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DIARY FOR APRIL.

1. Mon... County Court and Surrogate Court Term commences. Local School Superintendent's term of office begins.
6. Sat..... County Court and Surrogate Court Term ends. Local Treasurer to return arrears for taxes due to County Treasurer.
7. SUN... *5th Sunday in Lent.*
14. SUN... *6th Sunday in Lent.*
19. Friday *Good Friday.*
21. SUN... *Easter Day.*
23 Tues... *St George.*
24 Wed . Appeals from Chancery Chambers.
25. Thurs. *St. Mark.*
28. SUN... *Low Sunday.*
30. Tues... Last day for Non-Residents to give list of their lands, or appeal from assessment. Last day for L. C. to return oc. lands to Co. Treasurer.

THE

Upper Canada Law Journal.

APRIL, 1867.

CONTEMPT OF COURT IN LOWER CANADA.

Our professional brethren in the Lower Province may be congratulated, if such a subject can be the subject of congratulation, upon the very thorough knowledge they must almost necessarily have acquired lately of that branch of legal lore known as Contempt of court. The subject is somewhat extensive, using the term in its general sense, but in the sense in which it has come so prominently before the people of Lower Canada, it is happily little heard of.

In fact so little does it affect us in this part of the Dominion of Canada, that it would seem unnecessary to notice it, but we cannot well ignore what is taking place in legal matters within the courts of Lower Canada, particularly where the points involved are not in their nature of a character having reference to that part of its laws which have no bearing upon ours.

The Ramsay contempt case, as it is called in Lower Canada, has again entered its ugly appearance in court. This time in a Court of Error and Appeal, under the name of *Ramsay* plaintiff in error v. *The Queen*, defendant in error, on a writ of error from a judgment of Mr. Justice Drummond, holding the Court of Queen's Bench, Crown side, at the last term of the court, for the district of Montreal, on a rule for a contempt of the Court of Queen's Bench by Mr. Ramsay, in publishing two articles in the *Montreal Gazette* of the 27th and 29th of August last.*

It was submitted, amongst other things, by the plaintiff in error, that, as no man can be a judge in his own cause, and as Mr. Justice Drummond was himself the complainant, he was precluded from sitting or giving any judgment on the rule. Before going into the merits of the case, Mr. Ramsay objected to the competency of Mr. Justice Drummond to sit in the case, on the grounds that he gave final judgment in the court below, and that he was the party complainant in this case; but the court were, and we should think very properly, unanimously against him on these points. The first point was urged under the wording of the statute, and the second bore an impression of reason, owing to the unhappy manner in which the judge had conducted himself throughout the proceedings antecedent to this appeal.

Mr. Ramsay, on same day, applied, with the consent of the Attorney-General, for leave to appeal to the Privy Council. This being refused (Mondelet, J., dissenting,) he moved, with the like consent, to discharge the inscription, contending that the court could not interfere, that the Crown was *dominus litis;* that it had been declared by the court that morning that it was not Mr. Justice Drummond; that it was the Queen, who was represented by the Attorney General, (citing *The Queen* v. *Howes*, 7 A. & E. 60.) The court, however, refused to recognise the right of the Attorney General to abandon a proceeding for contempt (Mondelet, J., dissenting). Leave to appeal from this was also refused.

The question then remained to be discussed, whether or not a writ of error would lie from a judgment for contempt. The court was not unanimous upon this point, the majority holding that it would not, and Mondelet, J., thinking that it would, and arguing forcibly enough the impropriety of the same individual being, as he might be, he contended in cases of this kind, the accuser, witness and judge, and his judgment final and irreversible. But we think he travelled out of the record, and his remarks favoured of what is vulgarly termed "claptrap" when he said, "For myself I want no such privilege; not only as a citizen but as a judge I invite the scrutiny of the public eye. If I am honest, I have nothing

* See p. 2 U. C. L. J., N. S. 283.

to fear; and if I am dishonest, the sooner I am found out the better."

But whilst upholding the right of free judgment and fair criticism as to the acts and conduct of persons holding judicial positions, we must be very watchful that such criticism *is* fair, and not pushed to such lengths as to bring the judicial office, as distinguished from the individual holding that office, into contempt, and that remarks should not be made, which, however true they may be in themselves, are calculated to diminish the respect due to the laws, or to lessen the confidence of the public in their due and just administration.

Whilst admitting the apparent impropriety urged by Judge Mondelet, as to the same person acting in a variety of capacities, it is equally clear that Judge Badgley went to the root of the matter when he said, "Arguing from the mere reason of the thing, it is a plain consequence, that contempts would necessarily fail of their effect, and the authority of courts of justice would become contemptible, if their judgments could in such matters be subjected to revision by any other tribunal." The same view of their matter was years ago taken by that eminent jurist, Chancellor Kent, (referred to by the *Lower Canada Law Journal*, from which we take it,) when, in criticising a proposed penal code for Louisiana, which contained a provision for the trial of matters of contempt by a jury, he said, "Under such a state of law, no one would be afraid to offend; the delay of punishment and the manner and chances of escaping it, would disarm the expected punishment of all its terrors, nor could the insulted court or judge ever think of the attempt to cause the infliction of punishment under so many discouragements. It would be idle for the law to have the right to act, if there be a power above it which has a right to resist. In criminal matters penal law must enforce satisfaction for the present acts and security for the future; in other words it *must have* a remedy and a penalty. How could there be either a remedy or a penalty, if the judgment of contempt was subject to review by any other tribunal."

Apart from this, the weight of authority appears to be against the allowance of any appeal in matters of contempt, and such was the opinion of the court in the present case; and so the matter stands at present, unless indeed, as is remarked by our Lower Canada contemporary, the Judicial Committee of the Privy Council see fit to entertain an appeal from the judgment of the court. For our part, indeed, we hope that this unpleasant episode respecting legal life in this Canada of ours may not be further agitated in the English courts, and that however interesting the points in dispute may be in themselves, they may be considered settled as they now stand.

That such a state of things as have resulted in the *cause celebre* of *Ramsay*, plaintiff in error, v. *The Queen*, defendant in error, exhibits, could not well occur in this part of Canada, we may well be thankful for. That such a boast may be as true of the future as it has been of the past, should be the constant aim and exertion of all those, who, on the bench or at the bar, or in the study of the laws, desire the welfare of their country. The heritage left to us by those able, courteous and high-minded men who set the standard of the profession in Upper Canada cannot be too highly prized; and he who first, whether by his conduct on the bench or at the bar brings discredit upon their teaching, will, we doubt not, meet the universal contempt, which such conduct would deserve.

The Bench of Lower Canada is not (with some honourable exceptions) what it ought to be. The conduct of Lower Canada judges has, on more than one occasion, caused Canadians to blush; and we regret to say that people abroad know no distinction between the Bench of Upper and Lower Canada, and so in their ignorance cast upon the Bench of Canada, the obloquy which appertains to that of the Lower Province alone.

The prosecution of Governor Eyre in England appears to have come to nothing, the Grand Jury having thrown out the bill. The address to that body by Chief Justice Erle is said to have been an effort worthy of that learned judge, and to have occupied some six hours in its delivery. The necessity for the protection of persons acting honestly in the difficult position such as that in which this well abused Governor was placed has had its proper weight.

Our readers will observe that Mr. Harrison's Municipal Manual has been completed, and is now ready for delivery in a bound form.

ORDERS OF COURT OF CHANCERY.

The following Orders were promulgated on, and bear date the 1st April, 1867.

1. Every paper to be filed in the office of the Registrar at Toronto is to be distinctly marked at or near the top or upper part thereof, on the outside, with the name of the city or town in which the bill is filed; and the Registrar is not to file any paper which is not so marked.

2. In ordinary suits for foreclosure or sale against infant heirs or devisees of the mortgagor, or of the assignee of the mortgagor, where no defence is set up in the infant's answer, the cause is not to be set down to be heard in Court by way of motion for decree; but after the infant's answer is filed, or after the time for filing the same has expired, the plaintiff is to file affidavits of the due execution of the mortgage, and of such other facts and circumstances as entitle him to a decree, and is to apply for the decree in Chambers, upon notice to the infant's solicitors.

3. A defendant may claim, by answer, any relief against the plaintiff which such defendant might claim by a cross bill.

4. All exhibits put in at the hearing of a cause, are to be marked thus: "In Chancery [*short title*]. This exhibit (the property of ——) is produced by the plaintiff (*or defendant C., as the case may be*), this —— day of ——, 186-. A. B." (*the Registrar & Deputy-Registrar.*)

5. Every decree or order is to be bespoken, and the briefs and other documents required for preparing the same are to be left with the Judges' Secretary, within seven days after the decree or order is pronounced or finally disposed of by the Court.

6. In case any decree or order is not bespoken, and the briefs and other documents are not left within the time prescribed by the next preceding rule, the decree or order is not to be drawn up without leave being obtained on an application in Chambers.

7. The plaintiff, on applying for a decree on præcipe, is to produce to the Registrar an office copy of the bill, in addition to the papers required by Order 4 of the General Orders of 10th January, 1863.

8. Decrees, Special Orders and Reports are to be divided into convenient paragraphs, and such paragraphs are to be numbered consecutively.

9. Upon every office copy of a decree served, pursuant to section 2 of Order 6, of the General Orders of June, 1853, there is to be endorsed a memorandum in the form or to the effect following, that is to say: "Take notice, that from the time of the service hereof, you (*or, as the case may be, the infant or person of unsound mind*) will be bound by the proceedings in this cause in the same manner as if you (*or the said infant or person of unsound mind*) had been originally made a party to the suit; and that you (*or the said infant or person of unsound mind*) may, upon service of notice upon the plaintiff, attend the proceedings under the within decree; and that you (*or the said infant or person of unsound mind*) may, within fourteen days after the service hereof, apply to the Court to vary or add to the said decree. A. B., of the City of Toronto, in the County of York, Plaintiff's Solicitor."

10. Where any person required to be served with an office copy of a decree, pursuant to section 2 of Order 6 of the General Orders of June, 1853, is an infant, or a person of unsound mind not found so by inquisition, the service is to be effected upon such person or persons, and in such manner as the Master before whom the reference under the decree is being prosecuted shall direct.

11. At any time during the proceedings before any Master under a decree, the said Master may, if he thinks fit, require a guardian *ad litem* to be appointed for any infant, or person of unsound mind not found so by inquisition, who has been served with an office copy of the decree.

12. Guardians *ad litem* for infants, or persons of unsound mind not found so by inquisition, who shall be served with an office copy of a decree, are to be appointed in like manner as guardians *ad litem* to answer and defend are appointed in suits on bill filed.

13. Trustees, agents, and other persons in a fiduciary situation, are not to bid under the general order giving parties liberty to bid; but liberty in the case of such persons is only to be obtained on a special application.

14. Upon every order of revivor served in pursuance of the order of 6th June, 1862, there is to be endorsed a memorandum in the form or to the effect following, that is to say: "Take notice, that if you desire to discharge this order, you must apply to the Court by motion or petition for that purpose, within fourteen days after the service hereof upon you. The original bill in this cause is filed in the office of the Registrar (*or* Deputy Registrar) at ——;" and if the service is after a decree directing a reference to a Master, add, "and the reference under the decree in this cause is being prosecuted in the office of the Master, at ——."

15. No certificate for an increased counsel fee, or for two counsel fees, is to be granted *ex parte*, unless the certificate is applied for within *thirty* days after judgment is given. Any application afterwards is to be on notice, and at the expense of the party applying.

16. To secure uniformity of taxation, no bill of costs exceeding $30 is hereafter to be taxed by the Accountant, Registrar, or Judges' Secretary, except in cases of decrees on præcipe, and under the second of these Orders, where there is no reference; and any costs heretofore directed to be taxed by the Accountant, Registrar, or Judges' Secretary, are to be

taxed by the Taxing Officer, if the amount claimed exceeds that sum, notwithstanding anything to the contrary in the order in that behalf contained.

17. Where two or more defendants defend by different Solicitors under circumstances that, by the law of the Court, entitle them to but one set of costs, the Taxing Officer, without any special order, is to allow but one set of costs; and if two or more defendants defending by the same Solicitor separate unnecessarily in their answers, the Taxing Officer is, without any special order of the Court, to allow but one answer.

18. When, after the date of this order, a guardian *ad liten* is appointed on the application of the plaintiff to an infant, or to a person of unsound mind not so found by inquisition, no costs are to be taxed to the guardian; but in lieu thereof, the plaintiff is to pay to the guardian a fee of $15, and his actual disbursements out of pocket; and the plaintiff, in case he is allowed the costs of the suit, is to add to his own bill of costs the amount he so pays. But the Court may, in special cases, direct the allowance of taxed costs to a guardian *ad litem*.

These Orders are to come in force on Monday, the 8th day of April, instant.

P. M. Vankoughnet, C.
O. Mowat, V. C.

SELECTIONS.

TESTIMONY OF PERSONS ACCUSED OF CRIME.

On the twenty-sixth day of May, 1866, the Legislature of Massachusetts enacted, that, "in the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offences, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness; nor shall the neglect or refusal to testify create any presumption against the defendant." In these few words, with very little discussion and with no great amount of inquiry, the Commonwealth of Massachusetts enters upon what to some appears merely an experiment, and to others a thorough revolution, in the administration of criminal law. Whether it should be designated as an experiment or a revolution, it cannot be said to have been called for by any generally acknowledged necessity, or to be intended for the purpose of reforming any practical abuse or defect that had been a matter of general complaint. On the contrary, if there has been any one thing in which the old rules of the common law were successful in their practical working, it was in the protection of persons accused of crimes against the danger of being unjustly convicted. Here, if anywhere, was to be found a justification of the cry of the old barons, "*Nolumus leges Angliæ mutare.*" It is a just and well-founded boast of the common law, that, under its humane provisions, the risk of convicting a man of a crime of which he is not guilty is reduced to its very lowest expression.

Under the law of Massachusetts, as it stood until May 26, 1866, the great practical defence of every person accused of a crime was, first, the presumption of his innocence; and secondly, the certainty that he could not be compelled to furnish evidence against himself. The law not only presumed him to be innocent, but allowed him to keep his own secrets. He was not called upon to explain any thing, or to account for any thing. He was not to be subject to cross-examination. He had nothing to do but to fold his arms in silence, and leave the prosecutor to prove the case against him if he could. The penitentiary could not open "its ponderous and marble jaws" to devour him, unless his guilt was made out affirmatively beyond reasonable doubt. The verdict of "Not guilty" was perfectly understood to mean precisely the same as the Scotch verdict of "Not proven." No better protection to innocence could ever be devised. The only reasonable reproach ever urged against the system has been that it sometimes let the guilty escape.

It will be found, we think, on examination, that this experiment, or this revolution (whichever term may best describe this new statute), must inevitably and very greatly impair both of these defences against a criminal prosecution. It substantially and virtually destroys the presumption of innocence; and it compels an accused party to furnish evidence which may be used against himself.

If the statute merely provided in general terms that the person "charged with any crime or offence should be deemed a competent witness" on the trial of the indictment, its cruelty and injustice would be manifest at once. No man can doubt that it would be utterly unconstitutional, and would be held to be so, in all the courts, without even the slightest hesitation. It is for this reason, that the statute contains the fallacious and idle words, "at his own request, but not otherwise," and the equally idle and fallacious words, that "his neglect or refusal to testify shall not create any presumption against the defendant." We take the liberty to call these words "idle and fallacious," because the option which is given to the accused party is practically no option at all. In its actual workings, it will be found that this new statute will inevitably *compel* the defendant to testify, and will have substantially the same effect as if it did not go through the mockery of saying that he might testify if he pleased.

