OCTOBER, 1895.

The Barrister.

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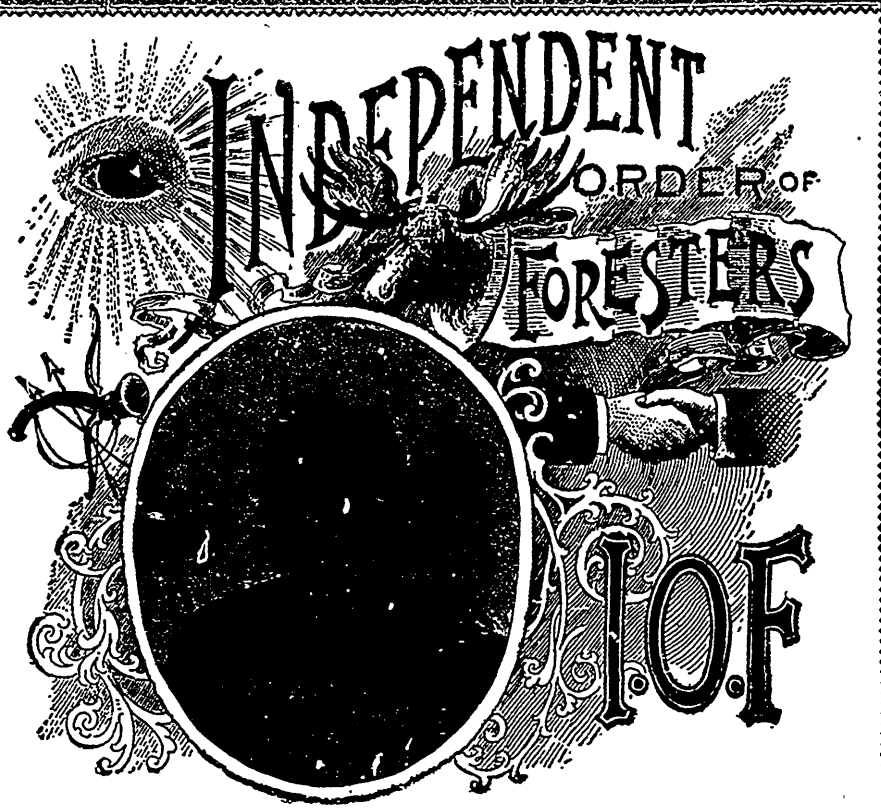

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EVERYBODY who knows anything about insurance acknowledges that the Independent Order of Foresters is far and away the **Best** Fraternal Benefit **society in the World.** It was founded in Newark, New Jersey, on the 17th June, 1874, and has spread all over the United States and Canada, and is rapidly spreading in Great Britain and elsewhere.

The Unexampled Progress and Prosperity of the Independent Order of Foresters is shown by the following figures:

	No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.		No. of Members.	Balance in Bank.
October, 1882	880	$ 1,145 07	January, 1888	7,811	$ 86,102 42	January, 1894	54,484	$858,857 89
January, 1883	1,184	2,769 58	January, 1889	11,611	117,599 88	February, "	55,149	875,860 06
January, 1884	2,216	13,070 85	January, 1890	17,026	188,130 86	March, "	56,559	876,230 08
January, 1885	2,558	20,992 30	January, 1891	24,466	283,967 20	April, "	58,339	911,620 93
January, 1886	3,648	31,052 52	January, 1892	32,303	408,798 18	May, "	59,607	928,707 04
January, 1887	5,804	60,325 02	January, 1893	43,924	580,597 85	June, "	61,000	951,571 62

Membership 1st July, 1894, about 61,000. Balance in Bank, $951,571.62.

The total number of applications considered by the Medical Board for the year ending 31st December, 1892, is 18,247, whom 17,028 were passed, and 1,219 rejected.

The cause of this unexampled prosperity and growth of the I. O. F. is due to the fact that its foundations have been laid on a **Solid Financial Basis,** and every department of the Order has been managed on business principles, thereby securing for all Foresters large and varied benefits at the lowest possible cost consistent with **Safety** and **Permanence.**

At date all Benefits have been paid within a few days of filing the claim papers, amounting in the aggregate to the princely sum of **Two Millions Two Hundred and Thirty-four Thousand Four Hundred and Twenty-four Dollars.** Notwithstanding the payment of this large sum, as well as all the management expenses, including large sums for planting the Order in New Territory, there remains the handsome cash balance in the treasury, as noted above, of the sum of **Nine Hundred and Fifty-one Thousand Five Hundred and Seventy-one Dollars and Sixty-two Cents.**

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FOR YOURSELF.—1. The fraternal and social privileges of the Order. 2. Free medical attendance. 3. Total and Permanent Disability of $500, $1,000, or $1,500. 4. A benefit for your old age of $100, $200, or $300 a year. 5. An Endowment Benefit, payable on reaching your expectation of life, of $1,000, $2,000, or $3,000. 6. Sick Benefits of $3 to $5 per week.

FOR YOUR FAMILY.—1. Funeral Benefit, $50. 2. Insurance Benefit of $1,000, $2,000, or $3,000.

The cost of admission to the Order in most Courts is only $7 to $9, according to the amount of insurance taken, besides medical examination fee, which is $1.50 if you are taking only $1,000 of insurance, and $2 if taking $2,000 or $3,000. **Agents wanted in Canada, the United States, and Great Britain and Ireland.**

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The Barrister.

VOL. I. TORONTO, OCTOBER, 1895. No. 11.

EDITORIAL.

EVERY lawyer in Canada should be a reader of the Barrister. It is furnished subscribers at the cost of publication—two dollars a year and is therefore within the means of everyone.

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WE invite all who desire to discuss any topic of interest to the profession to use the Barrister freely.

*

THE fight that is going on now in Montreal legal circles over the appointment of the Hon. J. J. Curran to a Superior Court Judgeship in the Montreal district, shows the ridiculous length that religion is carried to in this country, when it has come to the point that a man's qualifications for the Bench in Canada depends not on his legal qualifications but on the church he adheres to.

*

WE hope to refer in our next issue to the appointment of Mr. Désiré Girouard, Q.C., of Montreal Bar to the Bench of the Supreme Court. The appointment has met with universal approval from all parts of the Dominion.

THE FIRST ANNUAL NATIONAL CONVENTION OF COMMERCIAL LAWYERS.—On the 13th, 14th and 15th of August there was held in Detroit an important and highly successful convention, the gratifying result of which was the organization of a permanent association which will be a power to influence improved and uniform commercial legislation, better methods for the transaction of commercial law business, and to promote a pleasanter and more profitable relation among commercial lawyers themselves. Within recent years the commercial branch of the the practice has developed an importance second to that of no other. With lines of commerce traversing the country in a veritable net work, offering every facility and encouragement to the transaction of business between parties separated by hundreds and thousands of miles, a vast number of commercial clients are frequently rendered dependent upon the tact and energy of lawyers who devote themselves to such interests. Faith in humanity to the state of incurring the ordinary risks of credit in trade,

and dependence in a large measure upon the reputation and commercial ratings of the prospective buyer; are responsible for conditions so profitable to the commercial lawyer. The prevailing commercial law systems of the country, inevitably complex and varied, certainly contain elements of corruption a speedy eradication of which, it is to be hoped, may be accomplished by recourse to such heroic measures as may be deemed expedient. Precisely such an interchange of experiences and suggestions as was fostered by this first annual convention should afford a strong working basis for radical reform. Every portion of the country was well and ably represented at the convention. Enthusiasm and harmony characterized its deliberations throughout. Among the papers read and thoroughly discussed at the convention were the following: "Is the Draft System a Detriment or a Benefit to the Lawyer?" "Relation of the lawyer to the Business of Credit Reporting"; "The Lawyer and the Commercial Agency"; "What can this Convention do to Elevate the Standard and Improve the Conditions of the Commercial Law Business?"; "The Best Office System for Handling Claims"; "Co-operative Organizations of Lawyers and the Effect of the same upon the Commercial Law Business"; "Bankruptcy Legislation"; "Diversity in Commercial Laws and the Remedy." A permanent organization having been effected, officers for the ensuing year elected as follows: President, William C. Sprague of Detroit; Corresponding Secretary, George S. Hull of Buffalo; Recording Secretary.

*

are glad to note that the idea of a Provincial Bar Association is being favourably spoken of by members of the profession in all parts of the province. And we are almost daily in receipt of communication from members of the profession commending the formation of such an Association to more thoroughly advance and guard the interests of the profession.

*

THE association of members of the bar has a higher purpose, however, than is possible for any organization which, as in most cases, has for its sole object the protection of the interests of the trade, class or profession, in that it cultivates a broader and more liberal spirit in its effort to improve the science of jurisprudence in the interest and for the benefit of the people of the state. While the line of differeniation is not sharply drawn, yet the aims of such an association divide themselves into two classes: First, the oversight and the care of the education of the prospective lawyer, previous to his admission to practice, and the creation and the maintenance of such a standard in the bar as shall tend to uphold the honor and dignity of the profession; having, as a subordinate and secondary aim, the cultivation of social intercourse among the members, and perpetuation of the memory of those who have passed over to the majority. This may be termed the relation which the association holds

towards the profession; second, the more important duty which lawyers, as members of the association, owe to and undertake to perform toward the public is, by way of revision and repeal of unwise, and improvident and obsolete laws, through appropriate legislation; the prevention of ill-considered, hasty, careless and vicious legislation so far as practicable under existing conditions, and the exercise of care and watchfulness over the administration of law by duly constituted tribunals.—Extract from an address to the Pa. Bar Association. —On the Purpose of Bar Association.

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THE term of office of the present Benchers of the Law Society of Upper Canada expires at the close of Easter term, 1896. The next election of Benchers will take place on Thursday April 6th, 1896. The Benchers are thirty in number and are chosen by ballot by members of the Bar of Ontario for a term of five years. Vacancies during the term are filled by the remaining Benchers. The Treasurer is President of the Society and is elected annually, on the first day of Easter term. Two well known Toronto firms contain 6 Benchers, or one-sixth of the elected number. We expect to see some new men elected in the next contest. The result of the election will no doubt be watched with interest by the profession.

