DIARY FOR MARCH.

2. SUN... *Quadragesima Sunday.*
4. Tues... Last day for notice of trial for County Court York.
6. Thurs.. Name of York changed to Toronto, 1834.
9. SUN... *2nd Sunday in Lent.*
10. Mon... Prince of Wales married, 1863.
11. Tues... General Sessions and County Court Sessions (York) begin.
16. SUN... *3rd Sunday after Lent.*
7. Mon... St. Patrick.
19. Wed... Insurrection of Parisian Troops, 1871.
20. Thurs.. Flight of Napoleon III. to Dover, 1871.
21. Fri..... Princess Louise married, 1871.
23. SUN... *4th Sunday in Lent.*
30. SUN... *Passion Sunday.*

CONTENTS.

THE
Canada Law Journal.

Toronto, March, 1873.

The Right Hon. Stephen Lushington, D. C. L., late Judge of the High Court of Admiralty, died on the 18th of January last, in his ninety-second year. He was in full possession of his faculties to the last. He had occupied a seat on the bench for forty years.

If we may judge from a remark in a cotemporary in the United States, there are at least fifteen thousand members of the legal profession who may be expected to subscribe for a law periodical—how many more we know not. This explains the plentiful crop of law serials.

Mr. Vice-Chancellor Strong held a few days ago, on appeal from the Referee in Chambers, that the latter officer has no power to exercise the summary jurisdiction of the Court of Chancery with reference to proceedings against solicitors. It would appear also, that neither has a judge in Chambers that power, which can only be exercised by the Court.

The temporay appointment of Mr. Esten as Secretary and Librarian of the Law Society has been confirmed by the Benchers. A better person for the office could not have been selected; whilst the name, familiar to us as that of one of the most respected of our judges, will be kept in active remembrance, we hope, for many years to come.

Mr. Willoughby Cummings, who has hitherto discharged the duties of Registrar's Clerk in the Court of Chancery, having resigned, Mr. Ault, Barrister, lately of Cornwall, has been appointed

to succeed him. Mr. Cummings was an excellent officer, but his health was not equal to the sedentary life and bad air of Osgoode Hall. Mr. Ault will form a valuable acquisition to the Registrar's Staff.

At a banquet given by the Philadelphia bar to Chief Justice Thompson, on his retirement from the bench, one of the speakers read a letter which Lord Mansfield had written to a former head of the Supreme Court of the State, Chief Justice McKean, in acknowledgment of the receipt of a copy of Dallas' Reports. The letter reads thus :—

Sir: I am not able to write with my own hand, and must, therefore, beg leave to use another to acknowledge the honor you have done me, by your most obliging and elegant letter, and the sending me Dallas' Reports.

I am not able to read myself, but I have heard them read with much pleasure. They do credit to the Court, the Bar, and the Reporter; they show readiness in practice, liberality in principle, strong reason and legal learning; the method, too, is clear, and the language plain.

I undergo the weight of age, and other bodily infirmities, but blessed be God! my mind is cheerful, and still open to that sensibility, which praise from the praise-worthy never fails to give. *Laus laudari a te.* Accept the thanks of,

Sir, your most obliged,
And obedient humble servant,
Mansfield.

Judge Nelson, a member of the Supreme Court of the United States, lately resigned after occupying the bench for 50 years, of which 22 years was passed as a judge of his native State of New York, and the other 28 as one of the justices of the Supreme Court. The *Albany Law Journal* says that such length of judicial service is without precedent in the States or England, and doubts whether it has a parallel in the history of jurisprudence. Dr. Lushington served 40 years, Lord Mansfield 32 years, and Lord Eldon, 28 years, and they were the longest on the bench of Great Britain. In the States Chief Justice Marshall was 34 years on the bench; Chief Justice Taney, 30 years; Judge Story, 34 years, and Chancellor Kent, about 25 years.

It may be interesting to note that Pollock, C. B., was 82 years of age when he retired from the Exchequer, while in Ireland Mr. Blackburne was appointed Chancellor when he was 84, and Lefroy, C. J., retained office till he had reached the age of 92. At present the oldest Judge in England is Sir Fitzroy Kelly, who is 76, and in Ireland Chief Baron Pigot, who is 72.

We are indebted to the courtesy of Mr. Meagher, Barrister, of Halifax, for several important and interesting decisions in the Province of Nova Scotia. Both Mr. Meagher and Mr. Bligh, also a barrister in Halifax, kindly sent us a note of a case decided by the Chief Justice, Sir Wm. Young, on the Insolvent Act of 1869, which brought up the question of priority as between an attachment creditor and an assignee on a compulsory liquidation. It appears that the plaintiffs issued an attachment under the Absconding Debtors Act, (which is much the same as ours), about the middle of September last, and soon after obtained an order for the sale of the property attached, on the ground of it being perishable—the proceeds to be held by the Sheriff to answer the final disposition of the cause. The property was sold about the first of October, and some twenty days afterwards the defendant's estate was placed in compulsory liquidation under the Insolvent Act of 1869. The assignee of defendant's estate applied to the Chief Justice for an order to compel the Sheriff to pay the proceeds of this sale to him on the ground that by the issue of the writ of attachment under the Insolvent Act, the assignee became entitled to the money in the Sheriff's possession. The Chief Justice how-

ever held that the property of the debtor having been attached and sold under the Absconding Debtors Act before the debtor was moved into compulsory liquidation, the plaintiff was entitled to the proceeds of the sale in preference to the assignee in insolvency. The name of the case is *Neal et al.* v. *Smith.*

Slater v. *Pinder* L. R. 7 Ex. 95, and *Ex parte Roche* L.R. 6 Ch. ap. 795 were cited on the argument, to show that under the Act of 1869 the words "creditor holding a security" were construed to extend to an attaching or execution creditor, who had no notice of the act of bankruptcy, and also to show that the rights and liens given by the Absconding Debtors Act could only be taken away by express enactment.

The *Chicago Law Institute* is agitating for a change in the system of law reporting in the State of Illinois. The complaints are that the reports of the Supreme Court are excessive in price, deficient in quantity and dilatory in appearance. A computation is made of the reporter's profits, and it foots up at $15,185.25 per year—which is nearly four times the salary of a Supreme Court Judge! They suggest, according to the plan long in force in this Province, that the reporter, who is a public officer of the State, should be compensated by salary, instead of being allowed profits. The report of the Committee thus proceeds:

"The public requirement is to have the most law in the fewest books. The reporter's interest is, the least matter in the most books. The true canon of law reporting has been pronounced to be, to convey the fullest information in the least space. Establish the reporter's pay in a stipend, and the canon may be observed; but allow him the privilege of profit from his copyrights, and it becomes improbable. An eminent late Lord Chancellor (Lord Cranworth, in *Dudgeon* v. *Patrick*, 1 Macq. H. Lds. 724) has said, 'We are now overwhelmed with law reports, and I think every reporter deserves well of his country who *condenses*.' Compression, however, is a merit not confidently to be looked for in a reporter whose opportunities tend and tempt to make him forgetful of his country, and to deserve well of himself, by the art of amplyfying. A chief vice of the reporter is, that that art has been too freely applied in producing the reports. Bookmaking designs and devices run through the whole series. All the contrivances of spacing, paragraphing, blanks, verbose and needless syllabuses and prolix indexing are systematically and literally used, so that the reporter has, in more than the sense of the words of the statute, given us the cases '*drawn out at length*.'"

Sir George Honyman, Q. C., has been appointed to the seat in the English Court of Common Pleas rendered vacant by the resignation of Mr. Justice Byles. The leading organs of professional opinion in England, the *Solicitors' Journal*, the *Law Times*, and the *Law Journal*, speak of the appointment in the highest terms.

The *Solicitors' Journal* says:—

Sir George is well known as one of the soundest and most accomplished of mercantile lawyers, and his appointment will add great strength to the Court of Common Pleas, whose decisions during the Presidency of the late Chief Justice Sir William Erle, supported as he was by one of the strongest puisne benchers ever known, enjoyed the highest reputation.

The *Law Times* is equally commendamendatory:—

It was generally anticipated that Sir George Honyman, Q. C., would have been promoted to the vacancy in the Court of Exchequer which was filled by the elevation of the present Baron Pollock. We named him for that position; but in the exercise of a wise discretion the Lord Chancellor reserved him for the expected vacancy in the Court of Common Pleas. To that court he has now been raised, and a better appointment, or one which more thoroughly receives the approbation of the Profession, could not have been made. For many years Sir George Honyman has enjoyed the reputation of being one of the ablest lawyers of his time, and when Lord Chief Justice Bovill and Mr. Justice Lush were raised to the Bench he succeeded to the lead

in commercial business at Guildhall. Sir George Honyman is the eldest son of the late Colonel Sir Ord Honyman, Bart., of the Grenadier Guards, and comes of a race of judges. His grandfather and great grandfather were both Lords of Session in Scotland. He himself was a pupil of the present Lord Chief Baron, Sir Fitzroy Kelly, and practised as a pleader before being called to the Bar. He was called in 1849 at the Middle Temple, joined the Home Circuit, and became a Queen's Counsel and Bencher of his Inn in 1866. Four judges in succession have been raised to the Bench from the Home Circuit.

LEGAL PROCEDURE.

