

IN RE KINSEY V. ROCHE.

Division Court—Prohibition—Surety—Division Courts Act, 1880.

Plaintiff and defendant were joint makers of a promissory note for $169, which plaintiff signed as a surety only. Plaintiff paid $118 upon it.

Held, that plaintiff could not maintain an action in a Division Court for the amount so paid and that a prohibition must issue, but without costs, as there was no meritorious defence.

Watson & Doherty, for defendant.

Bethune, Moss, Falconbridge & Hoyles, contra.

Osler, J.] [August 26.

GRIERSON V. CORBETT.

Bail—Ca. sa. to fix bail—Surrender—Bail-piece—Copy of.

Where a defendant is arrested by a sheriff under a *ca. re.*, and after verdict is surrendered by his bail to the same sheriff, upon an action being commenced against them, the sheriff is not entitled to a copy of the bail-piece before receiving the prisoner into custody, and such refusal being given, the sheriff was compelled to pay the costs of an application to stay proceedings, and an order was made to extend the time for surrender.

Aylesworth, for the bail.

Robinson, O'Brien & Scott, contra.

The name of *E. Martin*, Q. C., should have appeared as one of the Counsel for the applicant in *Re Osler & T. G. & B. R. R. Co.* (ante p. 305) instead of that of *Osler*, Q. C.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

Collected and prepared from the various Law Reports by A. H. F. LEFROY, ESQ.*)

CHATTERTON v. WATNEY.

Imp. O. 45, *rr.* 3, 4, 8.—*Ont. O.* 41. *rr.* 6, 7, 11.

A garnishee order under the above general orders binds the debt attached, but does not amount to a transfer of them with securities.

[March 30, L. R. 17 C. D. 259.

M. mortgaged leasehold to W. and then to B. A., judgment creditor of B., obtained a garnishee order against M. After this W. sold the property under a power of sale, and an action was brought to distribute the surplus proceeds.

Held, by the Court of Appeal (affirming a decision of Bacon, V. C., 16 Ch. Div. 378,) that the judgment creditor had no claim against the surplus proceeds of sale, for that a garnishee order has not the effect of transferring the debt due from the garnishee with the benefit of the securities for it, and that to treat the garnishee order as affecting the land before execution would conflict with the provisions of Imp. 27 and 28 Vict. c. 112, (which statute enacts that no judgment shall affect any land until delivered in execution.)

JESSEL, M. R.—"The case turns firstly on order 45 of the rules embodied in the Judicature Act 1875. Rule 3 of that order provides that, 'service of an order that debts due or accruing to the judgment debtor shall be attached or notice thereof to the garnishee in such manner as the Court or Judge shall direct, shall bind such debts in his hands.' The 4th Rule empowers the Court, where the garnishee does not dispute the debt due from him, or does not appear, to issue execution to levy the amount due from the garnishee. The effect is to declare the debt bound and to make the garnishee liable to execution. . . . The appellant contends that a garnishee order is a sort of transfer of the debt and the security for it. That would defeat the provision in the 27-28 Vict. c. 112, by making the order affect land without any delivery in execution. This Act was passed for the purpose of facilitating the sale of land and not for the benefit of creditors. B. had an interest in the land, and equitable execution could haye been obtained against him but this has not been done. Though the appellant as between him and B. is entitled to have the debt paid to him, he has no interest in the mortgaged premises. He has no title, and the appeal must be dismissed."

BRETT, L. J.—"I am of the same opinion. The argument of the appellant went on the ground that by the garnishee order the debt is transferred, and he referred to the language of James, L. J., in *Ex parte Joselyne*, 8 Ch. D. 327, as supporting this view. But the Judicature Act contains no words importing a transfer of the debt, and I think that the L. Justice when he said that the property in the debt was transferred was only using a colloquial expression which meant nothing more than that the debt was bound. I am of opinion that the appellant's case fails."