*

THE young lawyer who reads what Mr. Greenleaf says about cross-examination in eliciting the truth and confounding the false witness, braces himself for the contest and plunges with vigour into the cross-examination. He makes the witness retrace all the ground he has gone over, so as to catch him in slight variations. He thrusts at him unimportant papers and asks him to explain trifling inconsistencies. He tries the witness's temper and tries his own, gets both the witness and himself into a perspiration, and finishes his storm of chops and tomato sauce with the consciousness, if he be a pretty shrewd fellow, that he has made the witness' story more emphatic, emphasized the point in it which hurt most, and altogether done his side of the case about as much damage as if he had himself introduced two or three additional adverse witnesses. The old practitioner, who has been there before, asks the witness a few unimportant questions, confining himself as nearly as he decently can to drawing out the witness' opinion on the weather and state of the crops, and finishes with the pleasing thought that he has disappointed his adversary, who expected the cross-examination of that witness to bring out a number of matters about which the witness could not be asked in chief. Cross-examination is a great thing, and, if employed in the proper place and with the proper witness, is productive of excellent results. The fundamental and most important canon, however, in the science of cross-examination is: Do not cross-examine the wrong witness.—*West Virginia Bar.*

DURING the next year, we presume, steps will be inaugurated for the decennial revision of the statutes of

Ontario, and it may be worth considering whether it would not be an improvement on previous revisions if the revisers were to introduce into the margin notes of cases bearing upon some of the statutes which have come up for judicial construction. Such notes, if carefully and judiciously made, would, we believe, prove an immense boon to the profession. The task of annotating as a whole is too big a one for any private enterprise, and it is doubtful whether it is a work which could be made remunerative. It is, therefore, almost hopeless to look to that source for what we suggest. We do not, of course, mean that any legislative sanction should be in any way given, or be deemed to be given, to the cases which might be cited; but merely that the citations should be given as a matter of convenience and for facility of reference. Whether the names of cases alone should be inserted, or whether any attempt to give their purport should be added, is a matter for deliberation; but even the names of cases alone, without any other note or comment, would be exceedingly useful, and would prove a great saver of time; but if a short, pithy, and accurate statement of their purport and effect could also be given, that would be still better. Some of the statutes have been already copiously annotated; for instance, the Judicature Act, the Municipal Act, the Registry Act, etc. Wherever private enterprise has undertaken the work of annotation, it would probably be better in the public interest not to interfere with it. At any rate, it is obvious that the mass of cases illustrating such Acts as those just mentioned is so large that to attempt to cite them would necessitate a much greater amount of space than it would be desirable to devote to it in the Revised Statutes. The annotations such as we suggest ought not very greatly to increase the bulk.—*Canada Law Journal.*

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It would be well if statutes were passed at intervals designed to clean up important points left uncertain by judicial decisions on statutes.

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Law in our Colleges.—There is a growing impression that the regular college course ought to include *some* law; and the number of colleges which have commenced to furnish such instruction appears to be steadily increasing. Of course, in most every institution desiring to attempt this, two questions must be considered:—What is most needed? What can our present resources supply? The first objective point is to make a beginning. The beginning need not be large; it it is only necessary that it be useful. If useful it will grow of itself. What then is most needed? All our readers will probably agree that one need of the college student is a college-taught knowledge of the rights and duties of citizens. Every citizen learns from common life some truth and some error on this subject, in a haphazard, fragmentary way. If the false conceptions, and the demoralizing object-lessons of which common life is full mislead him, it is because he has not been systematically instructed in a few

great controlling principles of human welfare as affected by political and legal conditions. Good progress has been made in introducing instructions in Political Science, and to some extent in Constitutional Law; but the Principles of Law, which a citizen ought to have some knowledge of for his own right guidance in common life, have as yet been little taught. Respect for law in the minds of our people at large cannot always rest on force. It must be supported by the appreciation of *Reasonableness* and the *Usefulness* of Law. The citizen at large does not need to acquire a technical knowledge of any branch of law,—not even of the law affecting his own business. But it is of great importance to the State that all its educated citizens should have sufficient knowledge *about* the law to understand what it is, its reasonableness, and the method of its growth and improvement, and its necessity to secure our prosperity and progress. It is not the details of the law itself that he needs for their own sake in his vocation, that should be offered him, but a knowledge of these qualities of law; and almost any branch of law, whether it has or has not any relation to a man's vocation or purposes is capable of being so explained as to manifest the true function and value of law as a condition of human progress. This the college ought, in some degree and by some method, to include in the equipment of every educated man, for intelligent life is a free republic.—*University Law Review.*

LIMBS OF THE LAW.—Lord Bramwell himself records how he turned a losing into a winning case at the outset of his career by taking a point which his leader, a man of slower apprehension, had missed. He expected that this signal success would have resulted in an immediate influx of heavy cases into his chambers. But no such inrush of business followed. The solicitors soon found him out, however, and the tide of work, when it once set in, knew no ebb. On the Bench, Bramwell was great in criminal and in commercial cases. As a criminal administrator he was, in the eloquent language of Sir Henry James, "the hope of all that suffered and the dread of all that did wrong." He shared Sir Henry Hawkins' settled antipathy to the doctrine that crime is simply a kind of diseased or abnormal development from social conditions; the very name of moral insanity operated upon him as an irritant, and both on the Bench and in periodical literature (*Nineteenth Century*, 1885-6) he often "went for" the fraternity of "mad doctors" with considerably more vigor than politeness To him is attributed the well-known reply to a counsel who urged that his client was suffering from the disease kleptomania, "That is a disease which I am here to cure;" and whether this is so or not, he certainly defined "an irresistible criminal impulse" as a criminal impulse not resisted, and loved to ask expert witnesses whether criminals alleged to be moral lunatics would have perpetrated their offences

"in the presence of a policeman."—*The Brief*, Eng.

*

LORD ESHER.—On the 13th August the Master of the Rolls, the Rt. Hon. Lord Esher, who is the oldest judge on the Bench, attained his 80th birthday, having been born at Lenham, in Kent, on August 13th, 1815. The learned judge was educated at Westminster and Caius College, Cambridge, was called to the Bar at Lincoln's Inn in January, 1846, and was created a Queen's Counsel in 1860. He was appointed Solicitor-General in February, 1868, and was made a judge of the Common Pleas in August of the same year; he was appointed a Lord Justice of Appeal in November, 1876, and in April, 1883, was promoted to the high office of Master of the Rolls. He is a good judge, but many persons would be pleased to know that he contemplated retirement.

*

IRRITABLE JUDGES.—It must irritate a judge, says the editor of the *Green Bag*, to hear counsel pretending to quarrel, knowing that it is merely Pickwickian, and that they will drink together most amicably at recess. It must irritate a judge to hear counsel floundering awkwardly in some matter with which he happens to have been perfectly familiar before said counsel was born. It must irritate a judge to hear counsel cite such-and-such a case as the "leading case," when he knows that it is founded on a case of his own twenty years earlier. It must irritate a judge to be cautioned how he decides this case —that the eyes of the community, and particularly of the counsel, are upon him. It must irritate a judge to have to listen hour after hour, and day after day, and year after year to interminable beatings of the same old straw. And so on *ad infinitum*. But the Bench has certain opportunities for vengance. Thus Mr. O'Connor, who was too apt to lecture the Court, and caution them about the awful consequences of deciding against his view of the law—which, of course, in the nature of things, must always have been the right view —irritated the Court of Appeals (or at least Judge Allen) in the famous Tweed case about cumulative sentences, and Judge Allen irritated that great lawyer a great deal more by quoting from a former argument of his in another case to the direct contrary, and adopting that as the infallible rule of law. Mr. O'Connor would not speak to the Court as they passed by for a long, long time. We must not be too hard upon our judges. They are not angels, not even Jobs. Frequently when they appear impatient, and are really irritated, it is because of a manifest waste of public time by unwise counsel. It may be that in the multitude of counsel there is safety; there certainly is tediousness. As we generally kick our judges up to the Bench in order to get rid of their rivalry at the Bar, and divide their business, we should be very long-suffering with them. If poets and judges are an *irritable genus*, we must put up with them patiently.—*The Brief*, England.

CURRENT ENGLISH CASES.

WILMER v. MCNAMARA, (1895) 2 Ch. 245; 13 R. June 127, was an action by a shareholder against a joint stock company to restrain the declaration of a dividend. By the articles of association no dividend was to be paid except out of profits. The property in which the capital of the company was authorized to be invested was of a wasting character, and, on taking the yearly accounts, it appeared that the assets of the company, including the good will, fell short of the paid-up capital by about £43,000; but the profit and loss account for the same year showed a profit to have been made of £5,816, which the company proposed to apply in payment of a dividend. The plaintiff contended that no dividend could be declared until the depreciation in the capital had been made good; but following Verner v General and Commercial Investment Trust, (1894) 2 Ch. 239, Stirling, J., held that the dividend might lawfully be paid, and that the depreciation in the value of the good will of the business of a company is to be treated as a loss of "fixed" capital, and not of "floating or circulating capital."

BISHOP v. Smyrna & Cassaba Ry. Co., (1895) 2 Ch. 265; 13 R. July 159, is another case on the question of company law. At the time of a joint stock company going into voluntary winding up a sum was standing to the credit of its revenue account representing profits previously earned, but not distributed. The present action was brought by a preference shareholder claiming, on behalf of himself and others of the same class, that this sum should be applied in payment of a dividend to the preference shareholders, and not treated merely as ordinary assets in the liquidation. The contest was between the preference and ordinary shareholders, and, as between them, Kekewich, J., held that the claim of the former must prevail, and that the fund in question was applicable to the payment of the preference dividends, rather than to the payment of a deficit on the capital account.

IN Lynde v. Waitham, (1895) 2 Q.B. 180; 14 R, Aug. 227, the action was brought to recover a mortgage debt, and the demand was specially indorsed. The mortgage deed contained a power enabling the mortgagee to appoint a receiver of the rents and profits, which had been done before action. The plaintiff applied for an order for speedy judgment under Ord. xiv. (Ont. Rule 739), and the Court of Appeal (Lord Esher, M. R., and Kay and Smith, L.JJ.), although holding that fact of a receiver having been appointed did not prevent the court from making an order for judgment under Ord. xiv., yet held that, as there appeared to be a *bona fide* dispute as to the state of the account, the defendant should have leave to defend.