Prominent among the Law Bills which have been brought before the House during this Session, is one introduced by Mr. Mowat, which, if it becomes law, is to be cited as "The Administration of Justice Act of 1873." The poet says that "Hope springs eternal in the human breast," and practitioners, after each Session of Parliament, hope, but vainly so, that at last there will be a respite for a few years at least from the nuisance of hunting up new points of practice. They are perpetually craving for *rest* whilst legislators are perpetually poking them up with a long stick of *change*. The utmost extent of change that should be permitted is a cautious gradual permenent reform of admitted grievances, and we believe these are the views of Mr. Mowat. Time will not permit us to discuss the provisions of his Bill, but a cursory glance would seem to shew that it contains some very useful clauses: whilst many of the proposed changes involve principles which commend themselves to a judicious law reformer. The Bill does not pretend to establish a system complete in itself, but is intended only as an approximation to fusion of law and equity. It is possibly unwise to commence that most difficult task without the aid of a combination of talent and experience, such as was to be found in the Commission which was recalled in such an unceremonious manner. The act is evidently drawn by a Chancery man, devoid of awe for time-honoured Common Law procedure. Some of the best suggestions contained in it, tending towards fusion, have been already given by a writer in our columns a few months ago; though now, as then, we are not prepared to accede to all the views he there very ably expressed.

SOME POINTS CONNECTED WITH THE LAW OF LETTERS.

The Lord Justice Mellish, in a recent case, *Re the Imperial Land Company of Marseilles, (Limited,)* 20 W. R. 690, proceeded to discuss the authorities bearing upon the following very important question, as stated by himself, "when a contract is made by letter, when a person in one part of the country writes a letter to a person in another part of the country proposing to him to make a contract, and either expressly tells him to send his answer by post, or impliedly tells him so by not directing him to send his answer in any other way, not saying that he will call for it or send for it, and by the authority therefore of the person who has sent the offer by letter, an answer is returned by letter accepting that offer, when is that contract made? Is it made at the time when the letter accepting the offer is put into the post, or is it not made until that answer is received?" The conclusion he arrives at is, that both the decided cases and the reason of the thing agree in this, that as soon as the answer of acceptance is written and put into the post both parties are bound and the contract is made.

The Lord Justice however leaves one point uncertain by reason of the case, *The British and American Telegraph Company* v. *Colson*, L. R. 6 Exch. 108, wherein it is held that the posting of the letter does not constitute a complete contract, if peradventure the letter is not

received by the person to whom it is sent, unless this non-receipt of it is due to his default.

The Lord Justice does not deem it necessary to dissent from this case, though evidently if it were needful to do so, he is prepared to overrule it upon the same state of facts. He leaves the point open by using these words, "it may possibly be that the contract is subject to a sort of condition subsequent, that if the letter does not arrive in due course, then the parties may act on the assumption that the contract is at an end." It in effect comes to this, is the contract conditional upon the post office authorities doing their duty, so that the letter does not miscarry and is duly delivered? It appears to us that to maintain the affirmative of this proposition will introduce no little uncertainty into an important branch of the law, and seriously affect the interests of trade and commerce. For what length of time is the contract to be as it were in suspense? For how long is the seller, for example, to remain in uncertainty as to whether he is to fill the order or not? Pointed illustrations of this kind are put by the Lord Justice, in the case first cited. The correct view would seem to be, that the person who agrees that the answer is to be sent by post, thereby undertakes to run all the risks connected with that mode of transmitting information. He first approaches the other party, can choose his medium of communication, and if any one is to suffer from the delay of the post, he is the man.

TRAVELLING BY RAIL.

[COMMUNICATED.]

In this age of universal travelling, when every one is hurrying to and fro, and the locomotive's whistle re-echoes through every part of our land, as the iron horse drags behind its long line of cars laden with freight, animate and inanimate, it is well to know somewhat of the rights and privileges of passengers, and of the liabilities and responsibilities of railway companies: this paper will, therefore, touch briefly upon the various decisions which affect, more or less, the traveller by rail and his baggage.

As soon as one arrives at a station dangers begin to gather round him on every side, and as a consequence, the liability of the company for deeds of omission and commission commences. As Blackburn J., remarks, "It is the duty of the company to take all reasonable care to keep their premises in such a state as that those whom they invite there (and they invite all who desire to be taken any place whither the line runs,) shall not be unduly exposed to danger: *Welfare* v. *London and Brighton R. W. Co.*, L.R. 4 Q.B. 693; and for damages sustained through their negligence by travellers they are responsible.

The motto *Cave cavem* is one worthy to be borne in mind by all who have to loiter about a depot awaiting the advent of trains "late as usual"; for, notwithstanding the duty of the company to keep their premises in a safe condition, if a stray canine rushes at one, seizes the nether garments, and tears, mutilates and bites the flesh, still, if the dog does not belong to any one of the company's servants or agents, they are not liable for the damage done—unless evidence is given to show that they had neglected to dispose of the dog when in their power so to do: *Smith* v. *Great Eastern R. W. Co.*, L.R. 2 C.P. 4.

'Tis well, too, to be careful where one goes; for if one enters a place where there is "no admittance except on business" with no object in view save the laudable one of acquiring knowledge, and evil befalls him, he will issue a writ against the company in vain, for he will take nothing thereby and the defendants will go thereof without day, &c. In fact,

one must even walk circumspectly around a railroad depot; "for the mere fact of a man having fallen and hurt himself is not sufficient to charge the company with negligence in the construction of their station: and the court is in an especial manner bound to see that the evidence submitted to the jury in order to establish negligence is sufficient and proper to go to them": *Crafter* v. *Metropolitan Railway Company*, L.R. 1 C. P. 300. In this case a man fell, seriously hurting himself, on a staircase leading from a station, and down which some forty thousand people passed every month without an accident, and it was held that there was no evidence of negligence to go to the jury.

Once a man innocently and naturally enquired of a porter when the train would be in, the official referred him to a time-table hanging on the wall: the would-be-passenger went to consult the table, and while doing so, down tumbled through a hole in the roof a heavy plank and a roll of zinc, and smote the man on the neck doing him grievous bodily harm: glancing upwards the stricken creature beheld through the aperture the legs of a man upon the roof. For the damage done by this it was held that the company was not liable, as, for aught that was shewn, the man might have been the servant of a contractor employed to mend the roof, or the misfortune might have been the result of a pure accident: *Welfare* v. *London and Brighton R. W.*, *ubi sup.*

As to the time tables so conspicuously placed at all stations, our own Court of Queen's Bench has held that they do not form an integral part of the contract made between a passenger and a railway company, but only amount to a representation: *Briggs* v. *Grand Trunk Railway*, 24 U.C. Q.B. 510. But the Railway Act, 1868, (31 Vict. c. 68. s. 20), enacts that the trains shall be started and run at regular hours to be fixed by public notice."

Before entering the car it is well for one's own comfort and convenience to check all baggage—though, doubtless, if preferred, it can be taken into the train by the passenger, unless perhaps the company expressly forbid it. Under the Railway Act (sub. sec. 5 of sec. 20), the company is bound to check every parcel of baggage presented to them for such purposes, "and having a handle, loop or fixture of any kind thereupon, and a duplicate of such check shall be given to the passenger." And subsection six provides that "if such check be refused on demand, the company shall pay to such passenger the sum of $8, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passengers, and if he has paid his fare, the same shall be refunded by the conductor in charge of the train." How many times travellers on our Canadian roads have to ask in vain for checks when going to or from the smaller stations it would be idle to guess.

Though for some purposes, though not for many in these days, the law considers that a man and woman joined together in the bonds of matrimony are one—and that one the husband—still where man and wife are travelling together they are entitled to carry twice as much baggage, as is allowed to one individual: *Great Northern Railway Co. Appellant* vs. *Shepherd, Respondent*, L.R. 8 Ex. 30.

The baggage having been safely bestowed in charge of an official, and the checks in the owner's pocket, the latter now proceeds with his journey, but caution is still required; as will be seen from the following: A Mr. Fordham, after purchasing his ticket, was in the act of getting into a railway carriage—the train standing quietly at the station. Having a parcel in his right hand, he very naturally placed his

left on the open door to aid him in mounting the steps and entering the car. The guard without giving any previous warning forcibly closed the door. Fordham having his fingers where the door should meet the door plate, had them badly crushed. Both the Courts of Common Pleas and the Exchequer Chamber held that the guard was guilty of negligence to which Fordham had not contributed, and that consequently the defendants were liable for the damages: *Fordham* v. *London, Brighton, and South Coast Railway*, L.R. 3 C.P. 368 and 4 C.P. 619 Exch. Cham. Different, however, was the result of one Richardson's attempt to recover for injuries sustained while entering a railway carriage: his hand was upon the edge of the door; the porter having called out, "Take your seats—Take your seats," closed the door on Richardson's thumb: the Court held that the porter closed the door in the ordinary and proper exercise of his duty and that the accident was solely attributable to Richardson's own want of caution: *Richardson* v. *Metropolitan Railway Co.*, L.R. 3 C.P. 374 n.