COTTON, L. J.—"I am of the same opinion, and should be content to rest the case on order 45 alone. If that gives the judgment creditor no interest in the land, it is unnecessary to consider the other Act of Parliament referred to by the M. R. though that Act strongly supports the conclusion at which we have arrived. . . . . There is nothing in the terms of the general order to affect any security for the debt, it only takes away the right of the judgment debtor to receive the money and gives the judgment creditor a right to receive it. It has not the effect of transferring the security, nor does it give the person who obtained the garnishee order any right to the security or any claim against the land comprised in it."

JESSEL, M. R.—"I quite agree with the view of Cotton, L. J., that a garnishee order does not operate as a transfer of the debt."

[*Note.—Ont. O.* 41, *rr.* 6. 7. 11, *are identical with Imp. O.* 45. *rr.* 3, 4, 8, *respectively.*]

*It is the purpose of the compiler of the above collection to give to the readers of this Journal a *complete* series of all the English practice cases which illustrate our present practice, reported subsequently to the annotated editions of the Ontario Judicature Act, that is to say since June, 1881.

Recent English Practice Cases.

Dauvillier v. Myers.

Imp. O. 31 r.r. 11, 18, 20; O. 36 r. 32.—Ont. O. 27, r. 3, 16, 18; O. 31, r. 25.

The official referees have no jurisdiction to make an order for the production of documents, the proper course being to take out a summons for the purpose in the chambers of the Judge, to whom the action is attached.

[April 13. L. R. 17 Ch. D. 346.

This action had been referred to one of the official referees who during the trial had ordered the plaintiff to produce certain documents at the office of his solicitor for the defendant's inspection.

With this order the plaintiff had not complied, and the defendant now moved, under Imp. O. 31, r. 20 of Rules of Court 1875, (Ont. O. 27, r. 18), to dismiss the action.

Counsel in support of the motion asked that if the order of the official referee was wrong, the order for production might be made then, and that if necessary they should have leave to amend their notice of motion.

Jessel, M. R.—I shall make the order for production as asked for, and shall for that purpose give the plaintiff leave to amend his notice of motion, though it is not absolutely necessary, as the notice of motion contains the usual clause as to further or other order. The official referee has made a slip; he made a perfectly proper order if he had jurisdiction to make it, but under Order 36, r. 32, (Ont. 31, r. 25), the only jurisdiction he has is to make such an order as a Judge of the High Court can make at a trial before him, and the order the official referee has made could not be made at the trial. Orders for the production of documents should always be made in the chambers of the Judge to whom the action belongs. My chief clerk would have made the order as a matter of course.

I shall now make the order that the plaintiff do produce the documents in question at the office of his solicitor, for the defendant's inspection. The costs of this motion will be costs in the action.

[*Note.—The Imperial and Ontario Orders referred to are virtually identical, but under our O. 27 r. 3, an order for discovery and production can be obtained on præcipe.*]

Ex parte Hospital of St. Katharine.

Imp. O. 55.—Ont. O. 50. r. 1.

The Court has now, under the Judicature Act, 1875, and Order 55 of Rules of Court, 1875 (Ont. O. 50, r. 1), a discretion as to directing payment of costs where a provision as to costs is omitted in any public or private act.

[Feb. 11, L. R. 17 Ch. D. 378.

This was a petition by the Master of the Hospital of St. Katharine, that part of a sum of money which had been paid into court by the St. Katharine Docks Company upon the purchase of land from the charity might be ordered to be laid out in the redemption of land tax chargeable in respect of land belonging to the charity; and the petition asked that the Docks Company might be ordered to pay the costs of the petition and of the re-investment of the money. The payment of costs was resisted by the company on the ground that by their private Act of Parliament, 6 Geo. IV., the Court could only direct costs to be paid in case the money was re-invested in the purchase of "other houses, buildings, lands, tenements, or hereditaments," and not where money was re-invested in the redemption of land tax.