CHATTERTON v. Secretary of State for India, (1895) 2 Q.B. 180; 14 R. Aug. 232, was an action for libel, contained in a communication made by the Secretary of State for India to an under-secretary, reflecting on the plaintiff. The action, on the filing of the statement of claim, was, on the defendant's application, dismissed as vexatious, and the Court of Appeal (Lord Esher, M. R., and Kay and Smith, L.JJ.) upheld the order, holding that the communication was absolutely privileged, and that it was not competent for the court to entertain the action at all, or to inquire whether or not the defendant acted maliciously.

IN Downes v. Johnson, (1895) 2 Q.B. 203; 15 R. Aug. 276, an appeal was brought from the decision of a magistrate refusing to convict the respondent of a breach of the Betting Act (see Cr. Code, s. 197). The evidence disclosed that the place where the alleged offence took place was a *bona fide* club, and that the respondent was a member of the club, and had betted with other members who resorted to the club, and it was held that this was not an offence against the Act.

IN Loftus v. Heriot (1895) 2 Q.B. 212; 14 R. Aug. 238, the Court of appeal

(Lord Esher, M. R., and Kay and Smith, L.JJ.) have determined, following their decision in Hood Barrs v. Cathcart, (1884) 2 Q.B. 559 (noted *ante* vol. 30, p. 678), that where a married woman is entitled to property subject to a restraint against anticipation the arrears of income which have accrued, but have not been paid to her when judgment is recovered against her, cannot be made exigible to answer the judgment. The effect of these decisions is that where there is property subject to a restraint against anticipation, there is no means for a judgment creditor of the wife making it available in execution, no matter when the income accrues. The restraint is good, and protects the fund from the creditor until it actually reaches the hand of the married woman. Whether it could even then be seized by the sheriff remains yet to be determined.

*

In Greatorex v. Shackle, (1895) 2 Q.B. 249; 15 R. Sept. 195, the question was raised whether an interpleader could properly be granted under the following circumstances: The plaintiffs, who were auctioneers, sued the defendant for £35 12s. agreed commission for the sale of a house. A second firm of auctioneers also claimed £25 from the defendant for commission in respect of the same sale of the same house. The Division Court (Wills and Wright, JJ.) were of opinion that it was not proper for an interpleader.

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Brace v. Calder, (1895) 2 Q.B. 253; 14 R. Aug. 201, was an action by a servant for wrongful dismissal. The facts of the case were the plaintiff had been employed by a partnership consisting of four members as manager of a branch of their business for a certain period. Before the expiration of this period two of the partners retired, and the business was transferred to and carried on by the other two partners, who were willing to employ the plaintiff on the same terms as before for the remainder of the period, but he declined to serve them. Wright. J., held at the trial that the dissolution of the firm did not operate as a dismissal of the plaintiff, and he therefore dismissed the action; but on appeal a majority of the Court of Appeal (Lopes and Rigby, L.JJ.) held (Lord Esher, M.R., dissenting) that the dissolution of the firm did operate as a dismissal of the plaintiff, or a breach of the contract to employ him for the specified period: but under the circumstances he was only entitled to nominal damages. The appeal was therefore allowed, but without costs of the appeal or in the court below. It appeared that the plaintiff had actually served the defendant for a period of two months beyond the date up to which he had been paid, for which he was entitled to recover £50; but as he had not stated his case in that way, but had claimed for the full unexpired period, the Court of Appeal held that he could not even get the lesser relief, because if he had confined his claim to the £50 the defendants might have paid the money into court and avoided further litigation; but that hardly seems a reasonable or satisfactory way of disposing of the case, or one that is in accordance with the spirit of the Judicature Act.

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Clutton v. Attenborough, (1895) 2 Q.B. 306, was a case arising under the Bills of Exchange Act. A clerk of the plaintiffs had procured the plaintiffs to sign a number of cheques in favor of "George Brett," whom the clerk represented to be a person who had done work for the plaintiffs. There was, in fact, no such person as George Brett, and no work had, in fact, been done by anybody as represented by the clerk, who forged the name of George Brett and negotiated the cheques with the defendant, who obtained payment thereof. The plaintiffs claimed to recover the amount of these cheques from the defendant as money paid under a mistake of fact. Wills, J., however, who tried the action, held that the plaintiffs could not recover on the ground that the payee was a "fictitious or non-existing person" within the meaning of s. 7, s-s. 3 (see Vict., c. 33, s. 7, s-s. 3 (D.), and, therefore, the cheque was, under that section, payable to bearer; and the fact that the plaintiffs were

ignorant that the payee was a fictitious or non-existing person was held to be immaterial.

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In Robb v. Green, (1895) 2 Q.B, 315; 14 R. Sept. 184, the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) have affirmed the judgment of Hawkins, J., (1895) 2 Q.B., p. 1 the court holding that, even where there is a written contract of service, which is silent on the point, there is, nevertheless, an implied stipulation that the servant will act with good faith towards his master, and the defendant's conduct complained of amounted to a breach of that stipulation.

*

The Jacob Christensen, (1895) p. 281, although an Admiralty case, may be referred to with utility, as Bruce, J., there held that a third party notice cannot be properly served except when the claim for indemnity or contribution arises out of a contract, express or implied, and that the Rules do not authorize the service of a notice merely because, in the event of the plaintiff being found entitled to recover against the defendant, the latter may have a right of action against the person proposed to be made a third party. (See Ontario Rule 328).

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In Huddersfield Banking Co. v. Lister, (1895) 2 Ch. 273; 12 R. July 107, the action was brought, among other things, to set aside a consent order on the ground of a common mistake. Williams, J., before whom the action was tried, was of opinion that the court has jurisdiction to set aside a consent order upon any ground that would warrant the setting aside of an agreement, and being of opinion that there had been a mistake of fact common on both parties he set the order in question aside, but without prejudice to the interests of third parties, and this order was affirmed by the Court of Appeal (Lindley, Lopes, and Kay, L JJ.) We notice that according to the judgment of Williams, J., a previous motion in the action in which the consent order had been made to set it aside on the same grounds had been unsuccessful.

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Portsea Building Society v. Barclay, (1895) 2 Ch. 298; 12 R. July 100, is an appeal from the decision of Romer, J., (1894) 3 Ch. 86. The plaintiffs were a building society having power to lend upon first mortgages only. They had lent £17,000 upon a first mortgage to one house. The society's borrowing powers being exhausted, and, it having need of money, it was arranged between the house and defendants and the plaintiffs that the defendants should advance house £6,000 upon the security of the property covered by the plaintiffs' mortgage, which should be applied on the plaintiffs' mortgage debt, and that the plaintiffs should consent to the defendants having priority for the mortgaged property to the extent of the amount so advanced. Conveyances to carry out this arrangement were accordingly executed; but it was held by Romer, J., that the attempt thus to be give the defendants priority was practically making the plaintiffs' security for the residue of their claim a second mortgage, and that therefore it was *ultra vires* of the company and void. The decision the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) have affirmed, and the defendants are also held disentitled to be subrogated to the plaintiffs or allowed to stand on an equal footing with them as to their £6,000 advances; or to have any terms whatever imposed on the plaintiffs. The doctrine of subrogation laid down in *re* Cork & Youghal Ry., L.R. 4 Chy. 748, was held not to be applicable because the loan of the defendants was to house and not to the plaintiffs.

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In *re* Woodin, Woodin v. Glass, (1895) 2 Ch. 309; 12 R. July 78, a testator had given certain leasehold property to trustees upon trust to pay the income to his daughter for life, and after her death upon trust to pay or transfer the same to her children in equal shares, the shares of sons to be vested at twenty-one, and of daughters at twenty-one or marriage. The testator made other specific bequests, and then gave his

residuary estate upon certain trusts for his children. The daughter having died leaving infant children, the question was whether the income of the leasehold estate specifically bequeathed which should accrue between her death and the vesting of the shares of her children could be applied for the maintenance of the latter. North, J., conceiving himself bound by Turneaux v. Rucker, W.N. (1879) 135, held that the infants were not entitled to the income for their maintenance, but that it fell into the residuary estate; but the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) revised this decision, and expressed their disapproval of cases imperfectly reported in the Weekly Notes being relied on as authorities, especially when opposed to reported cases. The fact that the fund had been severed from the rest of the testator's personal estate was held to carry the interest accruing between the death of the tenant for life and the vesting in the remainderman.

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In Taunton v. Sherifi of Warwickshire, (1895) 2 Ch. 318, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) hold that where a sale of the goods of a company under execution is stayed, by the deposit with the sheriff of a sum sufficient to satisfy the execution by persons claiming the goods under a lien created by debentures of which they were holders, and in whose favor a receiver had been appointed, and which deposit is accompanied by a notice of their claim and a protest against the goods being sold under the execution, they, the debenture-holders and not the execution creditor, are entitled to the money so deposited, on the debenture-holders subsequently establishing their claim to the goods seized.

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In Shelfer v. City of London Electric Lighting Co., (1895) 2 Ch. 388; 12 R. Sept. 83, the Court of Appeal had varied a judgment directing an inquiry as to damages occasioned by a nuisance, and had granted an injunction, but suspended its operation for a certain time. The defendants desired to obtain a suspension of the injunction for a further period, and applied to Kekewich, J., who doubted whether he had jurisdiction; the application was then made to the Court of Appeal, who granted, but in doing so intimated that Kekewich, J., could entertain the motion.

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In Chastey v. Ackland, (1895) 2 Ch. 389; 12 R. Sept. 62, the defendant had erected on his premises a building which had the effect of preventing the free access of air to the plaintiffs' premises, and, in consequence, the effluvia from a urinal in the neighborhood of the plaintiffs' premises and from the closets of their own premises were not so effectually carried off as prior to the erection of the defendant's building. Cave, J., granted an injunction to remove the building; but the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) were unanimously of opinion that, in the absence of contact, or proof of immemorial user, the erection in question gave no right of action, and the decision of Cave, J., was reversed.