Let us suppose that a person is on trial on a criminal charge, and that the same evidence which was sufficient to cause the Grand Jury to find a true bill against him is brought forward at the trial. There will be some plausibility in the evidence; otherwise, no bill would have been found. There will be some show

of a case against him. The court, the prosecutor, the defendant, and the jury all understand that he *can* testify if he will. In fact, it is difficult to see how the presiding judge can possibly avoid informing him (if he is without counsel) of this privilege which the law gives him. How can he possibly do otherwise than testify? How can he be silent? Or, if he should see fit to be silent, of what practical value to him will be the presumption of innocence? How can the jurors avoid the feeling that the reason why he does not testify is because he cannot explain the suspicious appearances of his case, and because he dares not subject himself to the risks and perplexities of a cross-examination? If he has counsel, it is, if possible, even worse and worse; for the feeling will be that his counsel are afraid to put him on the stand. It will be found, in practice, that the defendant, in every case in which there is any apparent plausibility in the charge, will, "at his own request," be made a witness; and the request will be made because he cannot help it. He will *volunteer* under the strongest compulsion, under a necessity that is wholly irresistible. The moment he takes the stand as a witness, the presumption of innocence, that bridge which has carried thousands safely across the roaring gulf of the criminal law, is reduced to a single and a very narrow plank,—he must then stand or fall by the story which he can tell.

But it will be said, that the statute provides, in express terms, that his neglect or refusal to testify shall not create any presumption against him. This is an attempt, on the part of the Legislature, to cure the inhumanity of the "experiment," and would answer the purpose admirably if it could be done by any amount of "provided, nevertheless." The difficulty is, that the jurors all know that the defendant has the privilege (as it is called) of making himself a witness if he sees fit; and they also know that he would if he dared. They will, and they must, draw every conceivable inference to his disadvantage if he do not. His neglect or refusal to testify will, and inevitably must, create a presumption against him, even if every page of the statute-book contained a provision that it should not. The statutes might as well prohibit the tide from rising, or try to arrest the course of the heavenly bodies, as to prevent a juror from putting upon the defendant's silence the only interpretation that it will bear. The juror cannot fail to see that the defendant must know whether he is guilty or not; must know all about his own connection with the case; must know where he was and what he was doing at the time in controversy; must be able to explain every thing that bears against him; must be not only ready, but most eager, to do so, if he is in fact innocent of the charge, and yet that he refuses to do so. There is but one construction to be put on such refusal; and no statute can be devised that will prevent that construction from having its full effect.

The inevitable effect of the statute will be, that, "in the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offences," the defendant will request to be himself a witness. This will be the invariable course of things in every criminal case which makes any show of plausibility, or exhibits evidence of any force or weight at all against the defendant. The necessity which has been pointed out will press equally and irresistibly on all. The innocent will be ready and the guilty will be compelled to ask the privilege, and all will use it. Passing over the question (though by no means a trivial one) of what value testimony will be that is given under such fearful and overpowering temptation to perjury, let us ask attention to the predicament in which a guilty man will be found. Suppose the evidence against him to be formidable, he may understand, or be advised, that silence would be better for him than anything he can possibly say; yet under the pressure of this terrific statute, he must go upon the stand as a witness. Ruin stares him in the face if he do not; and, if he does, what becomes of the constitutional provision that no man shall be compelled to furnish evidence against himself? Can he decline to answer on the ground that his answer might tend to criminate him? Has he not thrown overboard all his defensive armour? Is he not to be stretched on the rack of cross-examination? Will not all his secrets be wrung out of him by the torture of question after question? Plainly, the result must be that he will be compelled either to furnish evidence against himself, or to defend himself by lies "gross as a mountain;" an alternative to which the Constitution gives us no right to subject even a felon. We then should see the spectacle of smooth, ingenious, and plausible liars wriggling ingeniously, and perhaps with success, out of the toils in which clumsier, and perhaps better, men are hopelessly involved.

It is occasionally said, however, that it is of no consequence, or, on the whole, it is a good result rather, if the new statute facilitates the conviction of the guilty, and diminishes their chance of escape Is it right, however, to compel the guilty to furnish evidence against themselves? Are we so fond of perjury, that we insist on forcing every man who really does not wish to go to the penitentiary or house of correction, and yet is guilty, to swear that he is innocent? Is not his plea of "Not guilty" enough? It is idle, however, to waste words on this part of the case. The Constitution says that no man shall be required to furnish evidence against himself. The statute, practically and in its effect, compels the guilty man either to furnish evidence against himself, or resort to a refuge of lies.

But suppose the defendant to be innocent. He may be wholly innocent of the particular crime laid to his charge, and yet very far short of being a saint or an angel. He may have

committed every crime in the decalogue or the statute book *except* the one set forth in the indictment. He may be a veteran from what Carlyle calls the devil's regiments of the line. He may manifestly belong to the dangerous classes; he may be guilty of the great and heavy crime of rags, stupidity, and poverty,—yet he is thrown into the mill of the statute, and whirled off to the stand as a witness, where the most humane and tender of judges cannot protect him. The result is easy to foresee. He is torn to pieces by cross-examination. There are fifty things that he would keep back if he could. In a word, he breaks down; and the jury disbelieve him when he is really telling the truth, and find him guilty of the one crime of which he is really innocent. Surely, the advocates and admirers of the statute would hardly say that it is desirable to convict even a bad man, in such a way as this, of a crime of which he is not guilty.

To illustrate still further the operation of this new system in extorting evidence from the defendant himself, let us take a case which has already occurred, and which may recur at every term of the court. Let us suppose, then, a man by no means dead in trespasses and sins, but having a character to lose, and incommoded besides, with the possession of a conscience, to be indicted as a common seller of intoxicating liquors. Suppose it be proved that he is the owner and keeper of a grocery. Suppose some loafer, who has been disappointed in the hope of buying liquor on credit at his shop, should swear positively to the "three distinct and separate sales" within the period covered by the indictment, which the law says shall be sufficient proof of the charge. If he should decline to make himself a witness, the jury would convict him without leaving their seats. He takes the stand, and swears that he never in his life sold one drop to the witness whose testimony has been given in. Then comes the cross-examination; and he finds that the whole subject of the general charge against him is open to inquiry. The confession that he has made three *other* sales is forced out of him; and he is convicted on his own evidence, after he has been successful in demolishing all other evidence in favour of the prosecution.

If, in the trial of an indictment, the defendant is made a competent witness, he must stand or fall by the story which he can tell. If he is a witness at all, he will fare like every other witness, and will besides labour under the disadvantage of being an interested witness; telling his story under suspicious circumstances, and labouring under the most extreme temptation to perjury. The guilty (and, practically, they are more than half of the whole number of the accused parties at a criminal term) will add the crime of perjury to the crime set forth in the indictment. Even of the innocent, some, under the influence of terror and anxiety, may mix some falsehood with the truth, and so increase the embarrassment and aggravate the dangers of their position; some, and probably not a few, from stupidity, from unskilfulness, or from want of established good character, may tell their story badly, and fail to command belief, even when they speak the truth; others will get no further than simply to protest their innocence, which protest simply leaves the case where it stood before. In all such cases, the alleged privilege of testifying will simply be either nugatory and useless, or an engine of torture and oppression. It is to be remembered, that the statute is universal in its application, and reaches the case of the adroit and hardened culprit, the experienced felon, the green and ignorant novice, the nervous, timid, and feeble boy or woman, the foreigner, all orders and conditions of men, and almost every form of helplessness. All will be tempted to falsehood; all will be badgered on cross-examination. The experienced and self-possessed villain may possibly succeed in swearing his way through: the inexperienced and unskilful will be swallowed up.

But it is said that appearances may be so much against an innocent man that he cannot escape on unjust and wrongful conviction in any way unless he can testify in his own behalf. It certainly must be a very peculiar and extraordinary state of facts which could place an innocent man in such a position,—so peculiar and so extraordinary that it may be safely said to be of exceedingly rare and infrequent occurrence. False testimony may do it at any time; but it is not possible for mere statutes to protect the accused against perjury. It must be "the lie with circumstance" that creates the danger in such cases; and *mere* denial by the accused, even though under oath, might avail very little. But if appearances are against a defendant,—that is to say, if facts and circumstances are proved, by honest testimony, which tend strongly to prove his guilt,—he, of course, must meet and explain those facts and circumstances. If he has counsel, the defendant's explanation will at least be suggested. If he has no counsel, he will, in answer to the call of the presiding judge, make the suggestion himself. If he is really innocent, all the true and honest evidence against him will be consistent with his innocence. Truth is always consistent with itself, and requires no ingenuity or skill for its exhibition. The explanation will come out and be made known. If it meets and covers the case, it will relieve him, even if it be only laid before the jury as a theory, or as a possible state of facts, consistent with the evidence, and also consistent with the innocence of the defendant. If it do not meet and cover the case, it will avail nothing to swear to it. The presumption of innocence, and the reasonable possibility of innocence, consistently with the facts proved, constitute the real and effective defence in all such cases.

It sometimes happens undoubtedly, especially in the case of atrocious and startling

crimes, that the public anxiety and alarm stimulate detectives into extreme activity, and rouse up some witnesses into a degree of positiveness and firmness of recollection that may be quite unwarrantable. Fearful mistakes are sometimes made as to the identity of the person arrested and on trial with the actual perpetrator of some great outrage. But, in such cases, the mere denial by the accused would not be greatly re-enforced by his oath. It costs so little for a felon to deny his crime! Of course, he would deny it. The true protection is the discrimination and carefulness of the presiding judge, the zeal and energy of the counsel in defence, the fairness and integrity of the public prosecutor, and, last and best of all, the conscientious and wise caution of the jury.

To sum up, then, the objections to the new system of the administration of criminal justice, we take these points:—

It will be found to be compulsory in its operation, and will force defendants generally, in criminal cases, to take the stand as witnesses.

It will compel the guilty either to criminate themselves, or rely upon perjury for their protection.

It will, to a great degree, deprive all accused parties of the benefit of the presumption of innocence.

It will lead to such an accumulation of false and worthless testimony in the criminal courts, that there will be great danger that jurors will habitually disbelieve all testimony coming from any defendants.

It gives to persons who really are not guilty of any offence charged against them no substantial advantage over the presumption of innocence, and is wholly illusory as a privilege.

It tends to degrade the trial of a criminal case into a personal altercation between the prosecutor and the accused.

It is an experiment entered upon without necessity, not called for by the profession, not petitioned for by any body, demoralizing from its encouragement of perjury, and useless for the purpose of accomplishing any substantial good result.—*American Law Review.*

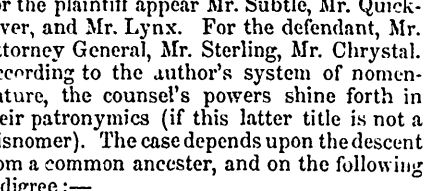
LAW IN ROMANCE.

The law is, after all, the most romantic of professions. Happily for its members, it is not entirely composed of sheepskin, and dust, and decided cases,—"quiddits and quillets, cases and tenures," as Hamlet hath it,—of contingent remainders or executory devises. It hath its paths of pleasantness, which are not necessarily those of Ferne, Littleton, or Chitty, but are more akin to human nature. And when we say that law has its romantic side, we mean that it has more to do than any other profession with those striking episodes in men's lives of which writers of fiction have taken advantage, either to incorporate, in making them the groundwork of their romances, or to imitate, in feigning similar events as occurring to the creatures of their fancy. The law sees men under the influence of powerful emotions, in the commission of terrible crimes. It sees the evil passions of suitors in conflict one with the other. It sees violent and sudden alternation from great riches to extreme poverty, and the reverse. It sees much suffering and much oppression. And in all these it knows and understands the motives, and sees the workings, of the minds of the actors. For these reasons have we termed law the most romantic of professions, and not only the vast collection of *causes célèbres*, but the myriads of unreported cases containing as much that is marvellous, prove this beyond peradventure. Hence it is not strange that writers of fiction, seeking where they can find what most will interest their readers, have often turned to the law, and invoked its invaluable assistance in compounding a plot, or inventing a striking episode. We propose, therefore, looking at law in romance, which is the shade or εἴδωλον of romance in law, which seeks to copy, if not to surpass, the reality in the extraordinary complication of events and episodes into which men may be led by crime, passion, or accident. Law, in this species of literature,—which, to separate from more orthodox law-books in buff, should be termed a sort of profane law,—may be divided into two classes: 1st, the cases where the plot turns on a legal point or proceeding in law; 2nd, where the circumstances of the tale culminate in a trial in court. Sometimes both are combined, and then there is law to the heart's content. It may be little pleasure to the tired lawyer, seeking relief in the literature of fancy after several hours' sharp engagement with Coke or Preston, to find their doctrines lying hid, like a snake, among the flowers of the imagination to which he has wandered for relaxation; and, on the other hand, to the hungry law-student, craving, with never-abated greed, the maxims of his profession, the law in fiction affords but an unsatisfying morsel.

Of the first class, the stereotyped instances are those where the plot turns on a disputed will, a forged deed, an altered marriage register, or a contested inheritance. The second is chiefly occupied by those cases where, after a variety of adventures, the hero or heroine is justly or unjustly accused of some crime, generally murder. In these cases, as a court-room during a capital trial is sure of a crowded and attentive audience, no matter how unimportant the person of the accused; so the author however dull may be the rest of his book, is sure of making one or perhaps two stirring chapters, and exciting a final interest in which his story may terminate. To a professional reader, however, this blaze of fireworks is apt to be rather tame, unless truthfully done; and the sticks of the rockets are painfully apparent, much as a diagnosis of the disease of which

the villain has expired, would be to a medical reader. It may be assumed, in the beginning, that the virtuous is always unjustly accused; and that it is morally certain that a new witness will appear before the trial is over, or, what is more probable, that the murdered man will turn up just before the word "Guilty" is pronounced by the foreman.

A good instance of the first class, and the work of fiction in which we are brought face to face most directly with the law, is Warren's "Ten Thousand a Year." Here we have barristers and attorneys without number, their characters described, and their conversation given, an account of a most interesting trial, and the whole composed by a barrister of excellent standing, and himself the author of an admirable work on the study of the law. Yet, wonderful to say, the whole point of the plot turns on law which cannot be held otherwise than bad. The book is so well known, that we need but refer in the fewest possible words to the plot: Tittlebat Titmouse, a vulgar and illiterate counter-jumper, is suddenly informed by the firm of Quirk, Gammon, & Snap, a trio of rascally attorneys, that he is the rightful owner of a property of £10,000 a year, now held by another. An action is brought, and the cause of "*Doe on the demise of Titmouse* v. *Jolter*" comes on to be heard at the York Assizes before Lord Widdrington, Lord Chief Justice of the King's Bench, and a special jury. For the plaintiff appear Mr. Subtle, Mr. Quicksilver, and Mr. Lynx. For the defendant, Mr. Attorney General, Mr. Sterling, Mr. Chrystal. According to the author's system of nomenclature, the counsel's powers shine forth in their patronymics (if this latter title is not a misnomer). The case depends upon the descent from a common ancester, and on the following pedigree:—



The history of the pedigree is this: Of old Dredlington's sons, the eldest, Harry, had taken to wild courses, gone to the Jews, and, to obtain money, had conveyed his inheritance, his father still living, to one Moses Aron. The second son, Charles, had lived more quietly, and died leaving two sons, Stephen and Geoffrey. Stephen had followed his uncle Harry's example, entered the navy, and died, it was thought, without issue. Geoffrey thus succeeded, and, for greater precaution, took an assignment of the conveyance of his uncle Harry to Aron. Under him the defendant claimed.

The plaintiff's case was to show that Stephen had left issue. It was proved that he had married a woman of low rank, just before going to sea, by whom he had a daughter, who was the mother of the plaintiff. Here the plaintiff rested. The defendant's title, then, depended only on the conveyance of Harry to Moses Aron, during the lifetime of his father, which, it was conceded, was invalid even by estoppel, but, on the evening before the trial, the defendant's attorney discovered a deed from old Dredlington to Geoffrey confirming the conveyance made by Harry.