After this point had been decided adversely to the contention of the company, who were ordered to pay the costs,

Glasse, Q. C., referred his Lordship to a recent case of *Ex parte Mercers' Company*, L. R. 10 Ch. D. 481, where it was held by the M. R. to be now immaterial to consider whether any public or private statute passed prior to the Jud. Act. 1875, had made, or omitted to make, any express provision as to the costs of particular proceedings under such statute, inasmuch as the combined effect of the Jud. Act and Order 55 of Rules of Court, 1875, giving the Judges a discretion as to costs in all cases, with certain specified exceptions, was to repeal all previous enactments directing costs to follow certain rules; and where a previous statute is silent as to the costs of particular proceedings under it, to supply the omission.

Malins, V.C.—"I am glad to have been referred to that case, because it settled the question, and shews that, independently of the term of this Act, the Court has authority to do what I have now done."

[*Note.—Imp. O. 55 and Ont. O. 50; r. 1 are identical.*]

ONTARIO.

IN THE FOURTH DIVISION COURT OF THE COUNTY OF SIMCOE.

PATTERSON, *Primary Creditor;* RICHMOND, *Primary Debtor;* and STEPHENS, *Garnishee.*

Garnishing rent—Apportionment.

Rent accruing due by virtue of the Apportionment Act, R. S. O., cap. 136, secs. 2, 3, may be attached, and when due may be ordered to be paid to satisfy the primary debt.

[Barrie, June 21. 1881.

This was a garnishee summons before judgment, the claim being founded on a promissory note for $96 and interest. The primary debtor disputed the claim on the ground of failure of consideration, and further alleged that the money sought to be garnished was not attachable, in that it was rent not yet due. The case came on for trial, and after taking time to consider, the following judgment was given by ARDAGH, J. J. :—It is adjudged that the primary creditor do recover against the garnishee the sum of $88.25.

The contention of the primary creditor must be allowed. The reason why rent formerly could not be garnished was that it might never become due, and so it would be unfair to order the tenant to pay to a third person what his landlord might never have been able to collect from him. The protection of the tenant was what was aimed at, and he ought to be satisfied if he gets that protection without endeavouring to "protect" his landlord against his (the landlord's) creditors. In this case there was no reason why the tenant should not have held, subject to the decision of the Court, the rent which became due a week after the attaching order was served, and some six or seven weeks before the sitting of the Court. He cannot now say that the rent never did become due, or that anything happened to prevent his becoming liable to his landlord for the rent then just about to become due. The "warning" in the summons served on him was that "all debts due or accruing, due" from him to his landlord were attached, &c. Now the statute (R. S. O., cap. 136) has made this rent to be "accruing due," and nothing ever happened to prevent it becoming actually *due.* All that a tenant in such a case could ask is, that he should not be ordered to pay before the rent became actually due. The grounds upon which the Courts refused to allow rents to be garnisheed are wanting in this case. This, coupled with the statute in question, and also with the fact that the tenant cannot be injured in any way, and also that it *should not* be his interest to see his landlord's creditors defeated, all concur in rendering it necessary and just that an order should now be made to pay over so much of the rent as will satisfy the primary creditor's claim.

Gamon, for the primary debtor and garnishee, subsequently applied for a new trial, contending that the debt to be garnished must be a debt actually due and owing at the date of summons to such a debt as the primary debtor could sue for at that time. The cases of *McLaren* v. *Sudworth,* 4 U.C. L. J., 233, and *Com. Bank* v. *Jarvis,* 5 U. C. L. J. 66, were, it was submitted, as much in point now as since the Apportionment Act (R. S. O., Cap. 136, sec. 2, &c.), the latter being solely for the equitable relief of heirs, devisees and legatees, and that in fact the doctrine of apportionment does not apply to a rent, except in cases of death, accident, or sudden termination of the lease, in cases where there is no adequate remedy at common law. Story Eq. Juris., pp. 474 to 484. Admitting, however, that rent is apportionable, it is not a debt until due and payable (sec. 3, R. S. O., cap. 136), consequently it could not be recovered as a debt at the time of the issue of garnishee summons.

There must be what there is not here, a legal debt due by a legal debtor. See *Boyd* v. *Haynes,* 5 Prac. R. 15; *Mead* v. *Creary,* 8 Prac. R. 382; *Holland* v. *Wallace,* Ib. 186.