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Robb v. Green, 2 Q. B. 1 and 315, July 1895.—The defendant being employed by the plaintiff to manage his business, and having access in the course of his duties to his master's books, secretly copied from the order book a list of the names and addresses of the customers, with the intention of using it in soliciting orders from them after he had left the plaintiff's employ. Subsequently, his services with the plaintiff having terminated, the defendant did use the list so obtained, while employed by another in a business similar to that of the plaintiff. The plaintiff applied for an injunction restraining the defendant from the use of the list and requiring him to deliver it up to the plaintiff for destruction, and also for damages done to his business by the defendant's solicitation from the list. All of these requests were granted, and it was held by Hawkins, J., that it was an implied term of the contract of service that the defendant would not use, to the detriment of the plaintiff, information to which he had access in the course of the

service, and, therefore, that the defendant was liable in damages for any loss caused to the plaintiff by reason of the breach of that term. In the Court of Appeal (affirming the above) it was held that it was an implied term of the contract of service that the servant would observe good faith towards his master during the existence of the confidential relation between them, and that the defendant's conduct was a breach of that contract in respect of which the plaintiff was entitled to damages and injunction.

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LLOYD v. Nowell.—W. N., 132; 99 L. T., 335; 30 L. J., 473.—Specific Performance. — Statute of Frauds. — By memorandum signed by both parties Lloyd agreed to sell a leasehold house to Nowell "subject to the preparation by my (vendor's) solicitor and completion of a formal contract"; the memorandum fixed the price and date for completion, and Nowell paid a deposit. The memorandum was dated in November, 1894, and the completion was to be on 1st January, 1895. No formal contract was ever prepared. The vendor sued for specific performance. Held, that the above quoted words were not a condition in favor of the vendor only which he could waive; that there was no memorandum in writing under the Statue of Frauds; and that the action failed. (Kekewich, J.)

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THE recent notable decision of the Supreme Court of the United States in Primrose v. West. Union Tel. Co, 154 U. S. 1, sustaining the validity of the conditions contained in the telegraph blanks that to incur liability for failure the message must be repeated at additional cost (a decision which had overruled or will probably lead to the overruling of many cases in the State Courts which have imposed a stricter liability upon such companies) has been followed by the decision of the Supreme Court of Michigan in Birkett v. Western Union Tel. Co., 61 N. W. Rep. 645, holding that where the writer of the message has accepted that condition by signing his message on such a blank he cannot recover on the ground that the delay would have occurred even if the message had been repeated; so that failure to repeat is fatal even though it had no relation to the company's delay in delivering.

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MANCHESTER TRUST v. Furness Withy & Co., W. N., 124; 99 L. T., 333; 30 L. S., 470.—Principal and Agent.—Liability of owner of chartered ship on bill of lading signed by master.—A let his ship to B by the ordinary form of a time charter where possession is retained by the owner, but with a special clause that "the captain and crew, though paid by the owners, shall be the agents and servants of the charterers for all purposes under this charter; and in signing bills of lading the master shall only do so as agents for the charterers, who shall indemnify the owners from all liabilities that may arise from the master signing bills of lading." B shipped a cargo of coal, and the master signed bills of lading for delivery at Rio and handed them to B. Then B. induced the master to sail to Buenos Ayres on his assurance that the coal was B's, and the bills of lading should be sent to that port. Next B. endorsed the bills of lading to a bank for a loan of £3,217, and the bank sent to their agents at Rio. B's agent at Buenos Ayres told the master he had the bills of lading, and the coal was then delivered to him without production of the bills of lading, and B sold it and received the price, and then stopped the payment. The bank sued A for their loss on the ground that it arose from the master delivering the coal without the bills of lading, and he was A's agent. Held, that A was liable to the bank—for A had retained possession and control of the ship, and the master was consequently A's agent and not B's; and the special clause in the charter party, though good as between A and B, had no operation against third parties who had no notice of it. (Court of Appeal, affirming Mathew, J.)

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Re London and New York Investment Corporation Limited, W. N., 122; 99 L. T., 334.—Company.—Reduction of Capital.—If paid-up capital is distributed

into preference, ordinary, and founders' shares, and so much of the capital has been lost as to make a reduction necessary in order to pay a dividend, the loss should properly fall on the shareholders who would bear it in a winding-up—*i.e.*, first on the holders of founders' shares, and, secondly, on the holders of ordinary shares, and not rateably on all shares in the company. (Sterling, J.)

OWNERS of Cargo ex Maori King v. Hughes, W. N., 127; 99 L. T., 334; 39 S. J., 688.—Implied term in contract.—*When frozen meat is shipped for transport*, the law implies a condition in the bill of lading that at the moment when the ship starts she has refrigerating machinery which is fit to carry the frozen meat to its port of destination. (Court of Appeal, *affirming Mathew J.*)

SUPREME COURT OF CANADA.

SCOTTEN v. Barthel—Ontario—6th May,— 1895.—Deed—Description—Evidence—Patent ambiguity—Res magis valeat quam pereat—Verba fortius accipiuntur contra proferentem Intention of parties. Land was conveyed by the following description.—"All that certain tract or parcel of land situate, etc., being part of lot 43 . . . commencing in the southerly limit of said lot 43, to a distance of 20 ft. from the water's edge of the Detroit river, thence northerly parallel to the water's edge 208 feet, thence westerly parallel to the water's edge 600 feet, more or less to the channel bank of the Detroit river, thence southerly following the channel bank 208 feet, thence easterly 600 feet more or less to the place of beginning." In an action of ejectment for land alleged to be covered by this description, in which the point of commencement was difficult to ascertain:—Held, reversing the decision of the Court of Appeal, 21 A.R. 569; KING, J., dissenting, that the construction of the description did not depend upon the terms of the patent of lot 43; that it must be construed by the terms of the instrument alone, read in the light of surrounding circumstances tending to explain it, even if such construction should make the grantor purport to convey more than he had title to; that the maxim *res magis valeat quam pereat* does not authorize a construction contrary to the plain interior of the parties; and that the maxim *verba fortius accipiuntur contra proferentem* cannot be applied to explain away a patent ambiguity.

EVANS v. King.—Will—Construction—Devise for life—Remainder to issue "to hold in fee simple"—Shelley's case—Intention of testator. A testator by the third clause of his will devised lands "to my son James for the full term of his natural life, and from and after his decease, to the lawful issue of my said son James to hold in fee simple." The will then provided that in default of issue the lands should go to a daughter for life, with a like reversion to issue, failing which to brothers and sisters and their heirs. A later clause was as follows:—"It is my intention that upon the decease of either of my said children without issue, if my other child be then dead, the issue of such latter child, if any, shall at once take the fee simple of the devise mentioned in the third clause of this my will." Held, affirming the decision of the Court of Appeal, 21 A.R. 519, Occ. N. 369, that if the limitation had been to the heirs general of the issue, the son James would have taken an estate tail according to the rule in Shelly's case; that the word "issue," though *prima facie* a word of limitation and equivalent to "heirs of the body," is a more flexible term than the latter and more readily diverted, by force of the context or superadded by limitations, from its *prima facie* meaning; that the expression "to hold in fee simple" is one of known legal import, admitting of no secondary or alternative meaning, and must prevail over the fluctuating word "issue;" and that effect must be given to the manifest intention of the testator that the issue were to take a fee.

CHATHAM National Bank v. McKeen —Company—Winding-up—Sale of assets by liquidation to director—R. S. C. c. 129, s. 34. As soon as a winding-up order against a company is made under the Dominion Winding-up Act, the relations between the directors and the company or its shareholders are at an end, and a sale by the liquidator of the property of the company to a director is valid.

ONTARIO CASES.

THOMPSON v. Grand Trunk Railway Company of Canada.—Cattle are "at large" within the meaning of S. 271 of 51 Vic., C. 29 (D.), when the herdsman, in following one of the herd that has strayed, gets so far from the main body that he is unable to reach them in time to drive them over a crossing when he sees a train approaching. The question whether cattle are at large or not need not, under all circumstances, be submitted to the jury, if the case is being tried before one. The judge is entitled to hold that there is no evidence that the plaintiff is not within the prohibition of the Act. Judgment of the County Court of Wentworth affirmed.

BROWN v. Lennox.—Where a lease containing a covenant against assignment, without the consent of the lessors, is so assigned, the assignment containing a covenant by the assignee to pay the rent and indemnify the assignor, and the assignee goes into possession of the demised premises, he is bound by his covenant, and is liable, notwithstanding the non assent of the lessors, to repay to the assignor rent accruing due after the assignment, paid by the assignor to the lessors under threat of legal proceedings. Judgment of the County Court of York reversed.

FIELD v. Hart.—An execution debtor can do as he pleases with the statutory exemptions, and his execution creditor cannot take advantage of the fact that they are insufficiently described in a bill of sale thereof by the execution debtor. Where in an interpleader issue the claimant alleges that the goods seized include the statutory exemptions, that is a question for trial in the issue, and is not to be left to the sheriff to deal with. Judgment of the County Court of Ontario reversed. "One piano, Dominion make, number 2773," is a sufficient description in a bill of sale. Judgment of the County Court of Ontario affirmed.

COMMON PLEAS DIVISION.

BROUGHTON v. the Township of Grey. —Divisional Court.—Where a township municipality has passed a by-law, purporting to be under sec. 585 of the Consolidated Municipal Act, 1892, for the purpose of making certain alterations and improvements in a drain, and has served an adjoining municipality, which is to be benefited by the work, with a copy of the engineer's report, etc., showing the sum required to be contributed by the latter, as directed by sec. 679; and the by-law of the initiating township is, as a fact, irregular and invalid; held, per Meredith, C.J., the contributory township is, nevertheless, not only entitled, but bound, within the four months prescribed by sec. 680, to pass the necessary by-law to raise their share of the estimated cost. Held, per Rose, J., the contributory township cannot be required to pass a by-law raising its shares till the initiating municipality has passed a valid by-law adopting the report providing for the doing of the work, including the raising of its proportion of the funds. But in this case the portion of the by-law of the initiating township adopting the engineer's report and directing the construction of the work might properly have been sustained on motion to quash by a

ratepayer of that township, and an order quashing have been confined to the portion providing for raising the funds, as to which an amending by-law might have passed; and, therefore, the contributory township might well proceed, relying on the good faith of the initiating township to make all necessary amendments. Per MacMahon, J. The contributory township had no power to pass a by-law for raising its share of the proposed expenditure until the initiating municipality had passed its by-law for the construction of the works.