The story of the trial is told with much circumstance. The opening of counsel and the evidence are given in detail. Harry's conveyance is well known to all parties, but is little relied on because made during his father's lifetime. The deed of confirmation comes like a thunder-clap, and is to decide the case. It is an ancient deed over thirty years of age. Its custody and possession are satisfactorily accounted for. No question is raised as to the handwriting. It is about to be admitted, when Mr. Lynx, true to his name, discovers an erasure in a material part. Let us quote Mr Warren, "The plain fact of the case was this,—the attorney's clerk, in copying out the deed, which was one of considerable length, had written four or five words by mistake; and, fearing to exasperate his master by rendering necessary a new deed and stamp, and occasioning trouble and delay, neatly scratched out the erroneous words, and over the erasure wrote the correct ones." After argument, the deed was not permitted to be placed in evidence, and the plaintiff had a verdict for his estate worth $50,000 a year. This, then, is the turning-point of this legal novel, written by a lawyer, elaborated with great effect, and, after all, on the face, is now, and was then, undoubtedly bad law. Here was an ancient deed over thirty years old, the signatures undenied, the possession proved, with an erasure in a handwriting the same as the rest of the deed, and yet it was not allowed to go to the jury, but was peremptorily ruled out. We do not think such law can be found in the books, whether new or old. The trial is represented as taking place in the early part of the nineteenth century. For old law hear my Lord Coke:—"☞ Secondly, of ancient time, if the deed appeared to be rased or interlined in places materiall, the judges adjudged upon their view the deed to be voyd. But, of latter dates, the judges have left to the jurors to try whether the raising or interlining were before the delivery." Lord Campbell, in *Doe* v. *Catamore*, 16 Q. B. 745, sustains this view; so do the Supreme Court of Massachusetts in *Ely* v. *Ely*, 6 Gray, 439, and Mr. Greenleaf and Mr Sarkie in their treatises on Evidence. The question is undoubtedly one of fact, to be left to the jury; and though some contrariety of opinion has arisen as to the proper instructions to be given to them as to the burden of proof and the presumptions of law arising, there is no respectable authority that we are aware of for entirely rejecting the deed as incompetent evidence on account of an alteration. The

Supreme Court of Massachusetts, while they admit that the alterations may be of such a character that the party claiming under the deed may rest on the paper itself, deny that there is any presumption of law that the alterations were made either before or after. Lord Campbell, on the other hand, thinks there is a presumption that they were made before the execution, because the presumption always is against fraud; so there can be no doubt that the question is for the jury, and that the turning-point of this famous novel is bad law. We are told, with much circumstance, that a rule to show cause was obtained, and that, after solemn argument, the ruling of the chief justice was sustained in *banc;* but this only makes the matter worse.

There is much more of legal matter that is entertaining in the book. The legal characters are well described, the legal jokes told with gusto; and there is scarce a page on which some reference is not made to deeds, courts, or conveyancing. We must content ourselves with copying the description of Mr. Weasel, a celebrated pleader:—

"He was a ravenous lawyer, darting at the point and pith of every case he was concerned in, and sticking to it just as would his bloodthirsty namesake at the neck of a rabbit. In law he lived, moved, and had his being. In his dreams, he was everlastingly spinning out pleadings which he never could understand, and hunting for cases which he could not discover. In the daytime, however, he was more successful. In fact, every thing he saw, heard, or read of, wherever he was, whatever he was doing, suggested to him questions of law that might arise out of it. At his sister's wedding (whither he had not gone without reluctance), he got into a wrangle with the bridegroom, on a question started by himself, whether an infant was liable for goods supplied to his wife before marriage; at his grandmother's funeral, he got into an intricate discussion with a proctor about *bona notabilia,* with reference to a pair of horn spectacles, which the venerable deceased had left behind her in Scotland, and a poodle in the Isle of Man; and, at church, the reading of the Parable of the Unjust Steward set his devout, ingenious, and fertile mind at work for the remainder of the service as to the modes of stating the case now-a-days against the offender, and whether it would be more advisable to proceed civilly or criminally, and, if the former, at law or in equity."

With this we must dismiss "Ten Thousand a Year" without reference to more of its law, except to say, that it turns out that the mother of T. Titmarsh, Esq., was already *feme covert* when she espoused his father. Consequently, that gentleman, after going through a variety of entertaining adventures, spending many thousand pounds, becoming a member of the House, and marrying an earl's daughter, reverts to his former obscurity; and being knocked on the head in the futile attempt to recover a loan from an Irish baronet, ends his days peacefully in an asylum. Thus Mr. Warren's mistake in law makes one of the cleverest novels on the shelves, has amused vast quantities of readers, and will not, we surmise, corrupt the ancient fountains to any very alarming extent.

Worth noticing as another good fiction, with a plot turning on law, is George Eliot's last novel, "Felix Holt, the Radical." Were this the title of an American novel of the present year, one might expect, if told there was law in it, to read some profound constitutional discussion, and to find some new and startling, if not very bad, law laid down; but, as the work was written on the other side of the water, we simply have before us a point of old real-estate law, which might well have found its place in the Year-Books. The law in "Felix Holt," not stated in precise legal phrase, is this: John Justus Transome, being the owner of certain estates a hundred years before the commencement of the story, made a conveyance, "entailing them, while in his possession, on his son Thomas and his heirs male,* with remainder to the Bycliffes in fee." His son Thomas, "a prodigal," in his father's lifetime and without his father's consent, conveyed his interest to a cousin named Durfey, a lawyer, who appears to have entered upon the death of John Justus, the father, and assumed the name of Transome. One of the descendants of this Durfey, Harold Transome, being in possession, the plot turns upon the discovery of an heir of the Bycliffes, the remainder men, in the person of the heroine. The theory of the novel is this: that the ancient Durfey received a "base fee" from Thomas Transome, which would continue as long as the male line of Transomes existed; but that upon this stock becoming extinct, the estate would become the property of the Bycliffes, the remainder men, if any existed.

It will be remembered that one of the legal points in "Ten Thousand a Year" was somewhat similar to this. The question was whether an heir, in the lifetime of his ancestor, had power to convey away his expectancy so as to bind himself, and those claiming under him, by estoppel, on the subsequent descent of the estate. This, it will be remembered, was decided in the negative; and it was there assumed that a conveyance made by the good-for-naught Harry Dredlington, in the lifetime of his father, would not bind his heirs. In "Felix Holt," on the contrary, it is taken for granted, that a conveyance made by the equally good-for-naught Thomas Transome, in the lifetime of his father, would pass the estate as against the heirs. The subject is an intricate one, and depends in some measure on the warranties in the deeds.† It is very fully discussed in the note to *Doe* v. *Oliver*, in Smith's "Leading Cases," to which more curious readers may refer. The case in "Felix Holt" is, however, clearly distinguishable from that in "Ten Thousand a Year. In the latter case, it was

* "Of his body," probably, as otherwise the estate of Thomas would be a fee simple (Litt. § 31), and the remainder over void.

† Co. Litt. 265 a. 2 Washburn on real property, 464.

the heir (so to speak, though "*nemo est hæres viventis*") who made the conveyance in the life of his ancestor, the tenant in fee. In "Felix Holt," it was the remainder man in tail who conveyed, living the tenant for life. By presuming, therefore, that Mr. Durfey persuaded the prodigal to have recourse to that very convenient but absurd fiction of the ancient law, the levying of a fine on the estate tail (and as Mr. Durfey was a lawyer, this is highly probable), Miss Evans will be found to have all the authorities in her favour, even though the prodigal had nothing in the land when he levied the fine. It is not likely the fair authoress looked into the black-letter "Reports of Sir William Jones, Chevalier,"—"De Divers Special Cases Cy bien in le Court de Banck Le Roy Come le Common Banck in Angleterre," and perhaps not even in Coke's "Reports," or in Blackstone's "Commentaries;" but, for all that, we think her law on this ancient and abstruse point safe to stand the test of examination.* Had the conveyance been by bargain and sale, or by lease and release, or covenant to stand seised, the issue of Thomas Transome, might have avoided his conveyance by entry; but the "lawyer cousin" probably knew of the case of *Machell* v. *Clarke*, 2 Lord Raym. 778, and took the wiser course of the fine.

One more of these law-novels certainly claims notice, Mr. Trollope's recent story, "Orley Farm." The author frankly says, in his first paragraph, that, did he think his rose by another name would smell as sweet, he should call his story "The Great Orley Farm Case." We plunge into court on the first page, and leave it only to ascend barristers' stairs for consultations, to linger in attorneys' offices, and to go into the country to search for witnesses, until the concluding chapters bring us again before the judge and jury. What of social life is described is at judges' country-seats and barristers' town houses. The hero is rising at the bar; the heroine, a daughter of the ermine. Thus we have no stint of law, and, in spite of all, a most delightful and entertaining novel. Mr. Trollope's sojourn among professional men has hitherto been chiefly confined to the clerical order. We have dined among bishops and deans, and listened to the controversies of rectors, curates, prebends, and what not, until we were rather tired of their reverend society. This makes an acquaintance with the bench and bar an agreeable change. Mr. Trollope, with his cabinet-painting style and niceness of touch, gives us all varieties of the profession, in court and out; and we would fain linger longer to say a word of our new professional friends.

(To be continued.)

* "*Car fine leive per l'issue en tayle en vie (n'aiant aucun estate) si sont al un que n'ad riens en le terre va soiment per voy de conclusion vers le issues et ses lineall issues et vers touts ceux queux veignont en le post.*"

Godfrey v *Wade* Term Trin. Ann XXI. Jac. Reg. in Communi Banco. Sir W. Jones's Rep. 31, 33. S. C. Hobart, 433. a.

"And, on these two cases of the Lord Zouch and Archer, it follows that if the grandfather be tenant in tail, and his father in his life, having nothing in the land, levies a fine with proclamations, and afterwards the grandfather dies, and afterwards the father dies, that this fine shall bind the son." 3 Rep. 90 b.

"A fine by tenant in tail does not affect subsequent remainders, but creates a base or qualified fee, determinable upon the failure of the issue of the person to whom the estate was granted in tail, upon which event the remainder man may enter." Christian's note to Blackstone's Comm. vol. iii. c. 21.

THE ACTION OF MANDAMUS.

The case of *Fotherby* v. *The Metropolitan Railway Company*, which is reported by us this week (15 L. T. Rep. N. S. 243), decides the point that a mandamus may be claimed wholly apart from an action. The section of the C. L. P. A. 1854, upon which the question rests, is the 68th, which says that the plaintiff *in any action* in any of the superior courts, with certain exceptions, may endorse upon the writ, &c., a notice that the plaintiff intends to claim a writ of mandamus, and the plaintiff may thereupon claim in the declaration, either together with any other demand which may now be enforced in such action, or *separately*, a writ of mandamus &c. The successful contention in the case was, that an action will lie to compel a man to do his duty, even though there be no action at common law for the neglect of that duty, *i. e.*, that the statute creates a new action for mandamus, which is *ex debito justitiæ*. Erle, C. J., decided that the word separately, in the section, settled the matter. The right to a writ of mandamus is substantive, not adjective to an action. There are some clear judgments on the point in *Norris* v. *The Irish Land Company*, 8 E. & B. 512; and 27 L. J. 115, Q. B.—*Law Times.*

UPPER CANADA REPORTS.

ELECTION CASES.

(Reported by Henry O'Brien, Esq., *Barrister at-Law and Reporter in Practice Court and Chambers.)*

The Queen ex rel. Mack vs. Manning

Municipal Act of 1867, *sec.* 73—*Disqualification—Lessee of Corporation—Defendant having claim against Corporation assigned before election.*

Section 73 of 29. 30 Vic., cap. 51, came into force on the 1st January. 1867.

"Disqualification" is not included in this act in "Qualification."

Where a lease, which was for twenty-one years, was originally made to a third person for the benefit of the beneficial lessee, and afterwards, during the term, it was surrendered, and a new lease made directly to the beneficial lessee for the remainder of the term, which was for less than twenty-one years, it was held that, looking at the real nature of the transaction, the lessee was not disqualified from being a member of the Corporation.

A claim by the defendant against the Corporation, *bonâ fide* assigned to a third party, before the election does not disqualify.

[Com. Law Chambers, March 16, 1867.]

J. A. Boyd obtained a writ in the nature of a *quo warranto* on the 1st February last, on the rela-

tion of William Mack, calling upon the defendant, Alexander Manning, to shew by what authority he claimed to exercise and enjoy the office of alderman of the ward of St. Lawrence, in the city of Toronto; the relator complaining that the defendant was disqualified to be elected at the election held in January last.

The grounds alleged against Mr. Manning were: 1st. That at the time of the said election he was a lessee of the Corporation of the city of Toronto for a term of 17 years, and for another term of 21 years, in certain leases of premises belonging to the said city. 2. That said Manning, at such time, had a claim against such Corporation for services rendered by him as arbitrator or valuator in their behalf.

It appeared from the affidavits filed, that the defendant was lessee of certain premises in the city of Toronto, of property belonging to the city, under a lease dated 26th January, 1864, made by the Corporation to the defendant for a term of 21 years, at a rental of $216 17, payable half yearly.

It further appeared, that the defendant was also lessee of certain other property of the city, under a lease dated the 2nd April, 1861, made by the Corporation to the defendant. This lease was for a term of 17 years, from the 1st of October then last past (1860). This latter lease recited that by an indenture of lease, bearing date the 30th of January, 1857, the Corporation leased unto Ezekiel F. Whittemore, then deceased, the premises for the term of 21 years, at a rental of £75; that although the lease was made to Whittemore, the defendant was the beneficial lessee, and took possession of the premises, and retained possession from the execution of the lease to Whittemore, and was then in possession, and that the defendant paid the rents and taxes, and expended very large sums in the erection and completion of several brick buildings thereon. That in the month of December, 1858, he, Whittemore, gave notice to the Corporation that the defendant, Manning, was the real and beneficial owner of the premises, and that he, Whittemore, held the lease from the first, for and on account of the defendant, and that he was desirous of assigning the lease to defendant, and that he, Whittemore, instructed the solicitor for the city to prepare an assignment of the lease to the defendant; that the assignment was endorsed on the lease and ready for execution, but that Whittemore suddenly died without executing it. It further recited, that the defendant requested the city to execute to him a new lease of the premises, as the beneficial owner thereof, which the Corporation were willing to do, provided they did not incur any liability to the defendant as against the estate of Whittemore, and that defendant covenanted and agreed to indemnify the Corporation against any claim of Whittemore's estate, in consequence of their executing the lease to defendant. The lease, as already stated, was for 17 years, from the 1st October, 1860, being the unexpired term of the 21 years granted by the recited lease to Whittemore; it contained the same covenants for renewals for further terms of 21 years, and the other usual covenants in leases of that nature.

It further appeared from the affidavit of Mr. Gamble, the solicitor of the city at the time these leases were made, that Whittemore was merely a trustee for Manning, and he corrobbrated the recitals mentioned in the second lease, that after the death of Whittemore, he drew the lease for 17 years, which he stated was only intended to confirm to Manning the term of 21 years, and rights of renewals.

Mr. Manning swore that the lease to Whittemore was made to Whittemore for his, the defendant's benefit, and that he was, from the first, the beneficial lessee for the term of 21 years, and that the lease to himself was made under the circumstances therein recited.

Robt. A. Harrison shewed cause.

The relator is not qualified as such. He qualifies on an Orange hall, of which he is merely care-taker and not a tenant, having such interest as would entitle him to vote, and the *locus standi* of the relator may be questioned in *quo warranto* proceedings: *Regina ex rel. Shaw* v. *McKenzie*, 2 U. C. Cham. Rep. 36, 44; Con. Stat. U. C., ch. 54, ss. 75, 76.

As to the first objection. The lease for 17 years is in substance and effect a lease for 21 years, and therefore within the spirit and intention of the act.

Under the late act the Corporation lessees were disqualified, but under the act of last session this disqualification, so far as relates to leases for 21 years and upwards, is removed.