Having escaped all accidents at the station and in entering the cars, and being now fairly *en route*, the next thing is to present your ticket to the conductor when he asks to see it; although, by the way, no conductor has a right to demand the tickets, or receive any fare, nor in fact can he exercise any of the powers of his office, or meddle or interfere with any passenger or his baggage or property, unless he has upon his hat or cap a badge indicating his office: Railway Act 1868, sec. 20. The learned judge in *Farewell* v. *Grand Trunk R. W. Co.*, 15 C.P. 427 points out that the statute has not provided that the hat or cap, when so badged, is to be or shall be worn upon the head: it assumes that such officers will or must have hats or caps, and that they will or must wear them, and wear them on the head, but it does not enact that they *shall* do so. *Quære* as to the effect of a conductor having a badge on his cap and his cap in his coat-tail pocket? The ticket will probably be marked "Good for this day only, A. to B." This creates a contract on the part of the company, "to convey the holder in one continuous journey from A. to B., to be commenced on the day of issuing the ticket," and if the passenger alights at an intermediate station he forfeits all his rights under the ticket he holds and cannot claim to be carried on to his journey's end in a subsequent train without paying a new fare: *Briggs* v. *Grand Trunk R. W. Co.*, *sup.*, *and Dietrich* v. *Pennsylvania A. R. R. Co.*, 8 C. L. J. N.S. 202. It is no part of the contract that the company should suffer him to leave the train and resume his seat in another train at any intervening part of the road: *Slate* v. *Overton*, 4 Zabriskie 438. One Craig bought a ticket marked "good only for twenty days from date" from Buffalo to Detroit; after viewing the glories of thundering Niagara he took his seat in the afternoon accommodation train of the Great Western at the Suspension Bridge. This train ran on to London, but Craig for his own pleasure got out at St. Catharines and went to see the town. As the night express was going through he applied to be allowed to travel by it on the ticket he held, and on being refused sued the company. The Court, however, considered that the ticket bound the company to carry the plaintiff on one continuous journey from the Suspension Bridge to Detroit, giving him the option of taking any passenger train from the point of commencement, and if that train did not go the whole distance to be conveyed the residue in some other train—the whole journey to be completed in 20 days: but that it did not give the holder the right to stop at any or every intermediate station, as Mr. Craig contended: *Craig* v.

Great Western R. W. Co., 24 U.C.Q.B. 504.

If one has left the train in which he started on his journey, the fact that he has subsequently entered another train and travelled over a part of the remaining distance without being required to pay fare by the conductor in charge, does not prejudice the company or renew the contract: *Dietrich* v. *Penn. A. R. R. Co.*, *ubi sup.* In this last case Agnew J. guarded his meaning by saying that there might be exceptions to the general rule, where from misfortune or accident, without his fault, the transit of the passenger is interrupted, and where he resumes his journey afterwards.

Great care should be taken of the ticket. "It is plain by law that a passenger is not obliged to purchase a ticket before he enters the company's cars, he may pay the conductor, if he pleases, the fare. If the passenger pays and receives a ticket, then he accepts the ticket upon the condition that he will produce it and deliver it up when required by some duly authorized person, and in such case it is part of the contract." If a traveller having previously paid the fare and obtained a ticket, loses it, the conductor, (unless he has knowledge of the facts), is justified in demanding payment of the fare, and, in case of refusal, in putting such passenger off the cars: *Duke v. Great Western R. W. Co.*, 14 U.C.Q.B. 377. As the late Chief Justice Robinson remarked in this case, "It may seem hard to a man who has lost his ticket, or perhaps had it stolen from him, that he should have to pay his fare a second time; but it is better and more reasonable that a passenger should now and then have to suffer the consequences of his own want of care, than that a system, (the system of issuing tickets as now in vogue), should be rendered impracticable which seems necessary to the transaction of this important branch of business. It is not for the sole advantage, or for the pleasure and caprice of the railway company that these things are done in such a hurry. The public, whether wisely or not, desire to travel at the rate of four or five hundred miles a day, and that rapidity of movement cannot be accomplished without peculiar arrangements to suit the exigency which must sometimes be found to produce inconvenience. If the passenger in this case, who I have no doubt lost her ticket, could claim as a matter of right to have it believed on her word that she had paid her passage, everybody else in a similar case must have the same right to tell the same story and to be carried through without paying the conductor, and without shewing to him a proof that he had paid any one."

If a railway passenger, holding a ticket entitling him to alight at a particular station, is carried past such station without his consent and without being allowed a reasonable opportunity of leaving the train, he has a right of action against the company for whatever damages may have accrued to him through his non-delivery at the place of his destination, at least it was so held by the Supreme Court at Illinois in *Illinois Central R. W. Co.* v. *Abell*, 8 C.L.J.N.S. 172. The ticket must be taken to be the contract between the plaintiffs and the defendant for the special purpose and upon the terms which are contained in it: *Farewell* v. *Grand Trunk R. W.*, 15 C.P. 427.

As accidents will happen even on the best regulated lines and baggage is frequently mislaid, stolen or lost, the law as to when, for what and to what extent companies are liable for passengers' baggage is consequently voluminous. *Shaw* v. *Grand Trunk R. W. Co.*, 7 C.P. 493, decided for this country that railway companies are not liable for the loss or destruction of merchandise carried by a passenger as luggage and for which he has paid no extra charge. In *Great North-*

ern R. W. Co. App. v. *Shepherd Resp.*, L.R. 8 Ex. 30, it was decided that if a passenger has merchandise among his personal luggage, or so packed that the carrier has no notice that it is merchandise, the carrier is not responsible for its loss. But if merchandise is carried openly, or so packed that its nature is obvious and the carrier does not object to it, he will be liable.

The question as to what is to be considered personal luggage is one which is often pressed upon the consideration of a contemplative traveller, when on entering a crowded train he finds every seat occupied if not with mortals like himself, still with bundles and band-boxes, nursery paraphernalia and the produce of the kitchen or the cook-shops,—it is also a question which has much agitated Courts of Justice, and a learned Canadian Judge has remarked, that "the authorities and references shew it is much easier to say what is not personal or ordinary luggage, than it is to decide what it is which a carrier is bound, or which it is usual for him, to carry along with his passengers."

Cockburn C. J., in *Macrow* v. *Great Western R. W.*, L.R. 6 Q.B. 623, held the rule to be "that whatsoever the passenger takes with him for his own personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or to the ultimate purpose of the journey, must be considered as personal luggage. This would include, not only all articles of apparel, whether for use or ornament, but also the gun case or the fishing apparatus of the sportsman, the case of the artist on a sketching tour, or the books of the student, and other articles of analogous character the use of which is personal to the traveller and the taking of which has arisen from the fact of his journey."

The cases have held that the ordinary luggage of a passenger comprises, clothing and such articles as a traveller usually carries with him for his personal convenience, perhaps even a small present for some admired friend: *Great Northern R. W.* v. *Shepherd*, 8 Ex. 38, also not only brushes, razors, pen and ink and the like, but books for instruction or amusement by the way, a gun, or the implements of the followers of the gentle art: *Hawkins* v. *Hoffman C. Hill*, N. Y. Rep. 589; articles of jewellry: *Brooke* v. *Pickwick*, 4 Bing. 218; carpenters' tools to a reasonable amount, if the traveller is of that trade and carries the articles with his clothes: *Porter* v. *Hildebrand*, T. Harris Henn. Rep. 129; even a pocket pistol and a pair of duelling pistols have been held to be ordinary luggage: *Woods* v. *Devon*, 13 Ill. 746; so, as a student going to college, manuscripts which were necessary to the prosecution of his studies: *Hopkins* v. *Westcott*, 7 Am. Law Rep. M. S. 534. In the late case of *Binty* v. *Grand Trunk Railway Co.*, 32 U.C. Q. B. 66), our Court of Queen's Bench held that a rifle, a revolver, two gold chains, a locket, two gold rings and a silver pencil-case were ordinary personal luggage, for the loss of which the defendants were liable; Wilson, J., also, held that a concertina lost in the same box as the other things should be considered as an article of amusement or pleasure which it is permissible to carry as part of one's luggage, there being no reason why one should not be indulged with a flute or fiddle, or even a concertina, as well as with a gun, fishing-rod or book: but the majority of the Court held otherwise.

Parke B., says personal luggage is not merchandise, nor are materials bought for the purpose of being manufactured and sold at a profit: *Great Western Railway* v. *Shepherd*, 8 Ex. 30. Cockburn, C. J., held the same in *Macrow* v. *Great Western Railway Co.* Nor are samples of merchandize carried by commercial trav-

ellers: *Cahill* v. *London & North Western R. W.*, 10 C. B. N. S. 154. Nor can a lawyer, or any one else, carry title deeds as personal luggage, nor a banker, or any other man, money as such: *Phelps* v. *London & North Western R. W.*, 19 C. B. N. S. 321. Nor can fond parents take a spring-horse for their little offspring: *Hudston* v. *Midland R. W.*, L.R. 4 Q.B. 366; nor sheets or blankets or quilts, wherewith to furnish a house when permanently settled: *Macrow* v. *Great Western*; nor, notwithstanding *Porter* v. *Hildebrand*, can a carpenter take a quantity of chisels, planes, bitts, saws and gouges, nor a sewing-machine; nor can one musically inclined carry a concertina: *Bruty* v. *Grand Trunk R. W. Co.*, 32 U.C. Q.B. 66. If one sends his luggage by a servant and the servant gives it with his own to the company's officials, and it is lost, the master cannot recover therefor from the company: *Becher* v. *Great Eastern R. W. Co.*, L.R. 5 Q.B. 241.