Robertson, for the primary creditor, showed cause.

ARDAGH, J. J.:—I cannot say that the cases quoted by the garnishee have altered my opinion. The law as to garnishment of rent very often worked justice to creditors, and I see no reason they should not, since the Act respecting apportionment, have the same rights, at least in a case like this, as in respect to other debts. Here the garnishee has no objection to the order made as he has submitted himself to the judgment of the Court and paid the money into Court.

LAW STUDENTS' DEPARTMENT.

RECENT EXAMINATIONS.

The following is the result of the recent examinations for admission and call:—

Attorneys—J. H. M. Campbell, G. G. Mills, J. Williams, C. Bitzer (without an oral on the merits), A. Ford, W. E. Macara, J. W. Curry, J. S. McBeth, H. Yale, C. Millor, A. Dawson, C. C. Going, A. H. F. Lefroy, G. M. Lee, Jas. Scott, E. N. Lewis, S. Wood, D. K. Cunningham, G. W. Baker, G. Beavers, F. H. Thompson (æq.), B. E. Sparnham, W. H. Bennett, C. E. Carbett, A. McKay.

Barristers—J. H. M. Campbell (with honours and gold medal), G. A. Watson (without oral on merits), J. S. McBeth, H. E. Crawford (æq.), J. R. Lovell, G. G. Mills, J. A. McCarthy, Chas. Millor, A. McNabb, J. Scott, C. Bitzer, W. E. Macara (æq.), S. G. McKay, J. B. O'Brian, F. H. Thompson, F. W. Kittermaster, A. Ford, J. W. Curry, E. N. Lewis, F. Case, A. R. Duncombe, N. Gilbert, W. F. Morphy.

Six of those who went up for examination as Attorneys, and seven of those who went up for call, were rejected.

The Second Intermediate Scholarships were awarded as follows:

A. Mills, P. S. Carroll, and G. Davis.

Thirty-six students presented themselves for examination in the Second Intermediate, of whom thirty-two passed. Of the thirty-two who went up in the First Intermediate only twenty passed.

EXAMINATION QUESTIONS.

A law student writes us as follows:—

"Kindly continue the publication of the questions and answers taken from the English *Bar Examination Journal*."

We are glad to find that the extracts have been found useful, and gladly continue them:

Q.—3. Explain the nature and objects of a conveyance by lease and release. To what extent did such conveyances operate under the Statute of Uses?

A.—This consisted of two deeds. By the first the releasor bargained and sold the land to the releasee for a year for a sum of money expressed to be paid at the time. By the second the releasor released the reversion to the releasee. The object was to enable an estate of freehold to he conveyed without the trouble of a feoffment, or an entry by the grantee. It operated under the Statute of Uses to this extent: that before that statute the Court of Chancery held that whenever A. bargained and sold land to B. for any estate for a pecuniary consideration, A. thereby became seised to the use of B. for such estate until a legal conveyance was made of it. The Statute of Uses then had the effect of making such a bargain and sale a legal conveyance itself. Hence by this means a legal term could be conferred without entry by the lessee, and the reversion could then be released to him. The Statute of Uses indeed elevated a bargain and sale of a freehold estate into a legal conveyance; but a subsequent statute (27 Hen. 8, c. 16), required all bargains and sales of estates of freehold to be made by deed enrolled. (Wms. R. P. Pt. I. c. 9.)

Q.—5. Explain the nature of the "reasonable and probable cause" which will prevent an action for malicious prosecution from being maintained. Is the existence of such cause a question of law or of fact?

A.—Whether the defendant had "reasonable and probable cause" for instituting the prosecution in respect of which the action is brought, is a question of opinion depending entirely on the view that may be taken by the judge of the circumstances of the case. The plaintiff must show that there was no reasonable or probable cause for the prosecution by giving evidence of facts from which the absence of such cause may be inferred; and evidence of malice on the part of the defendant will not be sufficient, because a person actuated by malice may nevertheless have a good reason for prosecution.