Sec. 73 is in force. "Qualification" and "Disqualification" are under separate and distinct heads, and the clause of the act postponing the clause as to qualification does not affect that as to disqualification.

As to the third objection, Manning before the election assigned the amount due to him from the Corporation, and the Corporation accepted it, he had not therefore any interest in the amount, and this objection must fail.

If the construction of the statute be doubtful, the sitting member should not be unseated: *Regina ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244; *Regina ex rel. Ford* v. *Cottingham*, *Ib*, 214.

J. A. Boyd, for the relator.

Sec. 73 of the Municipal Act of last session will not come into force until the 1st day of September, 1867. That clause is headed, "Disqualification," and enacts, that certain persons holding certain official positions, &c., and that no person having by himself or his partner an interest in any contract, with or on behalf of the Corporation, shall be qualified to be a member of the Council of any Municipal Corporation; "*Provided always, that no person shall be held to be disqualified, &c., by having a lease of* 21 *years or upwards, of any property from the Corporation, but any such lease holder shall not vote in the Corporation on any question affecting any lease from the Corporation.*"

This latter proviso is not found in the 73 sec. of the Municipal Act, 22 Vic., cap. 54, and before the passing of the act of last session, the defendant would no doubt have been disqualified, and if sec. 73 was not in force since the 1st of January last, he was ineligible as a candidate at the last election.

"Disqualification" is included in "qualification," and sec. 73 does not therefore, by sec. 427, come into force till next September.

If that section is in force, it only applies to leases for 21 years and upwards, and the lease for 17 years is not within the proviso, and that being the case, the defendant is within the disqualifying portion of the clause.

Morrison, J.—The first point to be determined is, whether the 73rd section of the act of 1866 is in force, and I am of opinion it is. The 427th section of that act (as amended by ch. 52 of the same session) enacts, "That this act shall take effect on the 1st of January, 1867, save and except so much thereof as relates to the nominating of candidates for municipal offices, and the passing of by-laws for dividing a municipality, or any ward thereof into electoral divisions, and appointing returning officers therefor, which shall come into effect on the first day of November next; and *also, so much thereof as relates to the qualification of electors and candidates shall not take effect till the first day of September*, 1867. Sections 70, 71 & 72 are headed "Qualification of Mayors and Aldermen," &c. Section 73, the one in question, is headed, "Disqualification." I can well understand upon an examination of the old and new municipal acts why the coming into force of the 70, 71 & 72 secs. was postponed until the 1st September next, as it appears that in many cases the qualification of candidates are changed, partly arising from the new system of rating, established by the new assessment act of last session, to the provisions of which act the new municipal act conforms, and that consequently the Legislature, being aware that the assessment rolls in existence on the 1st of January last, and by which the qualification of candidates would be determined were made up in 1866: that they could not properly apply to the last elections, were the whole of the act to take effect on the 1st of January, saw that it was necessary for the working of the new act, that the provisions relating to the qualification of candidates should not take effect until rolls were made up under the new mode of rating introduced by the acts of last session. But I see no like reason for postponing the operation of the 73rd section. On the other hand, if the Legislature deemed it right that the disability arising from the previous state of the law should be removed, were the words of the section not clear one way or the other, I would lean in favour of a liberal construction; but in my judgment the words of section 427 leave little doubt as to the intention and object of the Legislature, it being limited in precise words to so much as relates to the qualification of candidates. We find sections specially headed "Qualifications of Candidates," to which it does apply, but section 73 is headed, "Disqualification." Interpreting the section literally, it cannot apply to it, and I think I am warranted in assuming that it was not the intention of the Legislature that it should. Such being my judgment on this point, the next question to be determined is, whether the lease for 17 years is within the spirit and meaning of the 73rd section, and I think on this point the defendant is also entitled to my judgment. In considering this matter, I have to look to the object and purposes of the Legislature in adding the proviso to section 73, which refers to leases for 21 years and upwards. I think I may assume that the Legislature had in view the fact, that leases for terms of 21 years, similar to the one before me, were granted by corporations like the city of Toronto, and that it was expedient to render the holders of such leases eligible as candidates for the offices of aldermen, &c, no doubt thinking that the policy of the law, which excludes contractors from corporations, did not apply to persons who like this defendant were so much interested in the good government and welfare of the municipality. It is quite clear from the facts before me, that the premises in question were originally leased for a term of 21 years to Whittemore; that that gentleman took and held the lease as a trustee for the defendant, that before Mr. Whittemore died he was desirous of relieving himself of the trusteeship by assigning the lease to the defendant, his *cestui que trust*, and that he took steps towards that end, but unfortunately before completion, he, Whittemore, died; that under these circumstances, the defendant applied for and obtained the lease for 17 years in his own name, being the then unexpired term of the 21 years granted to his trustee, with similar covenants and conditions as those contained in the original lease, and as Mr. Gamble states, the lease for 17 years was intended to be a confirmation of the lease for 21 years; all these facts are also recited on the face of the lease. Under such circumstances, it would be hard to say that this defendant was not, in relation to the matter in queston, in reality a lessee of a term for 21 years, and as such entitled to be a person within the meaning of the proviso in that behalf mentioned in section 73.

With respect to the second ground of complaint namely, that the defendant had a claim for $30 against the Corporation for services rendered to the city as an arbitrator, it appears from the affidavit of Mr. Boyd, that by a request of the standing committee on finance, &c., of the Corporation, "the committee recommended payment of Mr. Alexander Manning's (the defendant) account of thirty dollars for services as arbitrator, in determining the value of St. Andrew's market buildings, destroyed by fire in 1860." This report is dated December 14, 1866; and he states that he was informed by the chamberlain that the amount therein stated had not been paid; he further says, that on the day of the date of his affidavit he saw an order (with whom or where is not stated), signed by the defendant, dated the 5th of January last, as follows:—"The Corporation of the city of Toronto will pay to Mr. John Wilson, the amount allowed me by finance committee, for valuation of St. Andrew's market, destroyed by fire." Mr. Manning swears that he performed the services mentioned in the report of the finance committee, and that he omitted to collect the amount; that on the 5th of January last (the election being held on the 7th), he assigned all his interest in the $30, by the order in writing mentioned in Mr. Boyd's affidavit, which order he states was accepted by the city chamberlain, and that he, Manning, ceased on the 5th day of January to have any interest in the sum of money referred to, and that he had no interest whatever in it at the time of his election; it was not suggested that the assignment or order for the money was not made in good faith The defendant's object may have been to divest himself of all interest (as he swears he did), for the

purpose of avoiding any doubt as to his eligibility as a candidate, and enabling himself to be elected to the office of alderman. If *bonâ fide* done, upon the principle acted upon in *Reg. ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60, although done on the eve of the election, I think there would be no valid objection to his doing so; it would indeed be hard were it otherwise. The object and spirit of the law was to prevent persons being elected members of a corporation who had any interest in a contract with the municipality, because it might possibly influence their conduct in the council. On the whole, my judgment is in favour of the defendant, as I am of opinion no case is made out for unseating him, and the application must be discharged with costs.

Judgment for defendant with costs.

The Queen ex rel. Piddington v. Riddell.

Disqualification of candidate—Contract with Corporation—Costs—Oral examination.

Where a member of the Corporation, being a baker, supplied bread to fulfil a gaol contract held by another person in his own name and for his own benefit, the member of the Corporation was held not to be disqualified.

As the case presented very strong presumptions against defendant in the absence of explanation, costs were not given.

Oral examination of parties refused.

[Com. Law Chambers, March 16, 1867.]

A summons in the nature of a quo warranto was issued on the 18th February last, on the relation of Alfred Piddington, calling upon the defendant Riddell to shew by what authority he claimed to use, exercise or enjoy the office of alderman for St. John's Ward in the City of Toronto, the relator complaining that the defendant was disqualified to be elected at the election held in January last.

The ground alleged against Mr. Riddell was that at the time of the said election he had by himself, and by his servants and agent, a partner, one Charles E. Clinkinbroomer, an interest in a contract with the Corporation of the City of Toronto, and with the Gaol Committee appointed by the Council of said Corporation, which was then existing and unsettled.

In support of the application the affidavit of one Samuel Reeves was filed, who swore that he had been in the employment of the defendant as foreman in his bake-house from August, 1864, until some time in March, 1866; that Clinkinbroomer above referred to was also in defendants employment as an outside man, attending to the driving of the bread cart, and not as a baker; and also that he kept the defendant's books, receiving the same wages as he, Clinkinbroomer, told him that defendant paid his bakers; that when he, Reeves, went into defendant's employment, the defendant then supplied the City Gaol with bread in his own name; that before the time when defendant became a member of the City Council in the year 1866, he heard defendant say, in the beginning of 1865, that he would have to get the gaol contract in another name, or else he would not be able to run for the Council, or words to that effect; and that he heard him shortly afterwards say that Clinkinbroomer had got the contract for the supply of bread for the gaol; and that he understood from the defendant, as well as Clinkinbroomer, that the latter tendered for the supply of bread for the gaol from March, 1865, to March, 1866, and that before he left defendant's employment he also heard from both of them that Clinkinbroomer tendered for and obtained the contract for the supply of bread to the new City Gaol from March, 1866, to the month of March of this year. Reeves also swears that it was well understood among all defendant's workmen that these contracts for supply of bread to the City Gaol were in reality the defendant's contracts, and that during the whole period Reeves was in defendant's employment Clinkinbroomer was regarded as a fellow workman; that all the bread made during that time, and which was sent to the gaol, was baked and made in the same manner, and by the same workmen, as bread which was sent to defendant's customers, and the bread for the gaol was drawn to the gaol by defendant's horses and bread carts, and sometimes driven by Clinkinbroomer and at other times by other drivers; that no difference or change took place in the management of defendant's business after the contracts were made in Clinkinbroomer's name, he, defendant, being sole proprietor thereof.

There was also an affidavit of Mr. Boyd filed, verifying an advertisement for tenders issued by the Board of Gaol Inspectors asking for tenders for, among other things, "bread per loaf," dated 27th February, 1866; also copy of a tender signed by Clinkinbroomer, as follows:

Toronto, March 15, 1866.

To the Board of Gaol Inspectors.

I hereby tender to supply the Toronto Gaol with the best wheaten bread at 9¼ cents per 4 lb. loaf, in such shapes and forms, and at such times as the Governor of the Gaol may require.

(Signed) C. E. Clinkinbroomer.

My sureties:

James Spence,
Allen Bryan.

The Board of Jail Inspectors consisted of aldermen and councillors of the City Council. The affidavit of one White was also filed, stating that he was well acquainted with defendant and Clinkinbroomer; that Riddell carried on the business of a baker in the premises in which he lives, and has done so for some time; that Clinkinbroomer has been in his employment for two years; that when he went to defendant's he had no means of his own; that his name has not appeared as owner of the business; and that he verily believes that Clinkinbroomer has no means of livelihood except from his occupation in defendant's business, and that the bread that goes to the gaol is delivered from the defendant's carts.

Robt. A. Harrison, for the defendant, filed the affidavit of Clinkinbroomer, in which he stated that he had read the affidavits of Boyd, Piddington, Reeves, and White; that the defendant had no interest, and never had any, in his contract in the affidavits mentioned; that he tendered for the supply of bread referred to solely on his own account, and for his own benefit, and that since his tender was accepted he had received and still receives all profits from the contract for his own use and benefit; and that he alone would sustain the loss,

if any, on such contract; that from time to time he buys bread from the defendant as he would from any other baker; and that when he buys in large quantities for the purposes of the gaol, defendant delivers it free of charge for conveyance; and he swears further that he never at any time made any statement to Reeves or to any other person at variance with his affidavit.

The affidavit of the defendant stated that he, defendant, had read the affidavits filed on the application, and that he had no partner in business; that he had no interest, and never had any, either by himself or partner, in the contract of Clinkinbroomer in the affidavit mentioned; that Clinkinbroomer tendered for the supply of bread solely on his own account and for his own benefit; that the latter received all the profits and will sustain any loss that may take place; that he supplied bread to Clinkinbroomer as he would to any other customer, and delivers it free of charge for conveyance; and he further states that Clinkinbroomer had never been paid by him any wages whatever as mentioned in the affidavit; and that he had never at any time made any statement to Reeves or other person at variance with his affidavit.

He also filed affidavits of five persons in the employment of the defendant for the year 1865, four of them bakers and one a driver, and they all severally swore that they always understood that the defendant had no interest in the contract of Clinkinbroomer for the supply of bread to the gaol, and never knew at any time either the defendant or Clinkinbroomer to make any statement to the contrary; and that they knew that the defendant sold bread to Clinkinbroomer as he would to any other customer, and when in large quantities delivered the same free of charge for carriage.

Mr. Harrison contended that the case must be within language as well as mischief of Statute (*Barber* v. *Waite*, 1 A. & E. 514); and that the word *interest* used in the Statute means *legal* interest, not merely a *sub-contract*. *Reg. ex rel. Bugg* v. *Smith*, 1 U. C. L. J., N. S. 129. He distinguished this Act from 3 Geo. IV., ch. 126, s. 125, and cited *Towsey* v. *White*, 5 B. & C. 125, and *Barber* v, *Waite*, *ante*.

J. A. Boyd, contra.

Morrison, J.—Upon a careful examination of the affidavits filed on both sides, I am of opinion that all the material facts and circumstances relied upon by the relator as raising the presumption that the defendant used the name of Clinkinbroomer as a cloak or contrivance to conceal the fact that he, the defendant, was the real contractor, or that he was a partner with Clinkinbroomer for providing the gaol with bread, are substantially met by the affidavits filed on the part of the defendant. The circumstances upon which the relator's case rest, standing alone, are exceedingly strong against the defendant, and, unexplained or unaccounted for, are well calculated to give rise to the gravest suspicions. I refer more particularly to the fact, that previous to the defendant becoming a member of the City Council, he had the contract for supplying the gaol; that after being elected a member of the corporation, when tenders for the contract in question were again advertised for, Clinkinbroomer, who at the time was in his employment as stated, tendered and obtained the contract, and that the defendant supplied Clinkinbroomer with bread from his bakery to carry out his contract, and the vehicles of the defendant were used for the carriage of the bread to the gaol. However, all these very suspicious circumstances are, as I say, met and accounted for by the positive affidavits of the defendant and Clinkinbroomer. Besides, the allegation that it was understood by the defendant's workmen that the defendant was in truth the contractor, is denied on oath by five of the workmen employed during the period of the contract, who assert they understood the contrary, and they further say the defendant sold the bread to Clinkinbroomer as he did to any other customer. The facts sworn to by Clinkinbroomer and defendant are peculiarly within their own knowledge, and not resting on conjecture or surmises, as do the material points in the affidavits upon which the application is founded. I may also remark that the defendant is not shewn to have interfered directly with the matter relating to the contract, or that any of the moneys paid under it passed into his hands.

It would have been much better if the defendant, considering that he was a member of the corporation, had no such business connection with his former hired man. On the argument I was pressed by counsel for the relator to order further proceedings with a view to the oral examination of the parties, and the production of their books for the purpose of impeaching the facts sworn to by Clinkinbroomer and the defendant. I could only be warranted in doing so upon the ground that I considered the facts sworn to, to be untrue. I see no reason for my thinking so. Their statements, although open to observation, are not inconsistent with the truth of the material facts alleged on the part of the relator: they only explain and account for the suspicious circumstances alluded to. On the whole case I must give judgment in favor of the defendant. With respect to costs, as the case presented a very strong presumption against the defendant in the absence of explanation, and as I have no reason to doubt that the relator acted in good faith in making this application, neither party will have costs.

COMMON LAW CHAMBERS.

(*Reported by* Henry O'Brien, *Esq., Barrister-at-Law and Reporter in Practice Court and Chambers*)

Elliott v. Pinkerton.

Security for costs—Former action pending—29, 30 *Vic. cap.* 42, *sec.* 1.