Where a traveller carried a bag with him into the car and there left it, in order to retain his place, while he went out at a station where the train stopped for refreshments, and during his absence it was taken away, he was held entitled to recover therefor from the railway company; his ticket giving him a right to be carried with his luggage of which the bag was a part: *Gamble* v. *Great Western R. W.*, 24 U.C.Q.B. 407. Draper, C. J., stated that he considered the system of checking in vogue in this country only as additional precautions taken by the company, beyond what is customary in England, in order to prevent the luggage from being given up to the wrong person; that the company would be liable for a loss in case no such means of checking was in use, and if notwithstanding, a loss occurs, the liability is unchanged, in the absence of express notice on their part that they will be responsible only for articles checked. Morrison, J., on the contrary, thought that the system of checking was notice to passengers that all articles which they do not desire or prefer to keep under their own personal care and at their own risk, must be checked or handed to the company's officers.

A lady placed her dressing-case in a car under her seat, the company's porters having taken the other baggage. On arrival at the station the railway official carried her things to her carriage. When she reached home, she, for the first time, missed her dressing-box: the Court held that the railway company must make good the amount of the loss: *Richards* v. *London, Brighton and South Coast R. W.*, 7 C.B. 839. In fact, the law laid down by Chambre, J., in *Robinson* v. *Dunmore*, 2 B. & P. 419, as to stage coaches has been considered by eminent authorities to be, in general, equally applicable to railway carriages, viz., "that if a man travel in a stage coach and take his portmanteau with him, though he had his eye upon it, yet the carrier is not absolved from his responsibility, but will be liable if the portmanteau be lost." Luggage, though never delivered to any servant of the company but kept by the passenger during the journey, is yet, in point of law, in the custody of the company, so as to render them responsible for its loss: *Great Northern R. W. Co. App.* v. *Shepherd Resp.* 8 Ex. 30. Willes, J., in *Talley* v. *Great Western R. W. Co.*, L.R. 6 C.P. 50, remarked that it had been questioned by high authority whether the liability of carriers in respect of passengers' luggage is as stringent as that in respect of the ordinary carriage of goods, and whether there be any larger obligation in respect of goods carried with passengers than in respect of passengers themselves to whom they are accessory. In this case it was decided that when a passenger's luggage is at his request placed by a railway company's

servants in the carriage in which he is travelling, the company's contract to carry it safely is subject to an implied condition that the passenger takes ordinary care of it, and if his negligence causes its loss, the company are not responsible. So where a passenger whose portmanteau had been placed at his request in the carriage with him, got out at an intermediate station on his journey, and having negligently failed to find the same carriage again, finished his journey in a different one: the portmanteau having been robbed during the latter part of the journey by persons in the carriage without any negligence of the railway company; it was *held*, that the railway company was not responsible for the loss, any more than if the passenger had upon some false alarm thrown his property out of the carriage window.

In giving judgment in *Le Conteur* v. *London and South Western R. W. Co.*, L.R. 1 Q.B. 54, Cockburn, C. J., said, "I cannot help thinking we ought to require very special circumstances indeed, and circumstances leading irresistibly to the conclusion that the passenger takes such personal control and charge of his luggage as to altogether give up all hold upon the company, before we can say that the company, as common carriers, would not be liable in the event of the loss."

(*To be continued.*)

JUDGES' REPORT ON THE GOODHUE BILL.

As promised last month we now publish the report made by the heads of the three Courts on the Bill to declare and determine the true meaning and intention of the Act to confirm the distribution of the Estate of the Hon. George Jervis Goodhue, deceased. The Bill and petition for it were submitted to the Judges composing the Commission appointed under 34 Vict., chap. 7, the Commission consisting of all the Judges, including the Chief Justice of Appeal, except Mr. V. C. Blake, who was raised to the Bench since the Commission issued. Though the Report is signed only by the Chancellor and the Chief Justices of the Courts of Queen's Bench and Common Pleas, it is understood that all the Judges concurred in the views expressed in the Report. It is a weighty, logical and convincing document, worthy of the high reputation of those whose names are appended to it, whilst the whole circumstances of the case are evidence of the wisdom of the Act under which the Report was made. Many of the observations are of general application, and condemnatory of the pernicious principle which the passage of such an Act would countenance. Much stronger language than is used on this point would not have been inappropriate. But the Judges, properly enough perhaps, did not think fit to travel out of the record or to express opinions as to matters which it might have been said were rather of general import than submitted to them in this particular case. Our readers are doubtless sufficiently familiar with the facts of the case to follow the Report without further explanation. It is dated at Osgoode Hall, 11th February, 1873, and reads as follows:—

"The undersigned judges, who have considered the Estate Bill (No 132), intituled 'An Act to declare and determine the true meaning and intention of an Act intituled, "An Act to confirm the deed for the distribution and settlement of the estate of the Honourable George Jervis Goodhue, deceased," forwarded to the judges under the Provincial Statute 34 Vict. cap. 7, to report thereon, beg leave to submit the following observations relative thereto:—It being the peculiar duty of the judges to interpret the Acts passed by the Legislature, and to expound their meaning, they can only do so by reference to the language used in framing these Acts of Parliament; they can know nothing of the intention of the Legislature, save from the language in which the Acts passed by them are expressed. A Court of competent jurisdiction having, by its judgment, declared the meaning of an Act of

Parliament, the only safe rule to act upon is, that the declaration of the meaning so made must be accepted as the true interpretation of the statute, until such judgment is altered or reversed, or a different meaning given to the statute by a tribunal of equal or greater authority. Under our system of judicature, the highest judicial authority in this Province is vested in the Court of Appeal, which has placed an interpretation on the Provincial statute, 34 Vict, cap 99, which the petitioners consider erroneous, or to use the words of the petitioners referring to the decision of the Court of Appeal as to the intent and meaning of the statute, judging as they were bound to do from the words of the statute, 'That the effect of such construction (of the statute) is entirely to defeat the intention of the Legislature,' and they desire this present Parliament to pass an Act, 'declaring and determining the true intention and object of the Legislature in passing the said former Act.' This is, in effect, asserting that the judgment of the Court of Appeal is erroneous, and the authority of the Legislature is invoked to correct the error. This, in substance, and almost in words, would be the nature of an application to a Court of Appeal to correct the erroneous judgment of the Court appealed from. The legal tribunal to appeal to to correct the decisions of the Court of Appeal in this Province, if erroneous, is the Judicial Committee of Her Majesty's Privy Council; and until the law in that respect is changed, the passing of an Act by the Local Legislature in effect to declare the decision of the Court of Appeal here to be erroneous, seems to be highly objectionable. In any view that can be taken of the matter, there would seem to be considerable difficulty in establishing to the satisfaction of this Parliament, what the true "intention and object" of the first Parliament of Ontario was in passing the Act alluded to by any evidence which ought not equally to have convinced the Judges of the Court of Appeal of such intent and object. The only new or fresh evidence suggested in the petition appears to be that, when 'the Bill' referred to was before the Legislature the following amendment was rejected on a division, viz., 'That the Bill should not now be read a third time, but that it be referred back forthwith to a Committee of the Whole, with an instruction to amend the same by inserting as the fourth clause, the following:—"4. Provided always, and it is hereby declared, that the foregoing enactments, or any of them, shall not take effect until it shall have been decided by a majority of the judges of one of the Superior Courts in this Province, that the interests in the testator's estate, by the said will bequeathed in trust for all his children who shall be living on the death of his said wife, were on his death, or at any time thereafter, before the passing of this Act, vested interests in the children of the testator."' The action of the Legislative Assembly in rejecting this amendment was quite consistent with the view that they were satisfied that such interests were not 'vested interests' in the children of the testator; and as they were not legislating to deprive the grandchildren of any rights they might possess under the will, it was not necessary to make a reference to the judges to decide that point; and looking at the judgment of the Court of Appeal such may be assumed to have been the real ground for rejecting the amendment; or they may have been induced to believe that, under the will of the testator, his children took a vested interest in the residuary estate, and that there could be no injustice done to the grandchildren in legislating to vest the shares of the children at once, instead of delaying until the death of the testator's wife. It seems to have been the opinion of all the judges that the interests of the children were not vested interests; and that, if the Legislature acted in a different view of the effect of the devise, they were acting under an erroneous view of the construction of the will in that point. In either of these views as to the cause of the rejection of the motion in amendment, no satisfactory evidence would be afforded for passing this statute, beyond what the former Act itself would furnish. We therefore come to the conclusion that an Act declaring and determining the true intention and object of the first Parliament of Ontario in passing the said former Act, is highly objectionable, having duly considered the grounds stated in the petition. But the Bill goes further, and by sec. 3 proposes to enact 'That the claims, rights, and interests of the grandchildren of the testator are hereby extinguished and determined; and the said Act and the deed, schedule A, are to be construed as if the said grandchildren * * * were of full age, and executing the said indenture, and thereby granting, assigning, and releasing to the said children of the testator any rights, claims, or interest in the premises.' The judges now almost for the first time, being required to discuss the 'advisability' of any proposed statute, deem it right to have it clearly understood that the Act submitted to them distinctly takes away certain valuable rights from one class of persons, and transfers such rights to another class; that it defeats the hitherto undoubted rights of a

testator to dispose of his property in a reasonable and lawful manner to such members of his family as he thought proper. The possible result of the proposed Act may be the total loss of a valuable estate, which, but for its operation, would vest in such of testator's grandchildren as may survive his widow, and to establish a precedent under which no one of Her Majesty's subjects can be secure that his disposition of his estate may not always be at the mercy of Legislative alteration. It should also be borne in mind that part of the estate is in England, where some of the infant grandchildren of testator are domiciled, and there are others domiciled in the United States, and that a very serious question may arise whether the proposed Act will be held in England to be any protection to the executors and trustees, who are by it to do an act wholly unwarrantable by their fiduciary position, not merely as to such portion of the estate in the country of the domicile of the children who reside in England, but as to that portion of it also which is in this Province.