The existence of reasonable and probable cause is a question of law for the judge, the jury having previously ascertained the facts. (Underhill on Torts, 2nd ed. 101 ; Indermaur, C. L. 2nd ed. 309.)

Q.—6. Explain the application of the maxim respondent superior in an action for injury arising through the neligence of (1) the defendant's coachman driving a hired horse and carriage; (2) the servants of a sub-contractor who has contracted with the defendant to do a portion of the work which the defendant himself has undertaken to do.

A.—(1) As a master is liable for the torts of his servant, committed by the latter while acting within the scope of his employment, and the coachman is the servant of the defendant and not of the owner of the horse and carriage, the defendant will be liable for the injury caused if it was committed by the servant in the course of his employment, and the owner of the horse and carriage will be under no liability. If, however, the coachman was not acting within the scope of his employment at the time when the injury was committed, the master will be free from liability, unless, indeed, he has made himself liable by ratification of his servant's act. (Underhill on Torts, 2nd ed. 30, 37 ; Indermaur, C. L. 2nd ed. 345.)

(2.) The defendant is not liable for the injury, as the persons by whom it was committed were not his servants, but the servants of the sub-contractor; who of course is liable if the injury was committed by the servants while acting within the scope of their employment. (Underhill on Torts, 2nd ed. 37, 38 ; Indermaur, C. L. 2nd ed. 335.)

REVIEWS.

OUTLINE OF AN ACTION UNDER THE ONTARIO JUDICATURE ACT, by Walter Barwick, Esq., of Osgoode Hall, Barrister-at-Law. Toronto, WILLING & WILLIAMSON.

Attention has already been called in the columns of the LAW JOURNAL to the two excellent annotated editions of the Judicature Act, by Mr. Maclennan and Messrs. Taylor & Ewart, These have now been in the hands of our readers for some time, and the profession is largely indedted to them for the light thrown on the new system. Mr. Barwick's "Outline of an Action" under the new practice, is another valuable contribution to the rapidly increasing literature of an Act which naturally requires all the light which its interpreters can cast upon it. The little work before us does not lay claim to originality of plan or treatment. It is founded, as the title page informs us, on Boyle's "Précis of an Action" under the English Judicature Acts and Rules, a book well known to the profession. A glance at the "outline" will show its nature and its practical value at such a time as this, when unfortunate attorneys are taking their first steps in the *terra incognita* of the new practice. To many of these gentlemen it will be a great boon to have the enactments scattered throughout the Act and Rules brought together in natural order in connection with the successive steps of an action, so that a few moments will generally put them in possession of information which would otherwise necssitate a tedious and uncertain search through the manifold sections and rules of what a sufferer has called the "Statute of Afflictions." The "Outline" will also be of great value to law students as a means of guiding and simplifying their study of the Act, which will henceforward be one of the subjects for their final examinations.

CORRESPONDENCE.

Conveyancing Charges.

To the Editor of the CANADA LAW JOURNAL :—

SIR,—I beg to direct the attention of your readers and especially the Benchers of the Law Society to the necessity of a tariff of fees for conveyancing being settled upon, and to the effect on the profession of the low charges for conveyancing made by some of its more prominent members in this city. The Editors of the LAW JOURNAL have at various times commented very unfavourably on Barristers advertising that they will do conveyancing at half the usual charges. Although I strongly disapprove of such advertising as being in the highest degree unprofessional I do not think that it is fair that these enterprising gentlemen should be dis-

countenanced by the LAW JOURNAL, and reprimanded by the Law Society, while many of the leading firms in Toronto, who are solicitors for mortgage companies, *are advertised* by their respective companies as being willing to do the necessary conveyancing in connection with the loaning of money at something less than half the usual charges. Recently I loaned a sum of $1,100 on mortgage, and charged, including disbursements, the sum of $24—for examining title, drawing the mortgage and making the necessary searches; the mortgagor objected to pay so much on the ground that Messrs. —— the solicitors of a mortgage company, would not have charged half as much. I pointed out to him what I had done and what were the usual charges for the services I had rendered; however, as he remained dissatisfied, and evidently thought I was imposing on him, I receipted the bill of costs and ordered him out of my office. Possibly I do not look at this matter in the right way; be that as it may, in my view of it it is both unfair and unjust to the other members of the profession for a lawyer to charge $5 for services worth double that amount, and for which other lawyers are charging double.