The plaintiff was non-suited in an action against the sureties of A. Whilst this suit was pending, the same plaintiff sued A., who then asked for security for costs under 29, 30 Vic. cap. 42, sec. 1. *Held*, that he was entitled to security.

[Chambers, March, 1867.]

C. W. Paterson, on the 2nd March, instant, obtained on behalf of the defendant the usual summons for security for costs. He filed an affidavit, made by the defendant's attorney, stating that a former action had been brought against the sureties of the present defendant, a

Division Court bailiff), for a false return made by the said bailiff to an execution placed in his hands at the suit of the plaintiff; that the plaintiff in the former action had been nonsuited; that while the said action was pending, and before judgment entered, the plaintiff had commenced this action against the present defendant (who was not one of the defendants in the first suit) for the same cause of action. He referred to 29 & 30 V. c. 42, s. 1.

Osler shewed cause, and contended that the section of the statute only applied where the action was not only brought for the same cause of action, but against the same defendant, and that this present action did not come under the statute.

Paterson, in support of the summons, argued that the defendant was entitled to security under the statute, it being sufficiently wide in its language to cover a case like the present; that the statute is not confined to cases where the action is brought against the same defendant, but also extends to cases where a second action for the same cause is brought against another, where the liability is identical with the former defendant. *King* v. *Hoare*, 13 M. & W. 494; *Newton* v. *Blunt*, 3 C. B. 675.

John Wilson, J.—After taking time to consider, granted the order.

Order accordingly.

Cline v. Cawley.

Ejectment—Last day for appearance falling on a Sunday.

Ejectment summons served on 15th February (not being Leap Year). Judgment, signed in default of appearance on the 4th March, the 3rd March, the last of the sixteen days within which defendant had to appear, being a Sunday, *held*, regular.

[Chambers, March 16, 1867.]

This was an act of ejectment in which judgment was signed (in default of appearance) against the defendant, who was in possession of the premises as tenant of one J. M. Lutz.

The landlord obtained a summons calling on the plaintiff to show cause why the judgment should not be set aside with costs, for irregularity in this: 1st, that it was signed too soon; 2nd, on the ground of collusion between the plaintiff and the defendant; and, 3rd, on the merits, and why he should not have leave to appear to and defend the action as landlord of the defendant.

It appeared from the affidavits and papers filed, among other things, that the ejectment summons was served on the 15th day of February last, and that judgment was signed on the morning of the 4th March, the 3rd March being Sunday.

J. D. Edgar shewed cause. As to the first ground, the defendant had sixteen clear days in which to appear, but did not; the judgment was therefore not signed too soon. The collusion is negatived and the merits denied by the affidavits filed on behalf of the plaintiff. If landlord allowed to defend it should be on payment of costs, and possession should remain in plaintiff. *Doe Ingram* v. *Roe*, 11 Price, 507.

———, in support of summons, contended upon the authority of *Scott* v. *Dickson*, 1 U. C. Practice Reports, 366, and *Montgomery* v. *Brown*, 2 U. C. L. J., N. S., 72, that defendant was entitled to sixteen clear days to appear, the day of service to be excluded; therefore in this case, as the writ was served on the 15th February, the last day for appearing would be the 3rd March, but as that day happened to be a Sunday, the defendant was entitled to the whole of the following day (Monday) to appear, and cited the C. L. P. Act, section 58, which he contended applied as well to a writ of summons in ejectment as to any other writ issued under the authority of that act.

Edgar, in reply. Section 58 of the C. L. P. Act does not apply to the Ejectment Act, nor do the provisions as to computation of time in the Rules of Court. In the absence of any express provision, there is nothing in the law to exclude Sunday, when the last day of a limited time, from being included in the computation. *Rowberry* v. *Morgan*, 9 Ex. 730; S. C. 23 L. J. Ex. 191; *Regina* v. *Justices of Middlesex*, 7 Jur. 396.

Morrison, J.—In the absence of any later authority, I must follow the rules laid down in *Rowberry* v. *Morgan*, 9 Ex. 730, and *Regina* v. *Justices of Middlesex*, 7 Jurist, 396; but were it not for those cases I should be inclined to think the defendant entitled to the whole of Monday to appear. I cannot, therefore, set aside the judgment on that ground, nor do I think I should set it aside on the ground of collusion, but I will do so on the merits, on payment of costs, and allow the landlord to come in and defend.

Order accordingly.

McKenzie v. Clark.

Interrogatories—Fishing application—Answers tending to criminate—Libel.

Interrogatories will not be allowed before declaration, without special facts being shown.

Nor where the application is of a fishing character, to ascertain whether the plaintiff has in fact any cause of action against the defendant, or for the purpose of fishing out information of a penal character.

Nor where the interrogatories are such that the answers would, as in case of libel, tend to criminate the person interrogated.

[Chambers, April 12, 1867.]

This was an action of libel, for having written and published in a newspaper remarks detrimental to the character and position of the defendant as a magistrate.

The plaintiff obtained a summons (before declaration filed) for leave to administer certain interrogatories to the defendant. He filed a copy of the proposed interrogatories with the ordinary affidavits of the plaintiff and his attorney, also a copy of a declaration stated to be "the declaration intended to be filed in this cause."

This intended declaration alleged "that the plaintiff before and at the time of the publishing of the malicious libel hereinafter mentioned was a Magistrate and Justice of the Peace in and for the County of Victoria, and exercised the functions of the said office, and was concerned in the administration of justice in the said county. Yet the defendant contriving and wickedly and maliciously intending to injure the plaintiff and to bring him into public scandal and disgrace,

and to degrade him in his said character and office, and to prevent the public from resorting to him as such Magistrate and Justice of the Peace in matters within his functions as such, falsely and maliciously wrote and published in a certain newspaper called the *Canadian Post*, of and concerning the plaintiff in his character as such Magistrate, and concerning him, while he held and exercised the said office, the words following:" [Then, after setting forth the words which described the holding of a court by two magistrates, without identifying them, except so far as a general description of their habits and character might be sufficient to identify them in the eyes of persons in the neighbourhood, it concluded]: "The defendant meaning thereby that the plaintiff is not worthy of the office of magistrate; that he conducted his magisterial duties in an indecent and disgusting manner; that he is insolvent and bankrupt; that he is dishonorable; that he is not deserving of belief under oath, and that he is dishonest."

The interrogatories proposed to be administered were as follows:

1. Are you the writer of a certain article published in *The Canadian Post* newspaper of the 23rd day of November, 1866, entitled "Magistrates," and signed "Crux?"

2. Is the plaintiff one of the magistrates to whom reference is made in that article, and if so, who is the other magistrate?

3. What occasion, time and place is referred to in the first paragraph of the said article?

4. Had you in November last or shortly before a quarrel with the plaintiff?

5. Have you procured, advised, or caused one Fraser to bring a suit against the plaintiff in reference to some act done by him in his capacity as a magistrate?

6. Have you ever said to any person that the said article was intended to apply to the plaintiff and to Israel Ferguson?

7. Did you write a letter to the proprietor of the said newspaper requesting him to insert the said article, and to forward to you three or four copies of the paper containing it?

8. Did you circulate any copies of the said newspaper by mail or otherwise, and if so, to whom did you send or give them?

9. Did you send one copy by mail to one Charles Lapp, who is connected with you by marriage, and who is a brother-in-law of the plaintiff, and did you write over the article in question in the said newspaper the words "Sid & Ferguson" in pencil? and did you mean the plaintiff by the word "Sid."

J. A. Boyd shewed cause.

These interrogatories should not be allowed:

1. They are asked before declaration, and should only, if at all, be allowed upon affidavits shewing a special state of facts. *Croomes* v. *Morrison*, 5 E & B. 984; *Anon* v. *Parr*, 13 W. R. 337: 11 Jur., N. S. 388.

2. This is a fishing application to ascertain whether the plaintiff has in fact any cause of action, and not in support of an ascertained cause of action.

3. It is an application for the purpose of fishing out information of a penal character: *May* v. *Hawkins*, 11 Ex. 210; *Tupling* v. *Ward*, 6 H. & N. 749; and interrogatories have been disallowed as imputing illegal conduct to party interrogated. *Baker* v. *Lane*, 13 W. R. 293; 11 Jur., N. S. 117; *Bickford* v. *D'Arcy*, 18 L. R. Ex. 354; *Peppatt* v. *Smith*, 11 L. T., N. S., 139.

4. There is a difference between libel and slander; and though interrogatories may be allowed in slander if allegations in declaration are specific as to when and where the slander was spoken (*Atkinson* v. *Fosbroke*, L. R. 1 Q B 628; 14 W. R. 832; *Stewart* v. *Smith*, Weekly Notes, 1867, p. 45), they should not be allowed in a case like this.

———, *contra*, referred generally to Day's C. L. P. Act, p. 235, *et seq.*, and contended,

1. That *Tupling* v. *Ward*, was distinguishable, and that action was against a publisher not an author, and that interrogatories may be exhibited even though the answers may tend to criminate the party interrogated. *Bickford* v. *D'Arcy et al.*, L. R. 1 Ex., 354; *Bartlett* v. *Lewis*, 31 L. J., C. P. 230.

2. Plaintiff seeks information as to a cause of action, which has evidently accrued to him, and which can be obtained from no other source; *Atkinson* v. *Fosbroke*, *ante*. In *Stern* v. *Sevastopulo*, 14 W. R. 862, 14 C. B. N. S. 737, the application was of a fishing character, to ascertain whether plaintiff had any cause of action against any one, and not as here, were the libellous words were actually published in a newspaper, under such circumstances as justified the plaintiff in supposing defendant to be their author.

Draper, C. J.—*Croomes* v. *Morrison*, 5 E & B. 984, determines that a plaintiff may deliver interrogatories before declaring, but the court expressed a strong opinion that the affidavits of plaintiff and his attorney, precisely such as are filed here, were not enough. Here we have only the additional affidavit, that the plaintiff intends to file a declaration similar to the one produced. In *Anon* v. *Parr*, 11 Jur., N. S., 388, the plaintiff not knowing his precise cause of action, applied for leave to administer interrogatories in order that he might declare correctly, and the Court of Queen's Bench refused the application. In *Atter* v. *Willison*, 7 W. R. 265, the court said, to allow interrogatories in a case like the present where the plaintiff issues his writ and then seeks to use them as a means of finding out whether he has any cause of action would be an abuse of the privilege.

But *Tupling* v. *Ward*, 6 H. & N., 749, expressly decides that in an action for libel the court will not permit the plaintiff to exhibit interrogatories (and the declaration had been filed in that case) to the defendant, the answers to which, if in the affirmative, would tend to shew that he composed or published the libel, and would therefore criminate him. The court says, "in cases of this kind it would be unfair to submit questions which a party clearly is not bound to answer, the object being either to compel him to answer when not bound, or to refuse, and so create a prejudice against him."

In *Atkinson* v. *Fosbroke*, L. R. 1 Q B. 628, the action was slander, and, it being shewn that defendant at a certain place, in presence of certain persons, had made imputations against the plaintiff to the effect that he had committed

forgery, but that the persons present refused to give plaintiff any further particulars, the court allowed interrogatories to be put to defendant as to the precise words he had used. This case does not apply. 1. Looking at the declaration it would seem the alleged libel was published in a newspaper, and no enquiry of the publisher is shewn. 2. There is only the common affidavit. 3. The action is libel not slander.

I discharge the summons with costs.

See also *Carew* v. *Davies*, 25 L. J. Q B. 163; *Ingilby* v. *Shafto*, 9 Jur. N. S. 1141; *Chester* v. *Wortley*, 17 C. B. 210; *Stoate* v. *Rew*, 14 C. B N S. 209; *Finney* v. *Forwood*, L. R. 1 Ex. 6; *Adams* v. *Lloyd*, 27 L. J. Ex. 499; *Moor* v. *Roberts*, 2 C. B. N. S. 671; *Hawkins* v. *Carr* and *Parsons* v. *Carr*, L. R. 1 Q. B. 89; *Blight* v *Goodliffe*, 18 C. B N. S. 757; *Thol* v. *Leaske*, 10 Ex. 704; *Martin* v. *Hemming*, 10 Ex. 478; *James* v. *Barnes*, 25 L.J., C.P. 182; *Osborn* v. *London Dock Company*, 10 Ex 698; *Tetley* v. *Easton*, 25 L. J. C. P. 293; *Robson* v. *Cooke*, 27 L J. Ex. 151; *Bird* v. *Malzy*, 1 C. B. N.S. 308; *Reynell* v. *Sprye*, 1 DeG. M. & G. 660; *Flitcroft* v. *Fletcher*, 11 Ex. 543; *Horton* v. *Bott*, 26 L. J. Ex. 267; *Edwards* v *Wakefield*, 6 E. & B. 462; *Pearson* v. *Turner*, 10 Jur. N. S. 731.

CHANCERY REPORTS.

(Reported by ALEX GRANT, ESQ., *Barrister at Law, Reporter to the Court.)*

ANDERSON v. THORPE.

Practice—Long Vacation.

It is irregular to proceed with references in the offices of the Masters, unless by consent, during the Long vacation.

This was an appeal from the finding of the Master of Barrie, on the ground that he had proceeded with the reference under the decree made in the cause during the Long Vacation, in opposition to the objection of the defendant to proceed therewith.

Hodgins for the appeal.

Snelling, contra, contended that the Masters have a perfect right to proceed with such references in vacation, although objected to by one of the parties. The orders of June, 1853, point out expressly in what cases the Long Vacation shall not be reckoned in the computation of the time allowed for doing certain acts or taking certain proceedings; but no mention is made of proceedings to be taken under a decree. In England the Long Vacation was formerly appointed by special order made each year, which order also regulated what business should be transacted in the several offices during the period so fixed for vacation: but for these orders the offices would have been open during the whole of the vacation. Our orders specifying in what proceedings vacation shall not count, it follows that all others are unaffected by it.

Hodgins, in reply:—The English orders in force in 1837 provided for the closing of the Master's office during vacation. A vacation Master was always in attendance for the discharge of such services as could not remain over until after vacation, and for the purpose of granting appointments. If the view taken by the plaintiff be correct the long vacation will be rendered a mere nullity

Lord Suffield v. *Bond*, 10 Beav. 146; *Angel* v *Westocombe*, 1 M. & Cr. 42; *Ex p Hunt*, 4 Deg. & Ch. 503; *Daniell's* Ch. Prac. vol. ii. p 1792; *Newland's* Ch. Pr. pp. 11-27 (ed 1839); 9 Jurist pt. 2, page 305; *Taylor's* Orders, p. 36, were referred to.

VANKOUGHNET, C.—This is an appeal from the report of the Master at Barrie, and the principal objection is, that the Master proceeded with the reference during the long vacation against the protest of the defendant. The statutory provisions in regard to the vacation between the 1st of July and the 21st of August in each year, do not extend to this court, and the question was argued before me as necessarily depending upon the practice in England at the time of its introduction here under the act of 1837. That practice is very imperfectly stated in the books; but so far as I can ascertain it, the Master in England might if he pleased keep his office open during the long vacation. There seems to have been a vacation Master, who disposed of necessary work, such as making appointments, &c., to take effect before the Master in rotation when he opened his office, but did no more than thus was requisite. General or special orders, provided that the long vacation should not count in the time allowed for certain proceedings; I do not find that up to 1837 the Masters were prevented from proceeding with business if they saw fit. Doubtless they very seldom did so. The Accountant-General's office was open, except on fixed and recognised holidays, unless when closed for the vacation by the order of the Lord Chancellor. The Registrar's office was always open, except on special holidays, though only a clerk attended during the long vacation for routine work.