"Wm. B. Richards, C.J.
"J. G. Spragge, C.
"John H. Hagarty, C.J., C.P.

"The undersigned dissented from the interpretation put upon the Goodhue Estate Act (34 Vict., c. 99) by the majority of the Judges of the Court of Appeals. He nevertheless agrees entirely with the views expressed in the foregoing paper.

"J. G. Spragge."

LAW SOCIETY.

Hilary Term, 36 Vict.

The following is the resumé of the proceedings of the Benchers during this Term, published by authority:—

Monday, 3rd February.

The several gentlemen whose names are published in the usual lists, were called to the Bar, received certificates of Fitness, and were admitted as Students of the Laws.

A Call of the Benchers was ordered for the last Friday of this Term, for the election of two Benchers in the place of George Palmer, Esquire, resigned, and the Hon. S. H. Blake appointed a Vice Chancellor, and of a Secretary, Sub-treasurer and Librarian, in the room of H. N. Gwynne, Esq., deceased.

Tuesday, 4th February.

Examining Committee appointed for next Term, and Report of Examining Committee for this Term received and adopted.

Abstract of Balance Sheet laid on the Table.

Communication from the Proprietors of Law Journal on the subject of the Chamber and Practice Court Reports, referred to the Committee on Reports.

Thursday & Friday, February 6th & 7th.

Intermediate Examinations.

Saturday, 8th February.

The Treasurer reported the result of the Intermediate Examinations.

The Report of the Committee on Rules received.

Ordered that a further revision of the rules be made by the Committee, and that after such revision, the draft be printed, and sent to each Bencher, with the request that he will return them to the Secretary by the first of May next, with suggestions of any alterations or additions that he may consider advisable.

The report of the Finance Committee received and adopted.

The Treasurer reported that the Committee appointed last Term to negotiate with the Government had had an interview with the Attorney-General on the subject of the agreement with the Crown for the accommodation of the Superior Courts, and that a new arrangement had been agreed to, which would be embodied in an Act of Parliament, to be submitted to Convocation during the present Term.

Friday, 14th February.

The resignation of J. B. Lewis, Esq., of his seat as a Bencher, received and accepted, and notice ordered to be given of an

election of a Bencher in his place, on the first Tuesday of next Term.

The petition of J. C. Johnston allowed.

Messrs. Benson, Blake and Burton were appointed a Committee to attend examinations in vacation before next Term.

Mr. Evans appointed Examiner for next Term, and the usual Fee ordered to be paid him for his services as Examiner this Term.

Mr. Lemon elected a Bencher in place of Mr. Palmer.

The Hon. D. E. Blake elected a Bencher in place of the Hon. S. H. Blake.

The appointment by the Treasurer of Mr. Esten as Secretary, Sub-treasurer and Librarian confirmed.

Salary from 1st December 1872, up to 21st December in same year, ordered to be paid to Mr. Salter J. Vankoughnet, late Reporter of the Common Pleas.

Report of the Committee on Reporting received and adopted, and a contract respecting the Chamber Reporting ordered to be entered into on the basis mentioned in the report, subject to approval of Committee on Reporting.

Ordered that fifty cents be added to annual Certificate Fee, for the purpose of paying postage on Reports.

Mr. McCarthy gave notice for first Tuesday of next Term of a resolution for the meeting of Convocation during Vacation.

The Treasurer and Messrs. McKenzie, Blake, Burton and Moss were appointed a Committee to urge upon Government better terms in the surrender of part of the Osgoode Hall property to the Crown.

$1,400 granted to the Library Committee for the purchase of American Reports.

The Hon. D. E. Blake appointed on the Library Committee in the place of the Hon. S. H. Blake.

J. Hillyard Cameron,
Treasurer.

SELECTIONS.

THE BENCH AND BAR OF QUEBEC.

Can any member of the Bench or Bar, placing his hand *sur sa conscience*, after the fashion of speech of our compatriots, say that the legal profession holds the place which it should occupy in the Province of Quebec? No judge, no lawyer can by any possibility have so low an idea of his profession as to answer the question in the affirmative. What then have been the causes productive of this degradation? Is it that with the increase in importance and wealth of the mercantile class, the learned profession must lose weight in society? Is it that the capacity to make and keep money is recognized now-a-days as the most virtuous and useful occupation of man? or is it that within the last fifty years both Bench and Bar have deteriorated, and judges and lawyers at the present day are inferior to their predecessors half a century ago.

There can be no doubt that the increase of commerce and the large fortunes realized thereby have tended to raise socially the position of men engaged in trade. Whilst but very few practitioners at the Bar have realized an independence, and not one a fortune, since the commencement of the century, men are seen in the streets of Montreal every day, who, with but little education, have in the course of a few years, by successful trade or lucky speculations, amassed large fortunes and retired from business, in the flower of their age, to enjoy the delights and intellectual charms of society. To the Quebec lawyer no pleasant prospect of ease and competence in the decline of life presents itself. His life path is monotonous, shadeless, arid, dusty, resembling one of those roads traversing some of the departments in France, straight as an arrow and losing itself in the distance, without a solitary tree to break the sameness of its aspect, or to cast its grateful shade over the aching head of the way-worn traveller. The upright practice of his profession brings no reward. His learning, his talents, are of no avail in the race, for his honesty is too crushing a weight for him to live the pace with others unburthened by scruples of conscience. Verily it would seem as if it had been for the last twenty

years the aim and desire of our rulers to degrade the Bar, and to abase the Bench. To be a Queen's Counsel, one need not be an honourable man or a distinguished lawyer; to be a judge it is not requisite to be a jurist.

Let it not be supposed that the picture here presented is overdrawn. What is herein embodied is spoken of openly in our Court-rooms, loudly in our streets; it is a matter of public reproach to the profession and to the Government. It is known to and admitted by ninety out of every hundred of our lawyers and judges, and is regretted by all save those who profit by this monstrous prostitution of patronage.

In no profession does the horror of coming out boldly against abuses affecting itself, exist so strongly as in that of the Bar. Lawyers as a rule are conservative in their ideas after ten years practice. They have a dislike to washing the soiled linen of the profession in public; they are afraid of exciting the enmity of the judges if they attack the Bench, or any of its members. They are occasionally restrained from giving public utterance to their opinions by feelings of friendship, and they avoid attacking the action of the Government, lest they might perchance prevent their own promotion. All these dislikes, motives, doubts and fears make the Bar exceedingly patient and long suffering in public. But to compensate for this public cowardice, this retiring modesty, so far as society at large is concerned, in private no man is more candid in his opinion of his *confrères* and the Judges, than a Quebec advocate.

Fifty years ago the Bar of Lower Canada stood high; its members moved in the foremost ranks of society, and in the political arena were supreme.

The object of this paper is to examine into the causes of the decline of the legal profession in this Province.

In the year 1849 the Act incorporating the Bar of Lower Canada was passed by the Legislature of the Province of Canada. Divided into sections according to the several districts, members of the Bar were entitled to elect their own officers, and to manage their own affairs in each section. The principle of universal suffrage was admitted, and the attorney of one day's standing had an equal voice in the administration of affairs with the barrister of thirty years' practice. Politicians eager for the interests of their respective parties saw therein opportunities of gaining strength, and consequently the nominees of four or five gentlemen who met in caucus and decided on the persons who should be the officers of the Bar for the then current year, have been for a long time past duly elected. So high on many occasions has party feeling run, that the candidates for the office of Bâtonnier, or their friends, have paid the subscriptions of members of the Bar, who had fallen into arrears, to secure the votes of the defaulters. Is it necessary to say that such a course of proceeding is disgraceful and demoralizing to all parties concerned? One of the consequences of this universal suffrage is that the elections are generally carried by the votes of the younger members, who in very many instances have no idea of their responsibility, and but very little *esprit de corps*. Canvassed it may be for weeks before hand, they are marshalled by their leaders on the day of election, and vote blindly for the man who is the selected of their party, without caring for or enquiring into his qualifications to be the representative man of the Bar for a year.

The annual election of Bâtonnier is also a mistake—that officer should be the leading man of the Bar, and should continue his office until he loses his position, when his successor in reputation should be appointed.

Now-a-days, thanks to the errors in the system and the malpractice adverted to, the office of Bâtonnier has been shorn of its *prestige*, and is open to any one willing to canvass the Bar, and expend fifty pounds in paying arrears.