PRACTICE.

RICE v. Kinghorn.—Rose, J.—Where a defendant on a mortgage action desires only to dispute the amount claimed, but, instead of giving the notice referred to in Rule 718 (1348), enters an appearance in which he disputes the amount, judgment cannot be entered on *præcipe*; a motion to the court becomes necessary, and the defendant so appearing must pay the additional costs of it. See Rule 718 (1340).

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CHAMBERS v. Kitchen. — Court of Appeal.—Order and decision of Street, J., 16 P.R., 219, refusing to set aside order of revivor, affirmed. See Rule 822.

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IN *re* Ball v. Bell.—Queens enchB Division.—The Division Court, 13th June, 1895. — Prohibition — Division Court—Mortgage—Contract of obligation to indemnify against—Action for interest only—Dividing cause of action—R. S. O. c. 51, s. 77. Where the plaintiff conveyed land to the defendant subject to a mortgage, and after maturity of the mortgage paid the mortgagee two years of interest accruing since maturity, which he sought to recover from the defendant by action in a Division Court:—Held, reversing the decision of Armour, C. J., 26 O. R. 122, *ante* p. 102, that there was no splitting of the cause of action within s. 77 of the Division Courts Act, R. S. O. c. 51, and therefore the action was maintainable.

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KENNEDY v. Rerrick. — Mortgage — Covenant of indemnity—Assignment of —Agreement by assignee to release assignor on obtaining judgment—Effect of C., as security for a loan of $7,000, mortgaged a number of lots to A., the mortgage containing a provision for the release of part of mortgaged premises upon payment of a proportionate part of the mortgage money. C. conveyed his equity of redemption to D., who assumed the mortgage and agreed to indemnify C. against it. D. conveyed his equity of redemption in half of the lots to the defendant, subject to half of the mortgage, and subject to the half of another mortgage on the lots, the defendant agreeing to assume the half of such mortgages, and to indemnify D. against the same. A. assigned the mortgage to the plaintiff, reciting that it had been reduced to $3,500, and conveyed the land therein contained, save and except the part released. C. assigned to the plaintiff D.'s covenant of indemnity, D. agreeing to release C. from his liability upon obtaining judgment against the defendant on his covenant, but such release was not to prejudice any rights the plaintiff might have against any parties through whom C. might claim or who might claim through him. D. also assigned to the plaintiff all his right under the defendant's covenant of indemnity, the plaintiff by deed agreeing to release D. on his obtaining judgment against the defendant. Held, that the plaintiff's agreement to release C. and D. upon obtaining judgment against the defendant in no way interfered with the right to recover such judgment.

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SCARLETT v. Nattress. — Mortgage — Action on covenant—Release — Assignment. The plaintiffs and their father

J., being the owners of certain land, in 1889 entered into partnership for the manufacture of brick on the north-east corner of the land. A part of the land had been subdivided, and two of the lots sold to the defendant, who gave back separate mortgages for the unpaid purchase money. On 8th February, 1890, the defendant sold these two lots to S., subject to the mortgages thereon. By a deed dated 1st July, 1890, S. sold these lots to J., subject to the mortgages, which J. covenanted to pay off. By an agreement dated 8th July, 1890, the plaintiffs and J. assigned to a loan company certain mortgages on the subdivision lots. The mortgages so assigned comprised J.'s share of a number of mortgages given to the plaintiffs and J. by purchasers of such subdivision lots, according to a division thereof made between the plaintiffs and J., while the mortgages taken by the plaintiffs as their share include those on the two lots. Notwithstanding the fact of the dates of S.'s deed and the loan company's assignment, the latter was prior in point of time. On the 11th August J. assigned to the plaintiffs all his interests in the two mortgages in question. On the 1st October, 1894, S. assigned to the defendant J.'s covenant of indemnity. In an action against the defendant on his covenants in the two mortgages to pay the mortgage money: — Held, that the plaintiffs were entitled to recover, for what had taken place in no way released the defendant from his covenants. The defendant also claimed to be released by reason of an alteration of the property by the change of location of a street, but the evidence failed to substantiate this.

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CONSUMERS' GAS CO. v. City of Toronto. — Boyd, C., 2nd July, 1895. The mains of a gas company laid beneath the surface of public streets are assessable by the municipality, being, with the underground soil occupied by them, appurtenances to the central land upon which the manufacture is carried on, and subject to taxation as realty of the company.

REGINA v. Welter and Hendershott.—Criminal law—Evidence—admissibility—Evidence of prisoners before coroner—Privilege—Insurance funds—Evidence of previous attempts. On the trial for murder, the alleged motive being to obtain insurance moneys under a policy effected on the life of the deceased in favor of one of the prisoners:—Held, that a coroner's court is a criminal court, and that being so, 56 V. c. 31 (D.) applies to it; and the evidence given there by the prisoners before arrest was rejected when tendered against them on their trial, notwithstanding they had claimed no privilege. Held, also, that evidence of previous attempts to insure the lives of other persons for the benefit of the prisoners, could not be deceived.

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HENDRY v. Toronto, Hamilton, and Buffalo R. W. Co.—The sections of the Dominion Railway Act, 1888, under the headings "Plans and Surveys" and "Lands and their valuations." apply as well to lands "injuriously affected" as to lands taken for the purposes of the railway. It is no answer to a complaint by a land-owner that the company is proceeding without having taken the necessary steps under these sections, that he has the authority of the Railway Committee of the Privy Council for the execution of the works. Held, also, that a by-law passed by the municipal council for granting aid to the railway and the validating Act, 58 V. c. 68 (O.), did not affect this question.

CHANCERY DIVISION.

FAIRWEATHER v. Owen Sound Quarry Company.—The Divisional Court, 27th May, 1895.—S., one of the directors of a quarry company, was appointed foreman of the works, with full powers of management, but subject to the directors' control, and to the performance of such duties as might be delegated to him from time to time. The plaintiff, one of the company's laborers, claiming that he had sustained injury by reason of S.'s negligence, while acting under his instructions, brought an action at common law against the com-

pany. Held, that, so far as the action rested upon the liability of the company through S., there was no liability, for S. was merely a fellow servant of the plaintiff. Held, however, that an action might be sustained on proof of negligence of the company in not furnishing proper appliances for the quarrying operations.

COMMON PLEAS DIVISION.

REGINA v. McBride.—Meredith, C.J., and Rose, J., 29th June, 1895.—*Criminal law—Forgery—Evidence—Corroboration*—Criminal Code, 1892, ss. 684, 732.—Case reserved by the police magistrate for the town of Chatham under s. 743 of the Criminal Code, 1892. There were two charges of forgery against the prisoner. The writing alleged to have been forged were a certificate of death for the purpose of supporting a claim against an insurance company and an indorsement upon a cheque drawn by the company in settlement of the claim. It was proved at the trial that the writings were forgeries, and it was sought to connect the prisoner with them by the evidence of a single witness, who testified that they had been written by the accused. The only corroboration in this case was supplied by proof that certain names written in a book, which were sworn by the same witness to be in the handwriting of the accused, were written by the same hand as the forged writings. Held, that this was not such corroboration as the section requires, and that the convictions upon both charges must be quashed.

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STEWART v. Woolman.—The Divisional Court, 20th June, 1895.—Where the plaintiff was proved to have conversed with members of the jury, after they had been sworn, upon the subject of his case, and, either personally or by another in his interest, to have treated them to drink, the verdict was set aside and a new trial ordered.

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CRANE v. Hunt and Wayper.—13th July, 1895.—Where intoxicating liquors have been supplied to the plaintiff's deceased husband at two taverns and to excess in each, so that the plaintiff might, under s. 133 of R. S. O., c. 194, have successfully maintained an action against either of the tavern-keepers for the death of her husband:—Held, per Meredith, C.J., that she could, and per MacMahon, J., that she could not, maintain a joint action against the two. The jury having assessed the damages at different sums against the two defendants, the plaintiff was permitted to elect to enter judgment against either, undertaking to discontinue against the other.

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SYLVESTER v. Murray.—Boyd, C., 27th May, 1895,—After negotiations had taken place for the sale of a farm at $9,500, the following written contract was signed by the purchasers; "We agree to take your farm and pay you $9,000, and if we get along fairly well we will give you the other $500 as soon as we are able." Held, that the provision as to the $500 was a conditional promise on which a recovery might be had, upon proof that the purchasers were of ability to pay, which the evidence in this case failed to show.

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IN *re* Garbut and Roundtree.—Ferguson, J., 8th June, 1895.—A testator devised certain land to his son W. during his lifetime, and in the event of his death, leaving his wife surviving him, he gave the rents, issues, and profits to her during her lifetime or widowhood; but in the event of both dying within thirty years from his death, he gave the rents and profits thereof, until the expiration of such thirty years, to W.'s children, equally share and share alike, to have and to hold the same after the specified periods to them, their heirs and assigns forever. By the last clause of the will the testator gave all the residue of his estate, real, personal, and mixed, of whatever nature and kind soever, and not otherwise disposed of by his will, to W. to have and to hold the same to him, his heirs and assigns forever. The testator died on the 9th January, 1876; W. and his wife both survived the testator and enjoyed their life estates, leaving eight children, of

whom one died unmarried and without issue, The others were still living. On a petition under the Vendor and Purchaser Act:—Held, that under the will the fee in the land, subject to the estate devised to the children until the expiration of the thirty years, vested in W. and his heirs, and, in the absence of any evidence showing whether or not W. had disposed of the land, and the children could not impart a good title in fee.

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TIERNAN v. People's Life Insurance Company.—Rose, J., 3rd May, 1895.—The application for a life insurance policy provided that no policy was to be in force until actual payment and acceptance of the first payment due thereon by an authorized agent, and the delivery to the insured of the necessary receipt signed by the general manager. The policy stated that in consideration of the annual premium being paid in advance to the company at its head office of the company on or before the delivery of the policy, and thereafter annually, the company would pay to the insured's executors the amount of the policy. By the contract between the general managers and the company, the former were to receive eighty-five per cent. of the premiums, and were authorized to employ sub-agents, whom they were to pay out of the commission allowed them, and were to indemnify and save harmless the company against any claims for commission by such sub-agents. One of the company's general managers, who had taken the application, agreed with the applicant that in consideration of certain work done by the applicant for him, the first premium should be considered as paid, and he gave the applicant the company's official receipt and subsequently the policy. In consequence of no payment having been made on the policy, the company cancelled the policy, but it did not appear that the insured had ever been notified of this. In an action to recover on the policy: Held, that no valid payment of the premium had ever been made, and that therefore the insurance never took effect.