The English orders of 1845—not in force here—provide for vacations, specifying what work may be done during those periods. The order in force here in regard to the long vacation is Order No. 4 of the 3rd June, 1853. It provides that "*the* long vacation" shall commence and end on ceriain named days. What long vacation is here referred to? It must be some long vacation previously established. It could hardly refer to the long vacation in England, the period of which had never been recognized here. The special holidays or fast days in England were not observed here. The Legislature had not provided any long vacation. How then had this long vacation been established here? On inquiry I find that an order made on the 25th of August, 1840, and numberd as 77 among the orders published in 1846—to which on the argument my attention was not called—established for the first time a long vacation in this court in the following words: "That whereas, it having been proposed by the profession and approved by the the Vice-Chancellor, that there should be a yearly vacation in this court, notice is hereby given that his Honor doth order and direct, that such vacation shall commence yearly, from and after the expiration of one week from the termination of the equity sittings after Michaelmas term in each year; and shall continue until the 1st day of November then next

ensuing, during which period the court will not sit, and the Master's and the Registrar's offices shall be respectively closed: except that the Registrar's may at any time during the said vacation be opened for all purposes of making applications for special injunctions."

On the 3rd day of June, 1853, all pre-existing orders were abolished in express terms. But still order 4 of this series of orders, substituted for those abolished, says, "The long vacation is to commence on the first day of July, and to terminate on the 21st of August in every year." What long vacation? In my opinion the long vacation established by the order of 1840. But if, as it may be contended, that order was blotted out entirely, there would be no long vacation to which reference could have been made. The order must then, I think, have only been disturbed so far as order 4, of 3rd June, 1853, disturbed it; or must have been recognized and re-established by that order, except in so far as it interferes with it. If the provision for, or creation of a long vacation depends upon this order 77, then also, I think, we must look to it to see what that vacation meant; what was its character, purpose and object; and these are defined by the order itself. Giving effect to these, I think that no proceeding *in invitum* could or can be taken in the Master's office during the long vacation; that the proceedings in this case were therefore improper, and that the matter must be referred back to the Master to proceed anew. The ordinary meaning of the word "vacation" is an intermission of proceedings—of ordinary work. It is true that subsequent orders provide that vacation shall not count in the time allowed for certain proceedings may be taken in vacation. But for this provision time might well run in respect of proceedings had before vacation arrived.

As, I believe, this is the first case in which objection has been taken to proceeding in the Master's office during the long vacation, and as it has been customary during that time to take such proceedings, I make no order as to costs.

CHANCERY CHAMBERS.

(*Reported by* J. W. Fletcher, *Esq., Solicitor, &c.*)

Tice v. Myers.

Practice—Petition to Court.

Where under an order in Chambers after decree, persons interested in the equity of redemption of mortgaged premises have been added as parties to a suit in the Master's office, an application to set aside such an order must be made to the Court upon petition.

S. H. Blake applied in Chambers, on notice, on behalf of Cornelius O'Sullivan, who had been added as a party defendant in the Master's office after decree, under an order made in Chambers, as being interested in, or as being the owner of a portion of the mortgaged premises in question, to have the order set aside and vacated.

Hamilton, for the plaintiffs, without adducing merits, contended that the application was irregularly and improperly made, having been made in Chambers on notice of motion instead of to the Court upon petition.

The Judge's Secretary.—I am of opinion that the objection is a good one, and must prevail. The order in Chambers which was sought to be vacated having been made after decree, was in fact a part of the decree in effect.

Liberty given to O'Sullivan to apply to the Court upon petition—costs of the application in Chambers reserved.

Wiman v. Bradstreet.

Practice—Extension of time for appealing to Court of Error and Appeal.

Where time to appeal to the Court of Error and Appeal from an order made in Chambers would expire before such appeal could be heard, the time will not be extended on an application made to a Judge in chambers for that purpose.

An order had been made in in Chambers this suit on the 29th of November last, refusing to discharge the writ of sequestration issued against the defendants. From this order the defendants desired to appeal to the Court of Error and Appeal; but as they had allowed one sitting of the said Court to be held without appealing, the six months would expire before the July sittings, and consequently unless the time was extended such an appeal could not be made at all. This was an application, therefore, for an extension of the time for appeal.

McLennan, for the defendants.

S. H. Blake, contra.

The Judge's Secretary.—Under the circumstances, if the appeal could be made at all, it might be made without an application of this description in Chambers. The English authorities shew quite conclusively that Judges in Chambers have no power to make such an order as that asked for in this case.

I must refuse the application with costs, on the ground of want of jurisdiction.

Stephen v. Simpson.

Practice—Taxation—Fee on subpœna.

Fee on Subpœna by direction of the Court, to be allowed on taxations under the tariff of costs, where the amount itself is properly taxable.

[Master's Office, 1867.]

In the bill of costs in this suit a charge was made for fee on a subpœna. The Master taxed it off, holding that, according to the practice which had prevailed in his office for a considerable length of time, he was not authorized in taxing such a fee.

Application was thereupon made, through the Secretary, to the Judges of the court, for a direction to the Master to allow such fees to the parties.

It was contendrd that under the wording of the tariff a fee on a subpœna should be a taxable fee, being a writ issued out of the court.

The Judges Secretary, having conferred with the Judges, directed the Master hereafter to allow a fee of five shillings on every writ of subpœna on all taxations, when the charge for the writ itself is properly taxable.

DIGEST.

DIGEST OF ENGLISI LAW REPORTS.

COMMENCING JANUARY, 1866.

(*Continued from page* 83.)

Parties.

1. A *cestui que trust* under a deed of family arrangement settled his share. There were two trustees of the settlement, one of whom was also a trustee of the deed of arrangement. In a suit to administer the trusts of this deed, and make the trustees responsible for breaches of trust, *held*, that as a trustee of the settlement was an accounting party to the suit, the *cestuis que trust* under the settlement should be made parties.—*Payne* v. *Parker*, Law Rep. 1 Ch. 327.

2. In a suit to enforce a covenant in a lease not to carry on a certain trade, the original covenantor is not a proper party, if he has parted with all his interest, and is not in fault. —*Clements* v. *Welles*, Law Rep. 1 Eq. 200.

3. If, on the construction of a will, there is a doubt whether there may not be an intestacy, and if the fund to be distributed has been paid into court under the Trustee Relief Act, the House of Lords will not proceed with an appeal in the absence of any one to represent the next of kin.—*Trevillian* v. *Knight*, Law Rep. 1 H. L. 30.

See Champerty; Covenant, 1; Husband and Wife, 4.

Partnership.

1. The test to determine the liability of one sought to be charged as a partner, is whether the trade is carried on in his behalf; and participation in the profits is not decisive of that question unless the participation is such as to constitute the relation of principal and agent between the person taking the profits and those actually carrying on the business.—*Bullen* v. *Sharp*, Law Rep. 1 C. P. 86.

2. Two partners, who had dealings with the respondents, took a new partner. The new partnership was formed by deed, and a balance sheet, showing the liabilities and assets of the old firm, was drawn up, and admitted by all the partners. The new firm continued to trade with the same books as the old firm, and no distinction was made in the payments, balances, assets, and debts of the old and new firms. The respondents continued to trade with the new firm, and part of the debt due them from the old firm was paid by the new firm. *Held*, that the respondents could prove against the estate of the new partnership, which had become bankrupt, for debts due them from the old firm. —*Rolfe* v. *Flower*, Law Rep. 1 P. C. 27.

3. A partnership was formed to continue five years, notwithstanding the death of any partner; the profits to be divided annually; and, before any division of profits, each partner at the end of each year to be credited with interest on his capital at the beginning of the year. One partner having died before the expiration of the five years,—*held*, that the interest on his share of capital was apportionable, so much as accrued in his lifetime being *corpus*, and the remainder income of his estate, but that his share of the profits, divided at the annual division next after his death, was all income.—*Ibbotson* v. *Elam*, Law Rep. 1 Eq. 188.

4. Partnership articles provided that a partner desirous of selling his shares should offer them to his co-partners collectively; if they should decline, then to the partners desirous of collectively purchasing; and, if none such, then to the partners individually; after which, he might sell to a stranger. One of four partners offered his shares to the other three collectively (one of whom he knew would not purchase). The other two declared their willingness to accept, and were told that no offer was made them. *Held*, that this offer enured to the benefit of the two, and specific performance decreed accordingly.—*Homfray* v. *Fothergill*, Law Rep. 1 Eq. 567.

See Administration, 5; Interrogatories, 2.

Patent.

1. When a patent is granted to two persons, each may use the invention without the other's consent, and without being accountable to the other for half the profits from its use. As to the profits from granting licenses, *quære*.— *Gathers* v. *Green*, Law Rep. 1 Ch. 29.

2. If a plaintiff, at the filing of a bill, was entitled to an injunction to restrain the infringement of his patent, an inquiry as to damages, under Cairn's Act, will not be refused him at the hearing, though the patent has then expired. —*Davenport* v. *Rylands*, Law Rep. 1 Eq. 302.

3. An interlocutory injunction to restrain the infringement of a patent, moved for in July, the plaintiff having complained of the infringement in the preceding November, and known of the defendant's proceedings in the previous August, was refused.—*Bovill* v. *Crate*, Law Rep. 1 Eq. 388.

4. An application for extension of the term of a patent on the ground of inadequate remuneration by a patentee, who did not manufacture or sell the patented article, but granted licenses to manufacture, was refused, it appear-

ing that the patentee's accounts of his own expenses in carrying on the patent were unsatisfactory, and that no accounts were given of the profits made by the licensees.—*Trotman's Patent*, Law Rep. 1 P. C. 118.

5. At the hearing of a suit for infringement of a patent, evidence of prior user, not disclosed by the particulars of objection, is admissible, though discovered since the delivery of the particulars.—*Daw* v. *Eley*, Law Rep. 1 Eq. 38.

6. In a suit to restrain the infringement of a patent, the defendant need not deliver particulars of objections, where replication has been filed, and the court has refused to direct issues.—*Bovill* v. *Goodier*, Law Rep. 1 Eq. 35.

See Copyright, 3; Interrogatories, 3; Company, 1.

Pedigree.—*See* Evidence, 1.

Perpetuity.—*See* Vested Interest, 2.

Pleading (at law).

1. To an action for money due, a plea on equitable grounds, that the plaintiff assigned the debt to D., who notified the defendant; that the assignment still remained in force; that the defendant was still liable to pay D.; that the action was not brought for the benefit nor with the consent of D.; and that, if the plaintiff recovered, the defendant would still be obliged to pay D.,—is good.—*Jeffs* v. *Day*, Law Rep. 1 Q. B. 372.

2. To an action against sureties on a bond conditioned for the due performance by A. of his duties as collector of poor rates and sewer rates, the bond to continue in force if A. held either office separately, the breach assigned being that A. had not paid over money received in both capacities, a plea that before breach an act was passed increasing A.'s duties as collector of sewers' rates, and under which he was chosen collector of main drainage rates by those from whom he held his other appointments, is bad, as not affording an answer to the liability for A.'s breaches of duty as collector of poor rates.—*Skillett* v. *Fletcher*, Law Rep. 1 C. P. 217

See Award, 2; Bankruptcy, 5; Equity Pleading; Variance.

Power.

1. A testatrix having a life interest in consols, with a power of appointment among her children, by will made in 1864, containing no reference to the power, bequeathed all money belonging to her in consols, and all money she might die possessed of, to her two surviving children and to a stranger to the power, in equal shares. She had no consols or other stock, except that subject to the power. *Held*, that there was a valid exercise of the power as to the share bequeathed to the children, and that the other share went to those entitled in default of appointment. — *Gratwick's Trusts*. Law Rep. 1 Eq. 177.

2. B. by a will in 1858, specifically gave freehold, copyhold, and leasehold property, and gave all other real and personal property of which he should die possessed, or have power to dispose, on certain trusts. By a voluntary settlement in August, 1862, B. conveyed all his freehold property on trust, after his death, for E. for life, with remainder as B. should "by his last will or any codicil thereto" appoint, and, in default of appointment, to E. in fee; and by the same settlement he disposed of all his leasehold and personal property. In November, 1862, B. by a last will, not mentioning any former will, appointed, under the power in the settlement, an annuity out of his freehold property, and devised all his copyholds, but made no other disposition of his property. Probate of both wills was granted. *Held*, that the testator having made the will of 1862 after the settlement that the will of 1858 could not operate as an execution of the power.—*Pettinger* v. *Ambler*, Law Rep. 1 Eq. 510.

3. A testator devised real estate to his daughter for life, without impeachment of waste, save as mentioned, with restriction against alienation, and remainders in tail and fee over. The daughter had power to charge the property to a limited extent; and she and each tenant in tail had power to lease any of the lands for twenty-one years, with a reservation to work mines. Then followed a reservation of all timber for twenty years from testator's death; and the will continued, that it was the testator's will and desire that it should be lawful for his daughter to work or contract for, lease or let out to be worked and wrought, all the mines,—the "issues, proceeds, and profits," to be paid to trustees for the purchase of lands. The daughter leased for twenty one years (or for sixty, if she had authority) all the mines on certain farms, with liberty to the lessee to do all acts in or upon the said farms that should be deemed expedient in working the mines devised, or the mines belonging to any other person, making satisfaction to the tenants for damages. The lessee covenanted to pay rent and certain royalties, and to work the mines in a workmanlike manner, &c. In ejectment by the remainder man against the lessee, the jury having found that the covenants were usual and reasonable, it was *held* by *Erle*, C. J., and *Willes*, J., that the daughter had unconditional power to lease the mines, with no other limitation than that

arising from her fiduciary capacity as donee of the power; that the lease was a good exercise of the power; and that, if some of the licenses granted were void, the lease was void *pro tanto* only. *Held*, by *Byles* and *Montague Smith*, J.J., that a mere working power was given to the daughter; and that the lease was void, or could not at all events extend beyond the daughter's life.—*Jegon* v. *Vivian*, Law Rep. 1 C. P. 9.

4. Under a settlement of personalty containing a power to sell the trust funds, and invest in real estate to be held on such trusts as would best correspond with the subsisting trusts, and to be considered personal estate for the purposes of the settlement, the trustees have a power of sale over purchased real estate, though no such express power is contained in the settlement.—*Tait* v. *Lathbury*, Law Rep. 1 Eq. 174.

5. If a power, coupled with a duty, is given to trustees, to be executed at a fixed period, and after they have come to a judgment as to the conduct of the individual to be effected, who has married three years before the time for such execution; and if the trustees formally approved of the marriage, and were made aware of a provision out of the trust estate for the intended wife, contained in the marriage settlement, and though they gave no warning that they might be obliged to defeat such provision, —yet it is the duty of the trustees (the husband having, in their judgment, subsequently misconducted himself) to execute the power so as to restrict him to a life-interest, though the provision for the wife's and other claims founded on the marriage settlement, are thereby defeated.—*Weller* v. *Ker*, Law Rep. 1 H. L. Sc. 11.

6. By a marriage settlement, a wife had power to appoint a fund to "all and every the children, or child, or more remote issue of the marriage." She appointed the fund to new trustees on trust to pay the income to her only child for his life, or until he became bankrupt, or assigned the same; and then to the trustees for his life, for the benefit of her son, his wife, and children, or any of them, as the trustees should think expedient. *Held*, that the appointment was void *in toto*, and not merely for the excess.—*Brown's Trust*, Law Rep. 1 Eq. 74.

See WILL, 13.

PRACTICE (AT LAW).

1. An indorsement of a notice on a writ of summons, allowing less time for payment than the time limited for appearance, is an irregularity not waived by admission of service.—*Galli* v. *Mongruel*, Law Rep. 1 C. P. 46.

2. The court will not interfere with the discretion of a judge at chambers in refusing leave to proceed without personal service, under 15 & 16 Vic. c. 76, § 17.—*Tomlinson* v. *Goatly*, Law Rep. 1 C. P. 230.

3. A writ having been issued for service out of the jurisdiction, the court, not being satisfied that the plaintiff did not intend to sue for matters not arising within the jurisdiction, ordered the writ to be set aside, unless the plaintiff would give an undertaking to prove, and confine himself to a cause of action arising within the jurisdiction.—*Diamond* v. *Sutton*, Law Rep. 1 Ex. 130.