Yours, &c.,

C. M.

Toronto, Aug. 25th, 1881.

[This letter opens up a rather important question, and one that requires careful consideration in all its bearings.—ED. L. J.]

Judicature Act—Procedure in County Courts.

To the Editor of the CANADA LAW JOURNAL:

SIR,—A recent article on this Act in one of the daily papers stated that the law of set-off and cross claims is to be recognized in the County Courts as in the High Court, that cases brought in the County Court may be transferred into the High Court, and that otherwise the County Courts and Division Courts and their practice and jurisdiction remain as they were before the passing of the Act. The writer of the article appears to have overlooked Order 60 in the schedule of the Act where there are several important provisions made in reference to the Superior Courts, and to which it may be well to call attention so that they may not escape the notice of any of those more immediately interested:—

By Rule 1 of this order County Court Terms are abolished, though there are to be sittings at the same periods as the Terms.

Rule 2 changes the times for holding Court to try cases where no jury is required, from the first Monday to the first Tuesday in the months of April and October.

Rule 3 provides for the sitting of County Court judges at any time for the transaction of business.

Rule 4 enables County Court judges to have control of the costs in cases beyond the jurisdiction brought in County and Division Courts.

And Rule 5 directs that the pleadings, practice and procedure for the time being of the High Court shall apply to the County Courts wherever the present pleadings, practice and procedure of the County Courts correspond with those of the Superior Court of law.

This last rule, it appears to me, makes a most sweeping charge, as the great proportion of County Court procedure corresponds with that of the Superior Courts, so that of whatever difficulties may arise in the carrying out of the new procedure the County Court judges may expect a full share.

It appears that none of the learned authors of the two excellent works that have been published upon the Act have thought it necessary to waste any comments upon this Rule (5), but a little reflection will show that instances may arise where the practitioner will be in doubt what practice to follow. Take the case where it is desired to have a Division Court judgment removed to the County Court. Of course the old practice will be followed so far as relates to the issue of the transcript and the filing of same in the County Court office, but when this is done and it becomes necessary to issue execution, some difficulty will arise. The new procedure must be followed, the former writ of execution in the County Court being similar to a Superior Court writ; but to mould the form of *fi. fa.* given in the Act to meet such a case will require almost total destruction, the leaving out of about two-thirds of the form and the alteration of the remainder. Rule 349 fortunately allows a good deal of latitude, so it is hoped that even in such a minor matter as this a satisfactory solution will be arrived at, and the

Act be found to run as smoothly as its most ardent admirer could desire.

Yours, etc.,

BARRISTER.

LATEST ADDITIONS TO THE LIBRARY OF OSGOODE HALL.

BILLS OF LADING.—A treatise on the Law of Bills of Lading, with Forms. By Eugene Legget, Solicitor. Stevens & Sons, London, 1880.

BIOGRAPHY.—Men of the Time. A dictionary of contemporaries. By Thompson Cooper, F. S. A. Tenth edition. George Routledge and Sons, London, 1879.

CHATTEL MORTGAGES.—A Treatise on the Law of Mortgages of Personal Property. By Leonard A. Jones. Houghton, Mifflin and Co., Boston.

COPYRIGHT.—The Law of Copyright in works of Literature and Art; together with International and Foreign Copyright, with the Statutes relating thereto. By Walter Arthur Copenger, Esq. Second edition. Stevens and Haynes, London, 1881.

CHURCHWARDENS.—The Churchwarden's Guide. By W. G. Brooke, M. A. Tenth edition. Knight & Co., London.

DIGEST.—Digest of the Reported Decisions for the year 1880. By Thomas Willis Chitty and John Mews, Esqrs. Henry Street, London, 1881.