PAROL EVIDENCE AS VARYING WRITTEN INSTRUMENT.

THE rule which excludes evidence of parol negotiations or conditions, when offered to contradict or substantially vary the legal import of a written instrument, does not prevent a party to the agreement, in an action between the parties, from showing by way of defense, the existence of a contemporaneous oral agreement, made in the time of writing was executed and delivered, which would tender the use of the written instrument, for any purpose, contrary to or inconsistent with the oral stipulation, dishonest or fraudulent. The consideration of a written instrument is always open to enquiry, and a party may show the design and object of the agreement was different from what the language, if alone considered, would indicate. Parol evidence may also be given to show that a writing, purporting to be a contract or obligation, was not in fact intended or delivered as such by the parties. So a conveyance, absolute in form, may be shown, as against the heir at law of the grantee, to have been made in trust for the benefit of a partnership firm, of which the grantee was a member, and so held by him in trust for the firm. Of course, there may be cases where the rights of innocent or third parties intervene to modify or change the rule, as in case of negotiable instruments, or where there exists some element of estoppel; but as

between the parties to the instrument there is no reason why the truth, with the real object and consideration of the instrument, may not be made appear. In an action to enforce a mortgage by sale of the land, the amount, if anything of the lien is an issue which the parties certainly have the right to contest. It is the debt which gives the mortgage vitality, as a charge upon the land and generally, where there is no debt or obligation, there is no sustaining mortgage.

Much of what has been said by courts and writers to the effect that a party cannot be permitted to defeat his own deed by parol proof, is based upon the importance which was attached to the presence of a consideration clause and a seal in an instrument by the common law. The conception that some consideration was necessary to support every promise and covenant was borrowed from the civil law, but the consideration was formerly deemed to be conclusively established by the presence of the consideration clause and seal. It was originally supposed that the recitals and clauses of a contract expressing a consideration could be raised by parol proof to the contrary, but the rule was gradually abandoned, and now that clause is open to parol proof. So also the conclusive presumption of a consideration which formerly arose from the presence of a seal is generally modified by statute, and is now open to the maker of such an instrument to allege and prove the absence of any consideration in fact as a defense. It is quite certain that by recent adjudications, deeds and other instruments have been defeated, in a great variety of cases, by parol proof of want of consideration, or that they were delivered upon conditions which would render their use for other object a fraud upon the maker, or that the purpose for which delivery was made was different from that indicated upon their face. There may be cases, no doubt, where the party will be held estopped by his deed from claiming that it is void for want of consideration, especially whereby its terms it appears to be an absolute conveyance of land. A voluntary conveyance, intended to take effect as such, and not executory, is generally good between the parties without actual consideration.

The case of Baird v. Baird, 40 N. E. 222, decided by the New York Court of Appeals, gathers the foregoing illustrations of the modifications of the rule which excludes testimony concerning parol negotiations or conditions, offered to contradict or vary the legal import of written instruments, and the discussion thereof by the court and its application to the case in hand, will repay careful reading.

The power of equity to follow trust funds was recently discussed by the Court of Appeals of Maryland in the case of Futterer v. Kealhofer, 32 Atl. Rep. 187, and the conclusion reached that as a trust fund can be traced, the court will always attribute the ownership thereof to the cestui que trust, and will not allow the right to be defeated by the wrongful act of the trustee or fiduciary. The true owner of a fund traced to the possession of another has a right to have it restored, not as a debt due and owing, but because it is his property wrongfully withheld from him. And it can make no manner of difference whether the fund be traced into a bank account or the possession of the individual, if the essential facts are shown by which the identification of the fund can be established, and no supe-

rior rights of innocent third parties have intervened. Where money has been received by a person in a fiduciary character, though not as technical trustee, and he has paid it to his account at his bankers the person for whom he has received the money may follow it, and have a charge on the balance in the bankers' hands, as shown by the account. This doctrine applies in every case of a trust relation, as well to money deposited in bank, and to the debt thereby created, as to every other description of property.

GENERAL NOTES.

A Brief for Both Sides.—Many a successful barrister has received rival retainers, but to Sugden belongs the unique distinction of having accepted briefs and gone into court for both sides. It happened in the Vice-Chancellor of England's Court. Sugden had taken a brief on one side of a case without knowing it. Horne, who opened on one side, and was followed by another lawyer, was to be answered by Sugden, but he, having got hold of the wrong brief, spoke the same way as Horne. The Vice-Chancellor said coolly, "Mr. Sugden is with you?" "Sir," said Horne, "his argument is with us, but he is engaged on the other side." Finding himself in a scrape, Sugden said, "it was true he held a brief for the other party, but for no client would he ever argue against what he knew to be a clear rule of law." However, the Court decided against them all.

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Reminiscences.—Sir Frederick Pollock, Chief Baron of the English Court of the Exchequer, like a once renowned justice of the United States Supreme Court, took a nap pretty regular about mid-day. His waking was comical. For when his "forty winks" had ended he would start to seize a pen, and with imperturbable gravity say to the arguing counsel, "what page was your last citation?" The harmless deceit was humored by the Bar, and only once did it provoke tartness. This came when an old sergeant retorted, "Did your lordship refer to the last citation made before your lordship gave Somnus a new trial, or the citation I made when your lordship produced a gap in my argument." Nothing nettled, Baron Pollock imperturbably answered, "The one immediately succeeding the gap." Upon another occasion a young barrister from a provincial circuit about to make a suggestion regarding an infant heir remarked, addressing Sir Frederick, "I assume that your lordship is a married man and—" but before he concluded the sentence the Chief Baron, with a merry twinkle in his eye at the assembled Bar, replied: "It would not be a violent assumption, for I have five great-grandchildren, and the total number of my descendants is eighty-five."—*Green Bag.*

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Prisoners as Witnesses.—The Lord Chief Justice at Cambridge Assizes, in Regina v. Gawthrop, gave a ruling which is of some importance with respect to the cross-examination of prisoners giving evidence on their own behalf. The defendant was charged with rape, and elected to give evidence. In chief he totally denied the charge. On cross-examination he admitted he was near the place where the crime was said to have been committed, and saw one of the

witnesses for the prosecution who had seen him there. He was also cross-examined as to a previous conviction of indecent assault. It has been usually regarded as undesirable or improper to cross-examine a prisoner as to previous convictions or as to credit unless evidence is tendered as to good character. But the Lord Chief Justice ruled that the proper limits of cross-examination had not been exceeded, and that a defendant who tendered himself as a witness must be subject to cross-examination just the same as any other witness, and this he wished to have clearly understood as the settled practice. In other words, the hesitation which the Court at first had as to the cross-examination of defendants may now be regarded as overcome.—*Law Journal.*

*

COURT OF CRIMINAL APPEAL.—Since the Lord Chief Justice stated in his letter to Sir Henry James that five judges were opposed to the establishment of a Court of Criminal Appeal an attempt has been made to discover the identity of these occupants of the Bench. Mr. Justice Hawkins was known to be one of the number; Mr. Justice Graham has just made it clear that he is another. He recently stated that the Home Secretary interfered last year with as many as 420 sentences. That these sentences were dealt with in a manner satisfactory to the public shows that the Home Office is not so incompetent to discharge this part of its functions as many persons represent it to be.—*Ib.*

*

A CASE IN NORTH CAROLINA.—It seems from recent decisions in North Carolina that if one is well advised of certain geographical conditions and takes advantage of them, he may slay his foe and escape all punishment. A gentleman standing in North Carolina maliciously shot and killed another who was just across the boundary in Tennessee. He was tried in North Carolina for murder and acquitted on the ground that the crime was committed in Tennessee, and the North Carolina Court had no jurisdiction (The State v. Hall, 114 N.C. 909; 41 Am. St. Rep.; 822). Then the Tennessee authorities tried to lay hold of him and bring him thither for trial by extradition proceedings; but the North Carolina Court held that he could not be extradited, because he was not "a fugitive from justice." The Court cited Alabama, Massachusetts, and Ohio decisions in point. Two judges, however, dissented from this conclusion and argued that the offender was constructively a fugitive.

*

LAWYERS IN PARLIAMENT.—The *London Law Journal* says: "The total number of lawyers in the House of Commons is 150, which is considerably in excess of the number in previous Parliaments. The legal profession forms, therefore, nearly one-fourth of the whole legislative body. A contemporary has complained of the predominance of the legal profession in the House of Commons; but the matter is entirely one for the electorate, whose choice of lawyers simply proves that those who are concerned with the administration of the law are best qualified to serve as legislators."

*

PRACTICING PEERS.—According to a late doctrine it was contrary to etiquette for a Privy Councillor to practice at the Bar, but this usage was disregarded when Sir Henry James became Right Honorable. Other conventional restrictions have been abolished. Macaulay tells how the first Duke of Bedford long refused to

exchange his earldom for a dukedom, on the ground that "an earl who had a numerous family might send one son to the Temple and another to the counting-house in the city; but the sons of a duke were all lords, and a lord could not make his bread at the Bar or on 'Change." There are lords at the Bar now, a son of the present Prime Minister among them, and not only lords by courtesy, but at least one Peer of Ireland and one Peer of the United Kingdom who are in practice more or less extensively.—*World.*

*

THE following extract from a pleading on file in the Supreme Court of North Carolina is taken from 112 N. C. 476: The plaintiff says: "Every such allegation is unjust to her credulity, manifests a lamentable want of the gallantry and courtesy to a lady which usually guides the strong arm of the draughtsman of pleadings in courts of justice, and she respectfully and kindly submits that such harsh and cruel accusations are not in keeping with that elegant, lofty and polished sentiment which is the growing glory of the American law."