See ARBITRATION; COSTS; DAMAGES, 2; EQUITY PRACTICE; INTERROGATORIES; JURY; PARTICULARS.

PRESCRIPTION.—*See* HIGHWAY, 3; LANDLORD AND TENANT, 1; NUISANCE, 1.

PRINCIPAL AND AGENT.

1. A. having employed B. to manage and carry on—in the name of "B. & Co."—his business, to which the drawing and accepting bills of exchange was incidental, although he forbade B. to accept or draw bills, was *held* liable on a bill accepted by B. in the name of "B. & Co.," in the hands of an endorsee, who took it without any knowledge of A. and B., or the business. —*Edmunds* v. *Bushell*, Law Rep. 1 Q. B. 97.

2. If an auctioneer, who is authorized to sell goods on condition that purchasers shall pay a deposit at once, and the remainder of the purchase money on or before delivery of the goods, receives payment by a bill of exchange, which falls due, and for which he receives cash, after his authority to sell is revoked, the purchaser is not discharged.—*Williams* v. *Evans*, Law Rep. 1 Q. B. 352.

3. A., a broker, sold some yarn to the defendant. Before its delivery, the defendant paid A. in advance £1,000 on his general account. Part of the yarn was sold by A., as agent for the plaintiff, on a *del credere* commission. The yarn being worth more than £1,000, the defendant paid the difference to A. in cash, and so balanced the accounts between them. A. did not pay over to the plaintiff the value of his yarn, and became bankrupt. *Held*, that the defendant was still liable to the plaintiff for the price of his yarn, except to the extent of the cash payment.—*Catterall* v. *Hindle*, Law Rep. 1 C. P. 186.

4. The duties of the agent of a company being personal, and incapable of being enforced in equity, the court refused to restrain the directors from acting upon or enforcing the resignation of A., whose agency was made a condition

in the prospectus of the company, and was expressly provided for by its articles; but put the directors on an undertaking not to take advantage—in proceedings at law, to recover the amount due on A's. shares—of his resignation, which he alleged to have been conditional on his being relieved from all liability on shares. —*Mair* v. *Himalaya Tea Co.*, Law Rep. 1 Eq. 411.

See Bills and Notes, 1, 2, 3; Frauds, Statute of, 4; Insurance, 5, 6; Master and Servant, Partnership, 1.

Probate—*See* Administration; Executor, 2; Legatee; Production of Documents, 1; Will.

Production of Documents.

1. A testator disposed of his residue, according to the trusts of a deed in which he had no concern or interest. The persons interested in and having the custody of the deed having refused to produce it, or allow a copy of any part to be made, the court directed probate of the will to issue, without the incorporation of the deed or any part thereof.—*Goods of Sibthorp*, Law Rep. 1 P. & D. 106.

2. A *cestui que trust* of an equity of redemption, in a suit for redemption of the mortgage and reconveyance of the property, can demand production of a conveyance of the equity to a mortgagee by the trustee, with notice of the trust.—*Smith* v. *Barnes*, Law Rep. 1 Eq. 65.

3. A mortgagee must always produce the mortgage deed for inspection by the mortgagor. —*Patch* v. *Ward*, Law Rep. 1 Eq. 436.

4. In an administration suit, it was ordered, on the application of the defendant trustees, that a contract for sale made before the suit should be carried into effect, the purchaser consenting to be bound "as if he were a party to the suit, and the contract was specially the subject thereof." The purchaser having applied for reduction of the purchase-money, on account of adverse claims, was *held* entitled to an affidavit by the trustees as to documents in their possession relating to matters in question between him and them.—*Dent* v. *Dent*, Law Rep. 1 Eq. 186.

5. A clerk of persons against whom adjudication of bankruptcy is prayed, who has stated that he has no possession of their books, is not bound to produce them on the hearing.—*In re Leighton*, Law Rep. 1 Ch. 331.

6. A *subpœna duces tecum* requiring a solicitor, not a party, to produce all papers, &c., relating to all dealings between his firm and a party, for thirty-three years, without specifying particular documents, is too vague; but, if the witness admits that he has "the documents thereby required," he must produce them, without being first sworn.—*Lee* v. *Angas*, Law Rep. 2 Eq. 59.

7. An application for liberty to seal up documents, by a defendant who has not been required to answer as to documents need not be made on the original summons for production; but will be granted on summons by the defendant, after his filing an affidavit admitting possession of the documents, without his paying the costs of his summons.—*Talbot* v. *Marshfield* Law Rep. 1 Eq. 6.

Promissory Note—*See* Bills and Notes.

Railway.—*See* Carrier; Company, 1, 2; Master and Servant, 1, 2; Negligence, 1, 2, 3, 4; Specific Performance, 2, 3.

Rape.

1. On a trial for rape there must be some evidence that the act was without the woman's consent, even if she be an idiot; and if there are no appearances of force, and the only evidence of the connection is the prisoner's admission, coupled with the statement that it was done with her consent, there is no evidence for the jury.—*The Queen* v. *Fletcher*, Law Rep. 1 C. C. 39.

2. The offence of attempting to have carnal knowledge of a girl under ten years of age may be committed, though she consent.—*The Queen* v. *Beale*, Law Rep. 1 C. C. 10.

Receiver—*See* Administration, 2; Trusts, 2.

Receiving Stolen Goods.

1. A thief stole goods from the custody of a railway company, and afterwards sent them in a parcel, by the same railway, addressed to the prisoner. The theft being discovered, a policeman in the company's employ opened the parcel on its arrival at the station for delivery; and then returned it to a porter, to be kept till further orders. On the next day the policeman directed the porter to take the parcel to its address, when the prisoner received it. *Held*, on an indictment laying the property in the company, that the prisoner was not guilty of receiving stolen goods, as the goods had got back into the possession of the owner.—*The Queen* v. *Schmidt*, Law Rep. 1 C. C. 15.

2. The 24 & 25 Vic. c. 96, § 94,—which enacts, that if one or more persons, of two or more indicted for jointly receiving property, are proved to have separately received any part or parts of such property, the jury may convict such of said persons as have received any part or parts of the property,—includes cases where the prisoners separately received the whole of the stolen property.—*The Queen* v *Reardon*, Law Rep. 1 C. C. 31.

Registration.

A registered title can be affected only by clear and distinct notice, amounting in fact to fraud.—*Chadwick* v. *Turner*, Law Rep. 1 Ch. 310.

Release.

Residuary legatees having given up to a debtor of their testatrix a policy on his life, held by her as security for the debt, and having signified their intention of releasing the debt on his paying the probate and legacy duty on the debt, such payment is a good consideration for the release, and the debt is released.—*Dubitante*, Knight Bruce, L. J.; *Taylor* v. *Manners*, Law Rep. 1 Ch. 48.

Rent.

1. Under a condition in a sale of leaseholds, that all outgoings to the day of taking possession shall be paid by the vendor, an apportioned part of the current rent from the last quarter-day to the day of taking possession is an outgoing.—*Lawes* v. *Gibson*, Law Rep. 1 Eq. 135.

2. A rent-charge, granted by a deed containing no power of distress, is within the 4 Geo. II. c. 28, § 5, and is therefore a "freehold tenement.—*Dodds* v. *Thompson*, Law Rep. 1 C. P. 133.

See Appeal, 1; Frauds, Statute of, 2; Lease; Tenant for Life.

Res adjudicata.

Demurrer will not lie to a bill on the ground of *res adjudicata*, unless it avers that everything in controversy, as the foundation of the suit, was in controversy in the former suit.—*Moss* v. *Anglo-Egyptian Navigation Co.*, Law Rep. 1 Ch. 108.

Residence.—*See* Domicil.

Seduction.—*See* Damages, 1.

Separate Use.

A bequest of a legacy to trustees on trust, to invest and pay the dividends to the testator's unmarried niece during her life, "for her own sole and separate use and benefit, free from the control of any husband she may marry," followed by a bequest of the residue of the testator's personal estate to the said niece, "for her own sole use and benefit absolutely,"—*held*, that there was a good gift of the residue to the wife's separate use.—*Tarsey's Trust*, Law Rep. 1 Eq. 561.

See Accruer, 2.

Service.—*See* Practice (at law); Substitutional Service.

Settled Estate.

Testator devised real estate to trustees on trust, at their discretion to sell, invest the proceeds, and pay the income to his wife and children. *Held*, that, as the time of sale was discretionary, and as the rents until sale must by implication go as the income of the proceeds was directed to be applied, this was a settled estate, within 19 & 20 Vict. c. 120, § 1; and 21 and 22 Vict. c. 77, § 1.—*Laing's Trusts*, Law Rep. 1 Eq. 416.

Solicitor.

1. A trustee is liable for loss caused by the fraud of his solicitor, although he may have used ordinary discretion in employing him.—*Bostock* v. *Floyer*, Law Rep. 1 Eq. 26.

2. Consent to the withdrawal of a juror, by counsel retained to conduct a cause, is binding on the client, notwithstanding he may have dissented, if this dissent was not known to the opposite party at the time.—*Strauss* v. *Francis*, Law Rep. 1 Q. B. 379.

3. Proceedings taken on behalf of a defendant by a solicitor, who had not at the time renewed his annual certificate, will not be set aside as irregular; the interest of the client not being affected by the want of proper qualification.—*Sparling* v. *Brereton*, Law Rep. 2 Eq. 64.

4. If a solicitor, acting for a vendor, receives the deposit on the sale of an estate as such agent, he does not receive it as a stockholder, but must pay it to the vendor on demand.—*Edgell* v. *Day*, Law Rep. 1 C. P. 80.

5. A solicitor who pays off a mortgage due from his client must be taken to act as the agent of the client, and not on his own behalf; and, if he receives the rent of the mortgaged property, the possession is that of the client, and the Statute of Limitations does not run against the client.—*Ward* v. *Carttar*, Law Rep. 1 Eq. 29.

See Production of Documents, 6.

Special Case.

If a case is submitted on an agreed statement of fact, with power for the court to draw any reasonable inferences, the court cannot infer that the facts stated are a color to conceal something really different; at least, unless such inference is very clearly made out.—*Bullen* v. *Sharp*, Law Rep. 1 C. P. 86.

Specific Performance.

1. A title, under a construction of a will, will not be forced on a purchaser, if an opposite construction has been acted on for years, and if the judge whose opinion is appealed from held the title bad, unless such opinion is clearly erroneous.—*Collier* v. *McBean*, Law Rep. 1 Ch. 81.

2. The safety or convenience of the public is a ground for refusing specific performance of a

contract between a railway company and a land owner—*Raphael* v. *Thames Valley Railway Co.*, Law Rep. 2 Eq. 37.

3. An award that the defendant should execute to the plaintiff a lease of a railway made by the plaintiff on the defendant's land, in words set out in the award, and that the plaintiff should furnish to the defendant certain privileges, such as keeping an engine on the railway, —which, however, were not mentioned in the lease,—will not be ordered to be specifically peformed, because the provisions in favour of the defendant cannot be enforced at once.—*Blackett* v. *Bates*, Law Rep. 1 Ch. 117.

4. Defendant purchaser in possession, who, by decree directing an inquiry as to title, has been ordered to pay into court the interest on the purchase-money,—which is also declared a lien on the estate,—is not entitled to dismiss the bill for specific performance, though the plaintiff cannot show good title; it appearing that the defendant has, since the purchase, by his own act, acquired the means of curing the defect; and leave will be granted to amend, or to file a supplemental bill.—*Hume* v. *Pocock*, Law Rep. 1 Eq. 662.

See Lease, 6, 7; Partnership, 4; Vendor and Purchaser, 3, 6, 8.

Statute of Frauds.—*See* Frauds, Statute of.

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

Statute, Repeal of.

If a statute is impliedly modified by a later statute, and the later statute is afterwards repealed, the implied modification ceases.—*Glaholm* v. *Barker*, Law Rep. 1 Ch. 223.

See Company, 4.

Stoppage in Transitu.

Goods were shipped by the vendor on a general ship, belonging to a firm of which the purchaser was a member; and registered in the purchaser's name. Three parts of the bill of lading, by which the goods were deliverable at G. to the purchaser or assigns, were handed to the vendor, and the fourth retained by the master.—*Held.* that the goods might be stopped *in transitu*, before the delivery at G.—*Schotsmans* v. *Lancashire and Yorkshire Railway Co.*, Law Rep. 1 Eq. 349.

Substitutional Service.

Substituted service ordered on a solicitor who had acted for the defendants in transactions concerning the matter in suit; service to be also made at the defendant's foreign residence, personal service being impracticable.—*Hope* v. *Carnegie*, Law Rep. 1 Eq. 126.

Survivorship.

If persons claim property as next of kin to an intestate, the burden lies on those claiming through a deceased nearer of kin to show that such deceased survived the intestate.—*Green's Settlement*, Law Rep. 1 Eq. 288.

See Accruer, 1; Vested Interest, 2.

Tenant for Life and Remainder Man.

1. A remainder man can maintain a bill against the executor of the husband of tenant for life, for an account of rents improperly received by the testator after his wife's death, before the remainder man asserted his rights, and, if the executor does not admit assets, he can maintain a bill for an account of the testator's estate.—*Caton* v. *Coles*, Law Rep. 1 Eq 581.

2. If a tenant for life, under a settlement of an estate *pur autre vie*, has renewed the lease for lives to himself and heirs, purchased the fees, made a parol demise for a year, but dies before the end of the current half-year the rent must be apportioned, under 11 Geo. II. c. 19, § 15, between his executor and the remainder man.—*Mills* v. *Trumper*, Law Rep. 1 Eq. 671.

3. A written agreement by a tenant in tail expectant on the death of an insolvent tenant for life, with the agent of the assignee of the tenant for life, that the assignee should have the same right to the timber as if he had actually cut it on a past day named, and that the assignee should not cut it for a month, will not be enforced in equity, if the tenant for life was alive at the day named, but dead at the date of the agreement, though both the tenant in tail and the assignee's agent were ignorant of his death.—*Cochrane* v. *Willis*, Law Rep. 1 Ch. 58.

4. The receipt of rents under a lease, made by tenant for life under a supposed power, by a receiver appointed during the remainder man's minority, does not create a tenancy from year to year; nor does the acceptance by the remainder man from the receiver of the accumulated rents so received confirm the lease.—*Jegon* v. *Vivian*, Law Rep. 1 C. P. 9.

5. If a demise is determined by the expiration of the landlord's estate, and the tenant continues to hold under the remainder man, but nothing passes between them, except the payment and receipt of the same rent as before, the new landlord is not bound by a stipulation in the former tenancy, which is not known to him in fact, nor according to the custom of the country.—*Oakley* v. *Monck*, Law Rep. 1 Ex. 159.

See Power, 3.

Threatening to Accuse.

A prisoner who has threatened to accuse of an abominable crime with a mare, in order to force her purchase under terror of the charge is guilty of threatening to accuse with intent to extort money.—*The Queen* v. *Redman*, Law Rep. 1 C. C. 12.

Trade Mark.

1. No trader can adopt a trade-mark so resembling that of another trader that persons purchasing with ordinary caution are likely to be misled, though they would not be misled if they saw the two marks side by side; nor can a trader, even with some claim to the mark or name, adopt a trade mark which will cause his goods to bear the same name in the market as those of a rival trader.—*Seixo* v. *Provezende*, Law Rep. 1 Ch. 192.

2. On an enquiry whether any and what damage has accrued from the unlawful use of a trade-mark, the plaintiff must prove special damage; and it will not be presumed that the amount of goods sold under the fraudulent trade-mark would have been sold by the plaintiffs, but for the unlawful use of the mark.—*Leather Cloth Co.* v. *Hirschfield*, Law Rep. 1 Eq. 299.