Another great cause of the decadence of the Lower Canadian Bar has been the laxity displayed in admitting to its ranks men who might perhaps have graced a shoemaker's bench, but who simply disgrace a learned profession. Within the last few years however a change for the better has been effected, and it is now impossible, if the examiners are but true to themselves and their profession, for men to be admitted to practice, without being to a certain extent qualified.

When complaints are brought against members of the Bar for improper or unprofessional conduct, it frequently occurs that the members of the Council, consti-

tuting the tribunal before which the charge must be investigated, are approached by the complainant or the defendant, or by friends, seeking to influence them in favor of one of the parties. It is also rumoured that the examiners, on the eve of an examination, have been spoken to by members of the Bar in favour of certain of the candidates. It is to be hoped that such solicitations have not induced any of these gentlemen to swerve from the path of duty. Placed in positions of the highest trust, the mere attempt to influence members of the Council, or the Board of examiners, is as heinous an offence as the endeavor to corrupt a judge.

Of all legislative enactments, decentralization is the one most fraught with fatal effects to the Bar and to the Bench. Life in a country district is destruction to a judge. His faculties rust, his energy declines, his learning is forgotten. In certain cases, without society, in a few years he neglects his duties as a judge, and ends by forgetting his duty as a man and a Christian. In lieu of being an example to his fellow citizens, he becomes a reproach to the community at large. To the lawyer in many of the country districts, the monotonous life he leads exposes him to many temptations, to which alas! he very frequently succumbs—how many men of fine ability have been destroyed owing to casting their lot in a country village. Moreover country practice tends to narrow the ideas, to turn the liberal practitioner into a pettifogger, to transform the advocate into a money-lender at exorbitant interest, and to make him a kindler of family feuds. The highest talent will always gravitate to the great cities, leaving as a rule inferior men in the country. Generally, the judges appointed in the country places are inferior even to those named in the chief districts, and with the happy conjunction of Bench and Bar, not composed of excessively good material, rejoicing in as many different interpretations of our codes, it may almost be said, as there are Districts, can it be wondered at that our law with its mixture of English, French and Civil principles, should by its administration be a veritable *olla podrida*, with an unsavory smell, affecting most unpleasantly the nostrils of the public?

As to the Bench generally, the most wide spread dissatisfaction exists throughout the Province. It is perfectly true that the corruption which was brought home to certain judges in the State of New York cannot be reproached to their *confrères* here; but it is not the less true that carelessness, negligence, indifference, and favoritism may with justice be laid to the charge of some of them. Physical defects, absolutely disqualify certain of them from acting as judges, and yet they sit in the most important cases.

To plead a case in the Court of Queen's Bench, appeal side, is one of the most mortifying trials to which an advocate can be exposed. Some of the judges pay no attention to the argument. Cases pleaded in one, are judged as a rule in the succeeding term, an interval of three months elapsing. In many of the judgments the most amazing ignorance of the facts and law is apparent. In all it is clear that there has been no proper deliberation; the Montreal judges being anxious to return to Montreal, when the Court sits in Quebec, and the Quebec judges being animated by the same desire for Quebec, when the Court is holden at Montreal. Two or three days are often consumed by windy harangues on evidence, and the judges seem to imagine that they must each give all the facts, sift the evidence, and lay down the rules of law, where even the facts are patent, and a student of two years' standing is acquainted with the law applicable to them. But this it must be remembered, is a cloak skilfully put on to deceive the public into the belief that the judges are overwhelmed with work, and that they perform it; whilst the reality is, that in the Court the judges have little to do, and that little is done in the most slipshod and unprofessional manner.

The hardship to which suiters are exposed by the delay of three months intervening between the argument and the decision of cases in appeal, is excessive. And there is really no excuse for it save the incapacity of the judges; for with printed factums furnished ere the inscription, containing a full exposé of the facts and the views maintained by each party to the Appeal, nothing should be easier for a judge than to be well up, in both facts and law, when the case is heard. By then listening to the arguments of the Counsel on both sides, it would be easy for them to abbreviate the discussion, and

by taking one day's adjournment ere the last day of the term, would enable them easily to dispose on that last mentioned day, of at least eight out of every ten, of the cases argued before them.

And here, *par parenthèse*, it may be remarked that some learned counsel are decidedly tedious in their arguments; they fritter away too much time in speaking, they are afflicted with a plethora of words, they seem to be in love with the sound of their own voices, and delight themselves at the expense of the Bench and the public. Loquacity in a legal argument is a vice; were the time rule to be introduced it would tend very much to the despatch of business.

The judges of the Superior Court in Montreal cannot be accused of idleness; they are hard working, and decide to the best of their ability. There is a want of knowledge however of the principles of Common Law apparent on the Bench, which causes certain of its members to be avoided in Mercantile cases.

The main cause of the present lamentable state of affairs is traceable to politics. In North America it would seem as if politics were the cancer of society. By political appointments the dignity of the Bench has been lowered, and the respect of the public for the judges has been impaired. From motives of political expediency, the *esprit de corps* of the Bar has been extinguished, its character has been damaged, and its power for good has been to a great extent destroyed. As consequences, the administration of the Law is unsatisfactory and bad, and society suffers.

It remains to be seen whether the joint action of the Bar, the Bench, and the Government of the Dominion, prompted by pure and patriotic motives, cannot redeem our Province from the imputations which now are justly thrown upon it.

Let the Bar eschew politics in its elections, restrict the right to vote to advocates of at least ten years' standing, elect the best men without distinction of party to its offices, admit no unqualified person to its ranks, punish severely any of its members who violate the principles of the profession, and contend as one man against the miserable practice of making seats on the Bench prizes for political subserviency.

Let the judges remember that courtesy adorns, whilst rudeness disfigures the Bench. A judge who is rude and insolent is no gentleman, and whatever his defects in birth or education may be, an advocate on becoming a judge is bound to act, as much as he can, like a gentleman. Let them remember that they are but public servants, of the highest class it is true, but still not less bound in common honesty, to work faithfully for their wages, and let them get rid of the idea that the main object in life of a judge is to receive his salary.

As for the Government of the Dominion, the onus of the present state of affairs rests to a great extent upon their shoulders. To the Minister of Justice we specially look not only for reform in the Bench as it at present exists, but also for the adoption of measures to raise it in the future, to a high state of efficiency. Its curse has been political appointments. Let him choose the best men without distinction of party to fill any vacancies. Let him increase the salaries to members of the Bench, so that judges may cease to feel like criminals, and be able to live respectably. Let him insist upon the retirement of those who are physically incapable of performing their duties. Let him hunt down without any mercy the judge who neglects his duties, or is guilty of any act incompatible with his position.

Sir John A. Macdonald has before him a Herculean labor, verily he has to clean out an Augean stable. Let us hope that he will prove equal to the task, and that in any appointments he may make he will show that as Minister of Justice, his oath forbids his consenting to the prostitution of the judicial office, and that he has at heart the regeneration of the Bench in the Province of Quebec.

William H. Kerr.

[Mr. Kerr does not mince matters. The time seems to have come, he thinks, for calling things by their right names. But though his opinion is entitled to much weight, and receives the sanction of the *Revue Critique*, we hope things are not quite so bad as he puts them.]

DIGEST.

DIGEST OF ENGLISH LAW REPORTS

FOR AUGUST, SEPTEMBER, AND OCTOBER, 1872.

From the American Law Review.

Acceptance.—*See* Contract, 2.

Accident.—*See* Burden of Proof.

Account.—*See* Injunction.

Action.—*See* Nonsuit.

Ademption.

A testator bequeathed his residuary estate upon trust to pay the income of one moiety to his widow for life, and divide the other moiety among his children as tenants in common. The testator had made advances to his children and gifts to his wife after the date of his will. *Held*, that said advances to the testator's children were not to be taken into account as part of their shares in said residuary estate for the purpose of increasing the income of the widow.—*Meinertzagen* v. *Walters*, L. R. 7 Ch. 670.

Administration.—*See* Executors and Administrators.

Admiralty.—*See* Burden of Proofs; Jurisdiction.

Advance.—*See* Ademption.

Agency.—*See* Principal and Agent.

Agreement.—*See* Contract.

Annuity.

A testator gave all his property to trustees "for the following uses, intents, and purposes," viz.: a certain sum to his wife to be paid quarterly; the sum of £800 per annum from the profits of a certain estate, to be appropriated by his trustees to the maintenance and the education of the eight children of his daughter, provided they should change their name for the testator's. If any child should die, his mother to have the benefit of his share. Should any child get into debt, the trustees to have power to forfeit his share and divide it with the other children. Should profits of said estate not reach £800 annually, then the trustees should charge the residue of the testator's property to make up such sum. *Held*, that the annuity to the testator's wife was for life only, but that there was an absolute gift to the children of such a sum as would produce £800 yearly.—*Hicks* v. *Ross*, L. R. 14 Eq. 141.

Appointment.