CONVEYANCING.—A short epitome of the principal Statutes relating to conveyancing. By George Nichols Marcy, Esq. Third edition. Davis and Son, London, 1881.

FOREIGN JUDGMENTS.—Foreign Judgments, Part II. The effect of an English judgment abroad. Service on absent defendants. By Francis Taylor Piggott, M.A., LL.M. Stevens & Sons, London, 1881.

INTERPLEADER AND ATTACHMENT.—Interpleader and Attachment of Debts in the High Court of Justice, and in the County Courts, with Forms. By Michael Cababe, Esq. William Maxwell and Son, London, 1881.

LANDLORD AND TENANT.—Woodfall's Law of Landlord and Tenant. Twelfth edition. By J. M. Laly, Esq., Henry Street, London. 1881.

LEADING CASES.—An epitome of leading Conveyancing and Equity cases, with notes. By John Indermaur, Solicitor. Fourth edition. Stevens and Haynes, London, 1881.

LIBEL AND SLANDER.—A digest of the Law of Libel and Slander, with Precedents. By W. Blake Odgers, M.A., LL.D. Stevens & Sons, London, 1881.

MARINE INSURANCE.—A Practical Treatise on the Law of Marine Insurance. By Richard Lowndes, Esq. Stevens and Sons, London, 1881.

PATENT CASES.—Appendix to Higgins's Digest of Patent Cases, containing those decided between June, 1875, and March, 1880. By Clement Higgins, Esq. Stevens and Haynes, London, 1880.

PRACTICE.—A manual of the Practice of the Supreme Court of Judicature, intended chiefly for the use of students. By John Indermaur, Esq. Stevens & Haynes, London, 1881.

The practice of the Supreme Court of Judicature, alphabetically arranged. Designed by F. O. Crump, Esq. Part I., Chancery Division. By Frank Evans Esq. Horace Cox, London, 1881.

RAILWAYS.—Railway Passengers and Railway Companies, their duties, rights and liabilities. By Louis Arthur Goodeve. Stevens & Haynes, 1880.

The Law of Railway Companies, with the Acts and orders. By T. H. Balfour Browne, and H. S. Theobald, Esqs. Stevens & Sons, London, 1881.

SPECIFIC PERFORMANCE — A treatise on the Specific Performance of Contracts, by the Hon. Sir Edward Fry; 2nd edition by the author and William Donaldson Rawlins, Esq. Stevens & Son, London, 1881.

TORTS.—Moak's Underhill on Torts, First American, from the Second English edition, with American cases. By Nathaniel C. Moak, Counsellor-at-law. William Gould and Son, Albany, New York, 1881.

The following officers have been sworn in under the Judicature Act:—

Master in Chambers.—Mr. R. G. Dalton, Q.C.

Master in Ordinary.—Mr. T. W. Taylor, Q.C.

Registrar of the Queen's Bench Division.—Mr. R. P. Stephens.

Taxing Officers.—Mr. S. B. Clarke and Mr. J. H. Thom, taxing officers for the Common Pleas and Chancery Divisions of the Supreme Court respectively.

Registrar of the Chancery Division.—Mr. G. S. Holmsted, Registrar and Senior Judgment Clerk of the Chancery Division.

Clerk of the Records and Writs, Chancery Division.—Mr. Geo. M. Lee.

The other officers and clerks retain the offices held by them under the old system.

Law Society of Upper Canada.

OSGOODE HALL.

EASTER TERM, 44TH VICT.

During this Term the following gentlemen were called to the degree of Barrister-at-Law :—

George Bell, with honors; John O'Meara, Charles Henry Connor, George Macdonald, John Birnie, jr., Charles Egerton Macdonald, Howard Jennings Duncan, Stewart Campbell Johnstone, Lendrum McMeans, William Boston Towers, Francis Edward Galbraith, Charles Wright, John Kelley Dowsly, Chas. Herbert Allen, Charles Elwin Seymour Radcliffe, James Leland Darling, John Clark Eccles, George William aker, Hedley Vicars Knight, George Ritchie.

(The names are placed in the order of merit).