*

THE recent escape of the post office robbers from Ludlow Street jail in New York City, and the censure of Sheriff Tamsen by a Federal Grand Jury, has called the attention of the people generally to the liability of a sheriff for a voluntary escape. This question was recently dealt with by the Supreme Court of Indiana in the case of Hoagland v. State *ex rel* Setsieber, 40 N. E. Rep., 931, wherein it is held that where a sheriff permits a defendant committed to his custody for non-payment of a final judgment in bastardy proceedings to go at large, unattended, on his promise to return, there is a voluntary escape, rendering the sheriff liable for the payment of the judgment. After the sheriff has permitted such defendant to so go at large, he cannot, by again receiving him into his custody, without plaintiff's consent, relieve himself from liabilities for the payment of the judgment.—*Literary Digest.*

WIG AND WIT.

"Much given to speech and seasoned anecdote,
And wit and repartee of Bench and Bar."
—*Valentine.*

ACCORDING to the *Washington Law Reporter* a jury is a body organized for the purpose of deciding which side in a law suit has the smartest lawyer.

*

MEETING a person of not immaculate character, clad in black, Judge Vose (of New Hampshire) asked him for whom he was in mourning. "For my sins," answered the man, jocularly. "Have you lost any of them?" inquired the Judge.

THERE was a sergeant-at-law named Walker who in the presence of Sergeant Whitaker was praised by a titled lady for the way in which he had danced a minuet. "Pray, your ladyship," said Whitaker, "was it upon his hind or his fore legs that Sergeant Walker moved so gracefully?"

*

THE story goes that Foote, having occasion for evidence of one Walter Ross of Edinburgh, the latter, who was a Scotchman, travelled all the way to London in a postchaise in the character of a writer to the signet, for which he charged the dramatist the entire expense.

Lord Chief Justice Clayton, an Englishman, was appointed to the King's Bench in Ireland. One day he remarked to Harwood, an Irish barrister, that numerous as the English laws were, one was found to be the key to the other. "Whereas here," he added, "it is just the contrary. Your laws are so continually clashing that, upon my word, at times I don't clearly understand them." "Very true my lord," said Harwood, "that's just what we all say about you."

*

A New York man pleaded in his petition for absolute divorce "that the defendant would not sew on his plaintiff's buttons, neither would she allow him to go to fires at night." The Court decided that the plaintiff was entitled to a decree on the ground that his oppression was cruel and inhuman.

*

A blacksmith of a village in Spain murdered a man and was condemned to be hanged. The chief peasants of the place joined together and begged the Alcade that the blacksmith might not suffer because he was necessary to the place, which could not do without a blacksmith to shoe horses, mend wheels and such offices. But the Alcade said, "How then can I carry out the law?" A labourer answered, "Sir, there are two lawyers in the village, and for so small a place one is enough! you may hang the other."—*Chicago Law Journal.*

*

In a murder trial before a Western court, the prisoner was able to account for the whole of his time except five minutes on the evening when the crime was committed. His counsel argued that it was impossible for him to have killed the man under the circumstances in so brief a period, and on that plea largely based his defence, the other testimony being strongly against his client. When the prosecuting attorney replied, he said: "How long a time really is five minutes? Let us see. Will his honor command absolute silence in the court room for that space?" The judge graciously complied. There was a clock on the wall. Every eye in the court room was fixed upon it as the pendulum ticked off the seconds. There was breathless silence. We all know how time that is waited for creeps and halts and at last does not seem to move at all. The keen-witted counsel waited until the tired audience gave a sigh of relief at the close of the period, and then asked quietly: "Could he not have struck one fatal blow in all that time?" The prisoner was found guilty, and, as it was proved afterwards, justly. —*Frank Harrison's Magazine.*

*

It was Mr. Justice Allan Parke who in latter years fell into a habit of thinking aloud. When trying an old woman for stealing faggots he was heard to mutter, "Why, one faggot is as like another faggot as one egg is like another egg." Counsel for the defence promptly repeated the remark to the jury, whereupon the judge, unconscious of the situation, burst in, "Stop! it is an intervention of Providence. That was the very thought that passed through my mind. Gentlemen (to the jury) acquit the prisoner."

*

Curran's ruling passion was his joke, and it was strong, if not in death, at least in his last illness. One morning his physician observed that he seemed to "cough with more difficulty." "That is rather surprising," answered Curran, "for

I have been practicing all night." While thus lying ill Curran was visited by a friend, Father O'Leary, who also loved his joke." "I wish, O'Leary," said Curran to him abruptly, "that you had the keys of heaven." "Why, Curran?" "Because you could let me in," said the facetious counsellor." "It would be much better for you Curran," said the good humored priest, "that I had the keys of the other place, because I could then let you out."

LEGAL MISCELLANY.

VACATION ELOQUENCE.—The tedium of the Vacation Court on Tuesday was pleasantly relieved by an all too brief incident in which Mr. Oswald, Q.C., M.P., chiefly figured. He had pressed his point on Mr. Justice Matthew with plusquam-Oswaldian persistence till at last the judge repeated several times that he would hear him no longer. "My lord," said Mr. Oswald as a parting shot, "in vacation counsel is very often placed in a very difficult position." "And so is the judge sometimes," said Mr. Justice Matthew, amid general laughter. "You can't score off Matthew," somebody observed.—*Pall Mall Gazette.*

*

A PECULIAR JUROR.—Says the *Pall Mall Gazette*: "It is mentioned that the juror apparently was suffering from bad feet, as both his boots were cut at the top; and this conjecture may account to some extent for his rather illogical irritation. He had helped satisfactorily to find the verdict at an inquest held at the London hospital, but he then lifted up his voice and demanded to be told why he had been taken from his wife and children to come there. Mr. Wynne Baxter did not tell him that it was an Englishman's proud prerogative. He just asked his officer, and discovered that the protesting juror had actually volunteered to serve as a substitute for another man. But the juror arose once more, and, waving his stick, insisted that they should not bring him there. If they did Mr. Baxter would have some dynamite put under him—"perhaps," he added, by a prudent afterthought. Then the coroner discovered that he had done exactly the same thing once before, and gave orders that he was not to be admitted to the Court in future. Now this was exactly what the juror had been looking for, and a fellow juror, feeling that something more was required, went up to the man outside and told him that he was lucky not to have been committed. But the coroner knew what he was about; for the injured juror explained that the slightest movement on the part of a policeman would have been the signal for him to tear the Court up. "His fellow jurors expressed disgust at his conduct"; but this was harmless, and did not call for any tearing up.

*

A PECULIAR LITIGATION.—It seems that one of William Penn's descendants has been at law with the City of Easton, Penn. The great Quaker deeded to that community a site for a Court-house. Why a peacable law-shunning Quaker should have done this we cannot imagine, any more than we could imagine why he should have deeded them a site for an

armoury; but he did. Many years ago the Court-house was torn down, and the site was converted into a public park and it is reported that the Court has held that this worked a reverter of the land. Probably William would not have insisted on his right in the premises.—*Green Bag.*

*

MR. ASQUITH, who will return to the Courts at the beginning of the Michaelmas Sittings, will not, it is said, practice in criminal Courts. The obvious reason for this restriction of his practice is that he has been Home Secretary, and may possibly occupy the office again. In criminal cases he has acted as a kind of Court of Appeal, and it would certainly be undesirable for him to appear as an advocate in a criminal trial after occupying a semi-judicial position, and with the possibility of being called upon to review the evidence in an official capacity. We regard it as a matter for regret that Mr. Asquith is returning to the courts at all. —*Law Journal*, Eng.

*

THEY are smart in America are the lawyers. One of our staff, who has just returned from the States, says that at the office of a New York lawyer he was surprised to find the office boy reading the paper. He mentioned the fact to the lawyer that in England office boys read newspapers surreptitiously, but in America openly. "Ah!" said the lawyer, "that's all right. The first thing my office boy has to do after sweeping and dusting the office, is to look at the notices in the morning papers: in the case of births he has to send one of the circulars of the insurance company for which I am agent pointing out the advantages of early insurance; death notices, one of my circulars showing charges for probates, &c.; marriage notices, one of my circulars on "Divorce Made Easy" to each bride and bridegroom, in separate sealed envelopes." We are unwilling to disbelieve any member of our staff, but we seem to have heard this before.—*Law Notes*, Eng.

*

THE *Law Journal* for the 21st ult. has an amusing little article on the word "gentleman." It begins by quoting from Smith's "De Republica Anglorum," published in 1583, to the effect that "Who can live idly and without manual labor . . . shall be taken for a gentleman." It then quotes a number of decisions on the Bills of Sale Acts showing that "gentleman" is not a correct description of a grantor of a bill of sale if such grantor is a clerk in the Audit Office, or a solicitor, or a solicitor's clerk, or a buyer of silks, or a commission agent; but it is a correct description if the grantor has never had an occupation, or is a coal agent out of employ, or a clerk out of a place and living on an allowance from his mother." The article finishes with a quotation from Irving Brown: "So it seems one who does not work for his living, but lives on his relatives, is a gentleman."

*

THE ABSENT-MINDED WITNESS.—An incident at a trial in Buckport this week furnished much amusement. An eccentric farmer, who took the stand, became rather vehement in his testimony, and, further, persisted in putting his hat on his head, not realizing the gravity of the situation. Although reprimanded by the judge two or three times the farmer still continued to clap on his dicer every few minutes. The judge finally ordered him to be arrested and locked up for contempt of court. He was released and led back into the court room in about ten minutes —where he apologized to the judge—but

on went the hat again. A friend breathed a word into his off ear, when the old fellow grabbed the offensive tile and slammed it on the floor with "Darn that hat!" and let it lie there, while the crowd roared. Such an intense and guileless witness may generally be depended upon to tell the truth.—*Lewiston* (Me.) *Journal.*

*

A PARLIAMENTARY paper has been issued giving an account prepared in pursuance of the Supreme Court of Judicature Act, 1875, showing the receipts and expenditure in respect of the High Court of Justice and the Court of Appeal during the year ended March 31, 1895. The total receipts amounted to 489,649*l.*, as against 513,375*l.*, being a decrease of 23,726*l.* The receipts show that 9,212*l.* was received for brokerage, 7,052*l.* as taxation account fees, 1,061*l.* from the public for the use of arbitration rooms and cloak-rooms, and 2,549*l.* as fees in connection with honors and dignities. The total expenditure was 637,902*l.*, as against 651,072*l.* the previous year, the net decrease being 13,170*l.* The salary of the judges, including the salary of the Lord Chancellor, amount to 148,716*l.*; the retiring annuities of judges, including pensions of the Lord Chancellors, 31,631*l.*; the circuit expenses of the judges and their suites were 10,229*l.*, and expenses of election petition trials, 8*l.*, showing a decrease in the last-mentioned item of 518*l.*—*Law Journal*, Eng.