A testator gave his residuary estate in trust for his daughter for life, and after her death, among such of her issue as she should by deed or will appoint, and in default of such appointment, to such persons as she should by deed or will appoint, and in default of such appointment in trust for her nearest of kin under the Statutes of Distribution. By will the daughter appointed in favor of her husband, reciting that she had no children. Subsequently she had children, and died. *Held*, that the appointment could not take effect: first, because the testator gave the general power only in default of his daughter's issue; and second, because the daughter meant to appoint to her husband only on her having no children; and that her children took as nearest of kin.—*In re Jeffery's Trusts*, L. R. 14 Eq. 136.

Assignee.—*See* Bankruptcy.

Assignment.—*See* Bankruptcy, 4; Distress.

Attachment.—*See* Bankruptcy, 1.

Attorney.—*See* Set-off.

Auction.—*See* Vendor and Purchaser, 1.

Bailment.

The defendant, a wharfinger, received wine shipped by the plaintiff to L. L. indorsed the bill of lading to M. under a colorable transaction, with intent to deprive the plaintiff of the wine, and M. obtained delivery orders from the defendant. L. then wrote to the plaintiff refusing to accept the wine. The plaintiff subsequently tendered to both M. and the defendant all charges, but the defendant refused to deliver. *Held*, that the defendant received the wine as bailee to L., and had no better title than L. had, and that, as M.'s title was no better than L.'s, the plaintiff was entitled to the wine.—*Batut* v. *Hartley*, L. R. 7 Q. B. 594.

See Contract, 3

Bankruptcy.

1. The plaintiff, who was holder of goods under an unregistered bill of sale from C., paid out a sheriff who was in possession of the goods, and took possession of the latter in ignorance of the fact that C. had been adjudicated bankrupt. Subsequently the plaintiff gave up possession of the goods. *Held*, that the sum paid the sheriff should be repaid to the plaintiff.—*Ex parte Mutton. In re Cole*, L. R. 14 Eq. 178.

2. An uncertified bankrupt cannot sue in chancery, even though alleging fraud in the defendants, including the assignee.—*Motion* v. *Moojen*, L. R. 14 Eq. 204.

3. It is a fraud upon creditors, and an act of bankruptcy, for a partner who knows his firm is insolvent, to transfer partnership assets to a creditor of his own, or to give security on such assets for his private debt, or for future advances to be made to himself.—*Ex parte Snowball. In re Douglas*, L. R. 7 Ch. 535.

4. A trader borrowed from a creditor to whom he owed £600 the further sum of £100, upon condition that if it was not repaid in ten days the trader should assign all his property by way of security for the previous advances and the £100. The trader failed to repay, and assigned said property, which was worth £718, and shortly afterward became bankrupt. *Held*, that said assignment was an act of bankruptcy, and invalid against the trustee.—*Ex parte Fisher. In re Ash*, L. R. 7 Ch. 636.

5. A debtor gave his creditor a mortgage to secure repayment of his debt, covenanting that if the mortgagor should, during the continuance of the security, become possessed of other goods, they should in all respects be subject to the mortgage, and might be seized and disposed of as if then possessed by the mortgagor. The mortgagor's debt was dis-

charged in bankruptcy. *Held*, that the creditor's right to seize ceased with the discharge of the debt.—*Thompson* v. *Cohen*, L. R. 7 Q.B. 527.

See Settlement.

Bequest.—*See* Appointment; Devise; Legacy; Will.

Bill of Lading.

The plaintiffs shipped goods on board the defendant's vessel under bills of lading in the following form: "Shipped in the steamship *Hibernia*, for London, having liberty . . . to transship the goods by any other steamer." *Held*, that by the contract said goods were to be carried by a vessel whose principal motive power, while on the voyage, should be steam. —*Fraser* v. *Telegraph Construction Co.*, L. R. 7 Q. B. 566.

See Bailment.

Bills and Notes.

1. Action on a promissory note. The note was joint and several by the defendant and R., the former being liable only as surety, with knowledge of the payee. R. had a set-off growing out of the same transaction, from which the defendant's liability as surety arose. *Held*, that the defendant had an equitable defence against the payee.—*Bechervaise* v. *Lewis*, L. R. 7 C. P. 372.

2. The master of a vessel which had been mortgaged, gave a bottomry bond for repairs, and also a bill at ten days' sight on the mortgagee, for the amount of the bond, under an agreement that if the bill should be accepted, the bond should not be enforced. The bill was forwarded for collection, but in the meantime the mortgagee had died, and no probate of his will had been granted. The person named in said will as executor refused to accept, and the bill was therefore protested on the day it arrived, and proceedings were subsequently taken on the bottomry bond. *Held*, that, under the circumstances, all that was reasonable was done for getting the bill accepted and paid, and that it was not necessary to wait until the expiration of the days of grace for having said bill protested.—*Smith* v. *Bank of New South Wales*. *The* "*Staffordshire*," L. R. 4 P. C. 194.

See Contract, 3; Limitations, Statute of.

Broker.

Trover for thirteen bales of cotton. The plaintiffs sold the cotton to B., who falsely represented that he was purchasing for certain principals. The defendant, in ignorance of B.'s fraud, purchased the cotton from B., stating that he would send in the name of his principal in the course of the day. The defendant knew that a customer was wanting cotton, and purchased said cotton, expecting his customer to accept it. The same day the customer accepted the cotton, and later in the day the defendant sent to B. an order for delivery of the cotton, in which said customer was named as principal, and the latter received the cotton and paid the defendant, who paid B. Upon these facts the judge left to the jury the questions whether the cotton was bought by the defendant as agent in the course of his business as broker, and whether he dealt with the goods only as agent of his principal. The jury found a verdict for the defendant, and a rule was granted to enter the verdict for the plaintiffs. *Held*, (by Martin, Channell, and Cleasby, B. B.: *contra*, Kelly, C. B., Byles and Brett, J. J.), affirming judgment of Court of Queen's Bench, that the defendant was liable for the value of the cotton.—*Fowler* v. *Hollins*, L. R. 7 Q.B. (Ex. Ch.) 616.

Burden of Proof.

Both in courts of admiralty and common law, it is a rule that the *onus* of proving blame is upon the vessel complaining against another, and that the *onus* of proving inevitable accident does not attach to the latter until there has been a *primâ facie* case of negligence and want of due seamanship shown.—*The* "*Marpesia*," L. R. 4 P. C. 212.

Cancellation.—*See* Will.

Cargo.

It was *held*, that it was not erroneous to describe the "necessity" which justifies a master of a ship in selling the goods of an absent owner, as "a high degree of expediency."—*Australian Steam Navigation Co.* v. L. R. 4 P. C. 222.

See Charter-Party; Insurance, 3.

Charity.—*See* Legacy, 1, 2.

Charter-Party.

1. By charter-party it was agreed that a vessel should take a full and complete cargo of sugar in bags, the freight for dry sugar and wet sugar being specified; the vessel to be a good risk for insurance, and the master during the voyage to take all proper means to keep the vessel tight, staunch, and strong, and in every way well fitted for the voyage. The charterer provided a cargo of wet sugar, but after the bulk of it was loaded, the drainage of molasses was found to be so great, that the vessel was unseaworthy. The sugar was unloaded, and the charterer refused to reship it, or to provide any other cargo for said vessel. The jury found that the vessel, though otherwise seaworthy, was not so for the purpose of carrying wet sugar, from which there is a large drainage, and that the vessel could not have been rendered fit to receive said sugar within a reasonable time, and that the sugar was a reasonable cargo to be offered. *Held*, that the ship-owner was liable to the charterer for damages caused by the unfitness of his vessel for carrying a reasonable cargo of wet sugar, being the cargo stipulated for in the charter-party.—*Stanton* v. *Richardson*, L. R. 7 C. P. 421.

2. By charter-party defendant agreed to load plaintiff's ship in regular turn with full cargo of coal; and that the charter being concluded by the defendant on behalf of another party resident abroad, all liability of the defendant should cease as soon as he had shipped said cargo *Held*, that the defendant was liable for a breach of the charter-party occurring before the cargo was loaded.—*Christoffersen* v. *Hansen*, L. R. 7 Q. B. 509.

Chose in Action.—*See* Executors and Administrators. 1.

Class.—*See* Devise, 3; Legacy, 3.

Digest of English Law Reports.

Company.—*See* Specific Performance.

Condonation.—*See* Guaranty.

Construction.—*See* Ademption ; Annuity ; Appointment ; Bankruptcy, 5 ; Bill of Lading ; Contract, 2 ; Devise ; Easement ; Frauds, Statute of ; Insurance, 3 ; Jurisdiction ; Law, Mistake of ; Legacy ; Principal and Agent, 1.

Contract.

1. An application for shares in a company was made by letter, and an answer, allotting shares, posted by the company. Before receipt of said answer, a second letter was posted by the applicant recalling his application. *Held*, that the contract of allotment was complete from the moment when said answer was posted.—*Harris's Case*, L. R. 7 Ch. 587.