3. The plaintiff being a thread-maker of repute, the defendant bought in the market wound thread, not made by the plaintiff, of inferior quality, and not bearing his name; but marked with the name of thread-winders known to be accustomed to buy of the plaintiff thread in the hank for winding. The defendant sold the goods to a wholesale customer, with the assurance (given, as alleged, without knowledge of any misrepresentation), that they were made by the plaintiff; and invoiced them to the customer under certain numbers, adopted and exclusively used by the plaintiff to mark his manufacture. The customer attached the plaintiff's name and numbers to the thread. *Held*, that the defendant had not been guilty of such wilful misrepresentation that an injunction would be granted; and the bill was dismissed, but without costs.—*Ainsworth* v. *Walmsley*, Law Rep. 1 Eq. 518.

Trusts.

1. A father put a check into the hands of his son of nine months old, saying, "I give this to baby for himself;" then took it back, and put it away. He also expressed his intention of giving the amount of the check to the son, but shortly afterwards died, and the check was found among his effects. *Held*, that there had been no valid declaration of trust.—*Jones* v. *Lock*, Law Rep. 1 Ch. 25.

2. A., by settlement on his son's marriage, covenanted for payment by himself, his heirs, executors, or administrators, during his life, or three months after his death, of £3,000 to trustees, with interes' till paid. By will, he devised certain real estates for payment of debts, and other real estates to trustees, in trust for his grandson for life, with remainders over. The grandson mortgaged his equitable life-interest for value. The executors paid interest on the £3,000 till 1849; but the £3,000 not having been paid, and the personal estate and the estate devised for payment of debts being exhausted, the trustees, in 1863, brought a suit to have the £3,000 raised by sale of the devised estates.

Held, that the £3,000, though due on covenant and *solvendum in futuro*, was a debt within the statute against fraudulent devices, 3 Wm. & M. c. 14; that A.'s having ample assets at the date of covenant did not take it out of the statute, it not being necessary that the devise should be made to defraud creditors; and that the mortgage by the grandson did not affect the creditor's right, the devisees in trust and not the equitable tenant for life, being the devisee within the statute.

Held, further, that misapplication of assets in the hands of the trustees was no reason why the creditor should not be paid out of the devised estates; and the fact that one of the original covenantees, who had been a receiver of A.'s estate during his lunacy, had not paid the £3,000 out of the money so received, was no bar to the present claim, he having no right to apply such moneys otherwise than as directed by the court; and also that the mortgagee could not be regarded as a purchaser without notice.—*Coope* v. *Creswell*, Law Rep. 2 Eq. 105.

See Confidential Relation; Executor de son tort, 2; Mortgage, 2, 4; Production of Documents, 2; Power, 4, 5; Solicitor, 1.

Variance.

The plaintiff lent money to A. on B.'s promise to become surety for repayment; and, after the money was advanced, A. and B. signed and delivered this memorandum, "We jointly and severally owe you £60. *Held*, sufficient evidence for the jury, on a declaration against A. and B. for money lent, and on accounts stated.—*Buck* v. *Hurst*, Law Rep. 1 C. P. 297.

Vendor and Purchaser.

1. A purchaser for value cannot require a voluntary agreement affecting the land to be delivered up to be cancelled.—*De Hoghton* v. *Money*, Law Rep. 1 Eq. 154.

2. A condition of sale, that no objection should be made in respect of a specified lease, or any

other lease prior to a certain date, does not cover the case of a lease, prior to said date, not specified, and within the vendor's knowledge.—*Edwards* v. *Wickwar*, Law Rep. 1 Eq. 68.

3. Specific performance will not be enforced of a sale at auction, the conditions of which said nothing as to bidding for the vendor, but at which the auctioneer and another person, both acting on behalf of the vendor, bid against each other. Whether the rule allowing one puffer is good, *quære.*—*Mortimer* v. *Bell*, Law Rep. 1 Ch. 10.

4. An order to open biddings, that, in case there shall be no higher bidding, the person offering the advance "is to be allowed the purchaser," followed by a certificate of no bidding and of such allowance, does not preclude the court re-opening the biddings.—*Ewing* v. *Waite*, Law Rep. 1 Eq. 440.

5. A clause authorizing the vendor to rescind a contract for sale, in case the purchaser should insist on any requisition which the vendor was unable or unwilling to comply with, does not justify a rescission, if the purchaser, finding the vendor unable or unwilling, has waived the requisition.—*Duddell* v. *Simpson*, Law Rep. 1 Eq. 578.

6. The defendant agreed to purchase lands from the plaintiff, who was "only to produce a title from his vendor;" and the plaintiff, at the defendant's instance, purchased all the estate, right, and interest in said lands from one of four reputed owners. *Held*, that the defendant could not show *aliunde* that the plaintiff's vendor had no title, and specific performance was decreed.—*Hume* v. *Pocock*, Law Rep. 1 Eq. 423.

7. W. contracted to sell an estate to G., the purchase to be completed on a certain day; and if "from any cause whatever" the purchase should not then be completed, G. to pay interest. Just before the day, a claim was made to the estate by a third party, with whom W. entered into a litigation, which was successful, but which did not end till nine years from the said day. W. in the mean time died, devising the estate to infants. G., when the adverse claim was first made, gave notice that he should not pay interest, but had always employed the purchase money in his trade, had never expressed a wish to rescind, and did not object to specific performance on a suit being brought by W.'s executors therefor, on account of his refusal to pay interest. *Held*, that G. must pay interest, but not all the plaintiff's costs; because, if he had consented to pay interest, litigation would still have been necessary on account of the devise to infants.—*Williams* v. *Glenton*, Law Rep. 1 Ch. 200.

8. A decree had been obtained by a vendor against a railway company for specific performance of a contract for sale, in which inquiries were directed to ascertain the amount due for damages and costs; and such amount with the purchase money was ordered paid, but was not declared a charge on the land. *Held*, that, under liberty to apply, the vendor could not enforce by petition a lien on the land for the sums due, especially in the absence of incumbrancers on the land.—*Attorney-General* v. *Sittingbourne and Sheerness Railway Co.*, Law Rep. 1 Eq. 636.

See Confidential Relation; Covenant, 1, 2; Specific Performance, 1, 4.

Vendor's Lien.—*See* Legatee, 1; Vendor and Purchaser, 8.

Vested Interest.

1. A testator directed trustees to apply the rents of a certain estate towards the maintenance of his daughters (naming seven) until the youngest should attain twenty-one, the property to be then sold, and divided equally among them; but if any of them should die before the youngest arrived at twenty-one, then "her or their share or shares to be divided amongst his surviving daughters, share and share alike;" but, if any of them should marry and die before the youngest attained twenty-one, and leave a child or children, "it or they should receive their mother's share equally among them." *Held*, that there were no vested interests till the youngest daughter attained twenty-one, and that by "mother's share" was meant the share which the mother would have taken, had she survived the period of distribution.—*Hunter's Trusts*, Law Rep. 1 Eq. 295.

2. A fund was bequeathed to S., and three other persons by name "who should be then living, or to the children of such of them as should be dead," the event indicated by "then" being one which might fall beyond the limit fixed by the rule against perpetuities. S. died before the event. *Held*, that the gift to S.'s children was vested at S.'s death, and so was not void for remoteness; and that all the children of S. who survived her shared in the gift, whether living or not at the time of distribution, but that none of her children who died in her lifetime shared in the gift.—*Merrick's Trusts*, Law Rep. 1 Eq. 551.

Watercourse.

1. The plaintiffs, by license from L. and the defendant, constructed a watercourse across the

land of L., and thence across the defendant's land. The defendant revoked his license, and, on the plaintiff's refusal to discontinue the watercourse, entered on L.'s land, at a spot near the boundary between it and the plaintiff's land, and obstructed the watercourse. By obstructing it on his own land, he would have done less damage to the plaintiff, but more to L., and perhaps some to the public. *Held*, that the obstruction was made in a reasonable manner; and a non-suit was ordered notwithstanding the defendant's trespass on L.'s land, L. not complaining thereof.—*Roberts* v. *Rose*, Law Rep. 1 Ex. 82.

2. A stream supplied by the drainage natural and artificial of cultivated land, and receiving the drainage of two or three houses in its passage to the river, is not a "sewer" within the Public Health Act 1848.—*The Queen* v. *Godmanchester*, Law Rep. 1 Q. B. 328.

Will.

1. It is essential to the validity of a will, that at the time of execution the testator should know and approve its contents.—*Hastelow* v. *Stobie*, Law Rep. 1 P. & D. 64.

2. If a will has been read over to a capable testatrix, and duly executed, certain words in it will not be excluded from probate because they are not in accordance with her instructions to her solicitor, nor contained in the draft will, which had been read over to and approved by her, and the solicitor who prepared the will swears that such words were inserted without her instructions and by his inadvertence.—*Guardhouse* v. *Blackburn*, Law Rep. 1 P. & D. 109.

3. A testator having made five codicils to his will, the fourth of which revoked the three preceding, and the fifth confirmed the will and four codicils, the ambiguity was explained by parol evidence, which showed that testator intended in the fifth codicil to confirm the will and fourth codicil only, and probate was granted of the will and fourth and fifth codicils only.—*Goods of Thomson*, Law Rep. 1 P. & D. 8.

4. A reference in a codicil to a document as a will, which is not of a testamentary character, is not alone sufficient to entitle such document to probate. A codicil revoking any testamentary papers is entitled to probate, though it does not dispose of any property, and there is no evidence of any previous testamentary papers.—*Goods of Hubbard*, Law Rep. 1 P. & D. 53.

5. A testator, by a paper purporting to be a codicil to his will, bequeathed the balance at his banker's to his wife. No will was found, though one had been in the testator's possession previous to the date of the codicil. *Held*, that the codicil was independent of the will, and should be admitted to probate till the will was found.—*Goods of Greig*, Law Rep. 1 P. & D. 72.

6. A will commencing, "In case of any fatal accident happening to me, being about to travel by railway," is not contingent on the event of the testator's death on such journey.—*Goods of Dobson*, Law Rep. 1 P. & D. 88.

7. A person in possession of land, without other title, has a devisable interest; and the heir of his devisee can maintain ejectment against one who has entered on the land, and cannot show title or possession prior to the testator.—*Asher* v. *Whitlock*, Law Rep. 1 Q. B. 1.

8. By a will before the Wills Act, A., who had purchased two undivided fourth parts of certain lands previously held in quarters, devised to M., without words of limitation, "all my undivided quarter of fields," describing them as in lease, for three lives. He had before devised his other "undivided quarter" to L. for life; and, on her death, to J., without words of limitation. *Held*, the devise to M. carried the fee.—*Manning* v. *Taylor*, Law Rep. 1 Ex. 235.

9. A testator who owned two manufactories, one on the west, and another, worth half as much, on the east side of H. Street, which had been for the thirty years previous to his death jointly occupied and used by his tenants at a single rent for the same manufacture, but which with certain alterations could be used separately, devised his "messuages, manufactory, &c., on the west side of H. Street, in the occupation of R. and A. and others, together with all rights and appurtenances to them belonging," to A. and W. R. and A. then occupied both manufactories. *Held*, that the manufactory on the east side did not pass under the devise.—*Smith* v. *Ridgway*, Law Rep. 1 Ex. 46.

10. A testatrix owned two adjoining houses and premises: one she occupied herself, in the yard belonging to which was a pump: the other had been for some time occupied by her tenant A.; and he, with her knowledge, had been accustomed to draw water from the pump, for the use of his house, there being no water supply on his premises. Under a devise of this house, "as now in the occupation of A.," the right to use the pump did not pass.—*Polden* v. *Bastard*, Law Rep. 1 Q. B. 156.

11. If, of two papers, each professing to be a last will, the later is only partly inconsistent

with the earlier, the earlier is only revoked as to those parts which are inconsistent, and both are entitled to probate.—*Lemage* v. *Goodban*, Law Rep. 1 P. & D. 57.

12. A declaration on oath received instead of an affidavit, in a probate proceeding, the person making it residing abroad where an affidavit could not be made.—*Goods of Lambert*, Law Rep. 1 P. & D. 138.

13. A will made in Scotland in the English form by a domiciled Scotch woman, invalid by the law of Scotland, but purporting to be made under a power, and disposing of property, in England, *held*, entitled to probate on the authority of *In the Goods of Alexander*, 29 L. J. (P. M. & A.) 93.—*Goods of Hallyburton*, Law Rep. 1 P. & D. 90.

14. An informal will contained in a letter by a naval surgeon, invalided at a foreign station, written at sea on board a steamship in which he was a passenger homewards on sick leave, is entitled to probate.—*Goods of Saunders*, Law Rep. 1 P & D. 16.

See Administration; Conflict of Laws; Executor; Frauds, Statute of, 1; Heir; Husband and Wife, 2; Legacy; Legatee; Power, 1, 2, 3; Probate; Witness.

Witness.

1. If an attesting witness, called by a party propounding a will, fails to prove its due execution, and such party then calls the other witness, who gives evidence against the will, that party may produce evidence to show the *animus* of said other witness.—*Coles* v. *Coles*, Law Rep. 1 P. & D. 70.

2. The evidence of an incompetent witness may be withdrawn from the jury on the incompetency appearing during the examination-in-chief, though he has been examined previously on the *voir dire*, and pronounced competent.—*The Queen* v. *Whitehead*, Law Rep. 1 C. C. 33.

3. If two prisoners, jointly indicted for felony, plead not guilty, but one only is given in charge to the jury, the other is an admissible witness, though his plea of not guilty remains on the record undisposed of.—*Winsor* v. *The Queen*, Law Rep. 1 Q. B. 390.

Words.

Driving, see Cattle; *Dwells*, see Domicile; *Issue*, see Legacy, 4, 5; *Minerals*, see Deed, 4; *Outgoings*, see Rent, 1; *Personal Representative*, see Legacy, 5; *Sewer*, see Watercourse, 2; *Share*, see Legacy, 6; *Sole Use*, see Separate Use; *Tenement*, see Rent, 2; *Unmarried*, see Legacy, 4.

REVIEWS.

The Municipal Manual for Upper Canada. By Robert A. Harrison, Esq., Barrister-at-Law, D.C.L., 1867. W. C. Chewett & Co., Toronto.

This valuable book, the first part of which was noticed some time ago, is now complete and ready for delivery, and is, we understand, being eagerly sought after by those interested in Municipal and Assessment matter. The delay in its issue, the Editor tells us in his preface, has been occasioned by a desire to make it as complete as possible. This, so far as a cursory glance will tell us, has been done, and we are glad to see that it is supplemented by a full and carefully prepared index. Want of space, however, forbids our giving any further review of the Manual in this issue.

W. D. A.

The American Review. Boston: Little, Brown & Co., 1867.

The second and third numbers have been received. This Review is establishing a reputation for itself, its articles being of a most interesting character. The Digest of American cases keeps us *au courant* with the American decisions. The digest of English reports we have used largely in preparing the digest of those cases of which we commenced the publication this year, whilst the concluding parts of each number, containing book notices, list of new law books, and summary of events, form an interesting record of legal matters on both sides of the water.

Godey's Lady's Book. Philadelphia, 1867.

The numbers of this enterprising and popular Magazine are duly received and fully appreciated by those who know more about its worth than we do. We are content, however, to take their word for it, and recommend it accordingly.

APPOINTMENTS TO OFFICE.

CORONERS.

ALEXANDER McKAY, of the Village of Beaverton, Esquire, M.D., to be an Associate Coroner for the County of Ontario. (Gazetted, March 30, 1867.)

WILLIAM WADE, of Cobourg, Esquire, M.D., to be an Associate Coroner for the United Counties of Northumberland and Durham. (Gazetted, March 30, 1867.)

HENRY YEAGHLEY, of the Town of Berlin, Esquire, M.D., to be an Associate Coroner for the County of Waterloo. (Gazetted, March 30, 1867.)

GEORGE WILLIAM SANDERSON, of Orillia, Esquire, M.D., to be an Associate Coroner for the County of Simcoe. (Gazetted, March 30, 1867.)