And the following gentlemen were admitted into the Society as Students-at-Law, namely :—

GRDUATS.

Adam Carruthers, B.A., James Alexander Hutchinson, B.A., George Frederick Lawson.

MATRICULANTS OF UNIVERSITIS.

John L. Peters, Morris Johnson Fletcher, Francis Cockburn Powell, Toronto University.

JUNIOR CLASS.

Herbert Gordon Macbeth, Alson Alexander Fisher, William Edward Sheridan Knowles, Thomas Hobson, Robert Alexander Dickson, Peter D. Cunningham, Alexander McLean, William Thomas McMullen Miron, Ardon Evertts, William John McWhinney, Richard Armstrong, Alexander Duncan McLaren, Edward Corrigan Emery, John Craine, Joseph McKenzie Rogers, W. Arthur Ernest Kennedy, Geo. Herbert Stephenson, Arthur W. Wilkin, Walte George Fisher.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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

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

Articled Clerks.

1881.
- Ovid, Fasti, B. I., vv. 1-300; or, Virgil, Æneid, B. II., vv. 1-317.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—N. America and Europe.
- Elements of Book-keeping.

In 1882, 1883, 1884 and 1885. Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law

CLASSICS.

1881.
- Xenophon, nabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero in Catilinam, II., III., IV.
- Ovid, Fasti, B. I., vv. 1-300.
- Virgil, Æneid, B. I., vv. 1-304.

1882.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum, (B. G. B. IV. c. 0-36, B. V., c. 8-23.)
- Cicero, Pro Archia.
- Virgil, Æneid, B. II., vv. 1-317.
- Ovid, Heroides, Epistles V. XIII.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles V. XIII.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical Analysis of a selected Poem :—
1881.—Lady of the Lake, with special reference to Cantos V. and VI.
1882.—The Deserted Village.
The Task, B. III.
1883.—Marmion, with special reference to Cantos V. and VI.
1884.—Elegy in a Country Churchyard.
The Traveller.
1885.—Lady of the Lake, with special reference to Canto V.
The Task, B. V.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek :—

FRENCH.

A paper on Grammar.
Translation from English into French Prose :—
1881.—Emile de Bonnechose, Lazare Hoche.

OR, NATURAL PHILOSOPHY.

Books.—Arnott's Elements of Physics, 7th edition, and Somerville's Physical Geography.

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

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the final Examination, shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery; O'Sullivan's Manual of Government in Canada; the Dominion and Ontario Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117, R. S. O., and amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing, (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law; Underhill on Torts; Caps. 49, 95, 107, 108, and 136 of the R. S. O.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Harris's Principles of Criminal Law, and Books III. and IV. of Broom's Common Law, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CERTIFICATE OF FITNESS.

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

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

The Primary Examinations for Students-at-Law and Articled Clerks will begin on the Second Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

The Second Intermediate Examination, on the 3rd Tuesday, except in Trinity Term.

The First Intermediate, on the 3rd Thursday, except in Trinity Term.

The Attorneys' Examination, on the Wednesday, and the Barristers' Examinations, on the Thursday before each of the said Terms.

FEES.

Notice Fees	$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Attorney's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fees ..... each,	1 00
Fee in Special Cases additional to the above.	200 00

The following changes in the Curriculum will take effect at the examination before Hilary Term, 1882:—

FIRST INTERMEDIATE.

Williams on Real Property; Smith's Manual of Common Law; Smith's Manual of Equity; the Act respecting the Court of Chancery; Anson on Contracts; the Canadian Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117 R.S.O. and Amending Acts.

SECOND INTERMEDIATE.

Leith's Blackstone (2nd edition); Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages and Wills); Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act; Caps. 95, 107 and 130 of the Revised Statutes of Ontario.

FOR CERTIFICATE OF FITNESS.

Taylor on Titles; Hawkins on Wills; Taylor's Equity Jurisprudence; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and the Pleadings and Practice of the Courts.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law, and Books III. and IV. of Broom's Common Law; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills; the Statute Law and the Pleadings and Practice of the Courts.