*

PARIS juries are in the habit, after their fortnight's service is over, of making a collection among themselves for the Prisoners' Patronage Society, and of dining together. The good-fellowship banquet of the jury was held recently at Marguery's, the chair being offered to the most distinguished juryman of the number, M. Jules Claretie, Member of the Academy and Director of the Comedie Francaise. The jury, before breaking up, sent an address to the presiding judge of the Assizes, M. Ditte, and begged to be allowed to express their very respectful sympathy, and the sentiment which they would ever preserve of the manner in which he conducted the trials, which was "so highminded, so impartial, in such accord with the spirit of the law, and so human." We suppose it seems all right to the French. It would appear strange to us if a jury had a dinner and congratulated the judge on his impartiality.—*Law Notes*, Eng.

LAW SCHOOL DEPARTMENT.

THE Law School is re-opened with a large attendance in all three years. The afternoon lectures are delivered at 2.30 and 3.30 p.m. The first year are having lectures on Equity in the mornings and on Contracts in the afternoon. The second year have Evidence in the morning and Torts in the afternoon. The third year have Real Property in the morning and Equity in the afternoon. There was a Moot Court in the third year on Friday, Oct. 11th; the subject being Equity.

*

THE Lamport Ticket in the Osgoode Elections is as follows:—President, W. A. Lamport; 1st Vice Pres., F. C. S. Knowles;

2nd Vice Pres., H. H. Shaver; Sec., J. F. Kilgour; Treas., O. A. Langley; Sec. of Com., Stuart Storey; Committee:—E. H. McLean, H. C. Becher and J. D. McMurrich. Election day is fixed for Saturday, Oct. 19th.

*

BALTIMORE University Law School class 1896, H. M. Hutton Sec.; Cornell University Law School, J. M. Singleton Sec.; Boston University Law School, A. F. Acton Sec., 89 State St., Boston; University of City of New York Law School class of 1896, D. Morrison Sec., 180 Henry St.; University of Michigan Law School class of 1896, G. S. Field Sec. The above mentioned secretaries ask for information, names and addresses of the Sec., of the Toronto Law School.

*

AT present writing it looks as if we have once more had a winning football team. We hope every supporter of our team will turn out at the coming match with Queen's.

*

PRESIDENT Leighton G. McCarthy is to be congratulated on his annual address delivered in the Osgoode Legal and literary Society on Saturday, Oct. 14th. The President reviewed the work of the year by the society and recommended the opening of a reading room for the students and the putting of the lawn in rear of the Hall in proper condition for football. We hope the suggestion will be carried out. Mr. McCarthy has filled the chair with credit to himself and credit to the Society and has won the esteem, confidence and respect of the members. We would also have liked to see the President recommend Inter-Collegiate debates and an athletic sports day.

Can We Stop Studying?

AT this time of the year after so many young men have been admitted to the Bar it may not be inappropriate to call attention to the idea which is all too prevalent that when a man is admitted to the bar the need of studying law has ceased. As a comment upon this failing among young lawyers we may quote from that excellent publication, "The University Law Review."

"A Judge holding court recently interrupted counsel by saying, "I don't need to hear any more, I stopped learning law when I went on the bench." He will change his mind about that before he has been there many years, or else his bar will be looking down on him and not up to him. The lawyer who says to himself, I have reached the point where I no longer expect to learn anything new, condemns himself to a monotony of routine. Why should a professional man look forward eagerly to the time when he should subside into a machine? Why should a flower wish to become a fossil? In youth we are all alert with the wish of mental growth, but most young lawyers speak of mental growth as if they were anxious to get through with it; hence a great crowd of men at the bar, and some on the bench, who are suffering from what the physiologist would aptly term 'arrested development'—men who have made up their minds not to grow any more; men who do not take advantage of the current to get on faster; who will not even float with the current; men who are angry with the current for moving on and leaving them behind; men who would like to stop the current and not being able to stop it anchor themselves or spend their strength swimming against it. These are the men whose idea of life seems to be to think

and to argue in 1895 just as they did in 1885 and in 1875 and in 1865. The world will not accept such service even if the courts do."

Yale Law School.

It has been decided that the plan of extending the Yale Law School course shall not go into effect until September, '96. Those who enter this year may graduate in two years, being the last class that will be able to do so. Mr. James H. Webb and Mr. William Bennett have been added to the corps of instuctors, and Mr. John Wurts, of Jacksonville, Florida, will deliver a course of lectures during the first term in place of Prof. Robinson. This work will not take Mr. Wurts out of active practice. He was offered a professorship on the Cornell faculty but declined it, preferring to do active work at the bar.

*

The summer session of the Cornell Law School opened June 8 for its 4th annual session. There were about fifty students in attendance, many of whom were practicing lawyers and others who were reviewing different subjects preparing to take bar examinations. The course given was of very high character, the resident faculty of the regular law school serving as instructors. The course embraced: Contracts, Torts, Crimes, Corporations, Real Property, Equity, Domestic Relations, Bailments, Wills, and a course in the New York Code of Civil Procedure for students in that State. The students had full use of the library, which, may be noted, contains some 23,000 volumes. The course closed August 30, and the students were much pleased with it. Prof. E. W. Huffcutt is writing a book on the law of Agency.

Ohio State University Law School.

Prof. Wilgus, the secretary of this law school, has been adopting a novel method of getting students. He is endeavoring during his vacation to visit every county in the State and interview all law students with the purpose of setting forth the advantages of this school, hoping thereby to induce the students to come to the O. S. U. His plan is to send a notice of time and place he may be seen to each of the towns which he intends to visit, so that those who are interested in the study of law can meet him and talk the matter over. He thus learns of other students whom he does not meet personally, and to those he addresses letters on the subject. He expects in this way to get up an attendance of about 150 to 200 students for the coming year.

Bournemouth and District law students' Society.

The next session commences on the 8th inst.

The annual report shows that this Society was formed in October, 1894, and the success of the first session has fully justified the hopes which were entertained at the commencement. During the session there have been 15 ordinary meetings, besides the annual meeting and three committee meetings. There are 29 members of the Society. The average attendance of members at the meetings of the Society is about eight, which though it appears small, compares favorably, we think, with the records of kindred Societies, considering the limited number of members. The average was considerably reduced by two very thinly-attended meetings during the severe

weather. There have been nine debates —two of which were impromptu—four papers read by solicitors, and one mock trial. Reports of most of the proceedings of the Society have appeared periodically in the Law Times, Law Students' Journal and Law Notes. The Society recently took steps to induce the Bournemouth and District Incorporated Law Society to purchase books for the use of students, and in this they were most successful, for the Law Society voted £15 for this purpose. Articled clerks have the use of the library and these students' books, upon payment of one guinea entrance fee and one guinea subscription; and it is hoped that by this means the Law Society may be enabled to keep the works up to date and at the same time recoup themselves in a short time for their original outlay. A number of students' books, selected from a list suggested by the Committee of this Society, will shortly be added to the shelves of the library. A prize competition among the members of the Society has been suggested, and it is hoped may be carried through in the course of the spring. Mr. Francis and Mr. Bone (the President) have offered most generous assistance, and it is hoped that ordinary members may further the success of the scheme by competing for the prizes. Next year the Society hopes to hold a public mock trial for the benefit of some local charity, which, in a town like Bournemouth, if held at a proper season, should not fail to be a success. The Society completes the first session with an excess of income over expenditure of £4 18s. 9d., which will be carried over to next year, when we shall hope to see increased vigour, increased membership, and increased attendance at debates. —*Law Times*, Eng.

THE COMING LAWYERS.

The bill is signed. And now to this
  Condition have we come at last
That stately dame and charming miss,
  Once their examinations passed,
May practice law, and may commence,
  If they can only get the cases,
To show at bar their eloquence,
  Their wit, their learning and their faces;
To try their arts upon the judge,
  On juries, too, to ply their wiles,
In court and offices to drudge,
  And help to swell the clerk his files.
It will be happiness to meet 'em,
When we have learned just how to
    treat 'em.

Suppose against one in a case
A maiden with a charming face,
Or e'en suppose one should enlist her
  Upon his side, should one refer
In court unto "My learned sister,"
  Or by so doing would he err?
(I think myself the safer way
Would be "my learned friend" to say.)
Would she improper questions ask,
How shall rude men take her to task?
We'll have to be quite circumspect,
In such a case, when we object,
Or else, I might confess my fears,
The case will be bedewed with tears.

Will Lawyers Sue and Nell and Kate
In court or chambers mostly prate?
Will they display their finest graces
In murder or attachment cases?
'Tis hard to tell, but I opine
In breach of promise suits they'll shine.
Two women fair, in tears and trouble,
  Lawyer and client, as I live,
Would cause a jury to see double,
  And double damages they'd give.
Man's only hope in such a plight
  Would be a lady to retain,
And, with her potent aid, to fight
  The case, if might be, o'er again.

And should he get a new venire,
To get some matrons on the jury,
Will damsels, who in law engage,
Copy the manners of the sage
And steady lawyer, or will they
On Saturday half holiday,
Go eat a dinner, see a play?
('Twould not be wrong, as I'm a sinner,
To take a sister in law to dinner)
Or will they, on a summer's day,
At Coney Island pick a winner?
Or fail to make the lucky stroke,
Returning home both sad and broke?

To language strong will they resort
When courts go wrong, and damn the Court?
Or will their accents plaintive ring
"I think the judge a mean old thing?"
Will curtain lectures all abate
When in a court they may orate?
In short, will't add to their decorum
To plead and scold in legal forum?
These questions easy 'tis to ask,
To answer them's a harder task,
But, if with patience we shall wait,
We'll have the answer soon or late.

The deed is done; the bill is signed;
And women now, whene'er they please,
May practice law, and we shall find
They'll share to some extent our fees.
And next we'll female judges see
And mistresses in chancery,
Let's hope our Portias may be pretty
Good-natured, learned, wise and witty.

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