2. Defendants contracted to supply shoes, as per sample, to be delivered at a certain wharf ; to be inspected and quality approved before shipment, and payment to be made on delivery. The defendants knew that the shoes were for the French army, and for a winter campaign. On February 7th a number of shoes were inspected by the plaintiffs' agent, approved, delivered at said wharf, and paid for. At this time the defendants knew that the shoes had to be passed by the French authorities, and that no paper was allowed in the soles of the shoes, and they had previously represented that there was no paper in the soles of the shoes they furnished. On February 11th, the defendants wrote to the plaintiffs, agreeing to take back the shoes which might be thrown back on the plaintiffs' hands in consequence of paper being found in them. The inspection and delivery then continued, and a large number of shoes were paid for, and all the shoes were forwarded to France, where, upon examination by the French authorities by opening the soles, paper was found in the soles, and the shoes were rejected. The plaintiff's agent had not discovered that there was paper in the soles when inspecting the shoes, and the jury found that this defect could not have been discovered by any inspection which ought reasonably to have been made. The defendants contended that the plaintiffs had accepted the goods. *Held*, that the plaintiffs were entitled to reject the goods, and leave them in France on the defendant's hands, and that they were entitled to recover back the price of the shoes, and damages for breach of contract, leaving the shoes the property of the defendants.—*Heilbutt* v. *Hickson*, L. R. 7 C. P. 438.

3. The defendant agreed to be the depositary of certain bills in the following terms : The defendant "undertakes to be responsible for said bills until the effectual encashment thereof, which encashment is entrusted to C." *Held*, that the bills were properly delivered to C., when the time for encashment came, and that the responsibility of the defendant then ceased.—*Trefftz* v. *Canelli*, L. R. 4 P.C. 277.

See Bill of Lading ; Charter-Party ; Damages ; Evidence ; Foreign Government ; Frauds, Statute of ; Insurance, 3, 4 ; Law, Mistake of ; Specific Performance ; Vendor and Purchaser, 1.

Corporation.—*See* Specific Performance.

Costs.—*See* Set-Off.

Covenant.—*See* Bankruptcy, 5 ; Easement ; Ejectment.

Cross-Remainder.—*See* Legacy, 3.

Damages.

The defendant contracted to deliver five hundred tons of iron, in equal quantities, in September, October, and November. In August the defendant repudiated the contract. The plaintiff claimed for damages the difference between the contract and market price of five hundred tons of iron on the 30th November ; but the defendant contended for the difference in August, when the contract was repudiated, or on September 30th, when it was first broken. *Held*, that the measure of damages was the sum of the differences at the end of each month between contract and market prices of one-third of the five hundred tons.—*Brown* v. *Muller*, L. R. 7 Ex. 319.

See Charter-Party, 1 ; Contract, 2 ; Negligence, 2 ; Trespass.

Deed.

1. A testator gave the residue of his estate, after his wife's decease, to his son C. and his heirs ; "and in case C. should die, leaving no issue, then my freehold estate shall be equally divided between my surviving children, or their families." The wife died, and then C., intestate. At C.'s death there were living one son of the testator, the children of two other sons, the grandson and daughter of a fourth son. *Held*, that the gift was, on the death of C., without leaving issue at his death, to the other children of the testator then living, and the children of such of them as should be dead.—*Burt* v. *Hellyar*, L. R. 14 Eq. 160.

2. A testator devised a portion of his estate, on failure of limitations for life and in tail, in trust to sell and pay the proceeds to the children of A. "who shall be then living, and the issue of such of them as shall be then dead, leaving issue, share and share alike, but so as the issue of such of the children" of said A. "as shall be then dead shall have no greater share than their, his, or her deceased parents would have had if living." And a second portion in trust for P., and after her decease to divide the same among her children "then living ;" and so on as with A. Proviso, that whenever sums should become payable "to the issue of my late sister A., and my sister P., and any one or more of such issue as shall be then dead having left lawful issue, then the issue of such issue as shall be so dead shall have the share to which their, his, or her parent would have been entitled to if living." *Held*, that two living children of P. and the issue of a deceased child took one-third respectively of said second portion, as tenants in common.—*Hesman* v. *Pearse*, L.R. 7 Ch. 660 ; s. c. L. R. 11 Eq. 522 ; 6 Am. Law. Rev. 95.

3. Devise in trust for E., with certain remainders to her children, and ultimate limitation as follows : "And in case every child born or to be born should die under the age of twenty-one years, and without leaving issue, then to the use of the heirs and assigns of E.,

as if she had continued sole and unmarried ;" remainders to heirs of testator. E. had a child who died, aged twenty-three, before the testator's death, but after the date of the will, at which time the child was aged sixteen. E. assigned her interest under the will of the defendant. The plaintiff claimed as heir-at-law of the testator, and of E. *Held*, that the ultimate limitation did not take effect. Judgment for the plaintiff.—*Brookman* v. *Smith*, L. R. 7 Ex. (Ex. Ch.) 271 ; s. c. L. R. 6 Am. Law Rev. 87.

4. A testator directed his trustees to invest for accumulation the dividends of his personal estate, and the rents and profits of his real estate, during such time as any person beneficially interested in said estates should be under twenty-one. The trustees were to hold the testator's real and personal estate to the use of his grandson, and after the grandson's decease, for the latter's first and every other son successively in tail ; remainder to the testator's second and other grandsons in like manner, remainders over. Then came the proviso : " I declare it to be my will and meaning, that such person as shall under my will be entitled to an estate tail in possession in my said real estate, shall not be absolutely entitled to my leasehold and personal estates until he shall attain the age of twenty-one, and that my said leasehold and personal estates shall absolutely belong only to such person as shall first attain the age of twenty-one, and become entitled to an estate tail in possession, under the trusts aforesaid." Said grandson entered into possession of the estates as tenant for life, and had an eldest son who died an infant, and a second (the defendant) who attained twenty-one. The plaintiff, second grandson of the testator, claimed the leasehold and personal estates on the ground that they did not invest in said first grandson's first son, who died under age. *Held*, that the defendant was entitled to an estate tail in possession, under the testator's will, and was the first so entitled, and was therefore entitled to said personal estates.—*Martelli* v. *Holloway*, L. R. 5 H. L. 532.

See Ademption ; Annuity ; Appointment.

Distress.

Upon a demise of a coal-mine under certain land a power of distress for rent was reserved over the land described, and over " any lands other than those described in which there should be for the time being any pits in course of working " by the lessees or their assigns. The defendant distrained over lands other than that described, which the lessee had assigned together with the coal-mine to the plaintiff. *Held*, that the power of distress over such other lands was void, for the uncertainty of their description, against said assignee.—*Daniel* v. *Stephney*, L. R. 7 Ex. 327.

See Ejectment.

Dog—*See* Master and Servant.

Domicile.—*See* Executors and Administrators.

Easement.

In a lease the demised premises were described as bounded on the east and north by newly made streets (as on a plan referred to), on the west by premises of H., and on the south by land of the lessor. There was no approach to the demised premises but by said east and north sides. The lessee covenanted to build a house on the premises, " and to kerb the said causeways adjoining the said land with proper kerbstone." *Held*, that the lessee had a right of way over said new streets under the lease.—*Espley* v. *Wilkes*, L. R. 7 Ex. 298.

See Trespass.

Ejectment.

Ejectment for breaches of covenant in a lease. The writ was dated July 21, 1871, and did not claim the premises as from any previous day. In September, the plaintiffs distrained for rent due up to the previous 24th of June. *Held*, that the distraint did not waive breaches previous to said June 24th, as bringing ejectment was an unequivocal election to determine the lease for any breach that could be proved.—*Grimwood* v. *Moss*, L. R. 7 C. P. 360.

Equity.—*See* Bills and Notes, 1 ; Specific Performance.

Estate for Life.—*See* Annuity.

Estate Tail.—*See* Devise, 4.

Evidence.

1. A mutual marine insurance company issued an unstamped policy on a vessel which was subsequently lost. At a meeting of the company a claim for the insurance was allowed, and an entry to that effect was made in the minute-book, and the sum due ordered to be drawn for. A part of such sum was subsequently paid upon an order by the insured. *Held*, that though said policy could not be introduced in evidence, the validity of the claim for insurance had been admitted.—*In re Teignmouth and General Mutual Shipping Association, Martin's Claim*, L. R. 14 Eq. 148.

2. A letter from an English subject in Germany to a person in England breaking off an engagement of marriage entered into in Germany is evidence that a breach has taken place in Germany.—*Cherry* v. *Thompson*, L. R. 7 Q. B. 573.

See Burden of Proof ; Negligence, 1 ; Vendor and Purchaser, 2.

Executors and Administrators.

1. A wife who was entitled to a legacy upon the death of another person died intestate in the lifetime of such person, and her husband died without having administered to her. *Held*, that said legacy formed part of the estate of the husband, and that administration in respect to said legacy must be taken out by the representatives of the husband.—*In the Goods of Harding*, L.R. 2 P. & D. 394.

2. A testator appointed his daughter executrix for all his property not named in his will, and died, leaving residuary personal estate undisposed of. The court refused to grant probate to the daughter, as she was precluded from dealing with the property which passed under the will.—*In the Goods of Wakeham*, L. R. 2 P. & D. 395.

3. A testator made a will in England disposing of his real and personal estate, and

appointing an executor. Afterward he made a will in Italy, where he was domiciled, in which he made his wife his universal heiress, adding, "I erase, revoke, and annul every other act or last will which I may have made." *Held*, that the provisions of the first will being revoked as to the personalty, the appointment of executor was revoked also.—*Cottrell* v. *Cottrell*, L. R. 2 P. & D. 397.

Fact, Mistake of.—*See* Insurance, 5; Law, Mistake of; Vendor and Purchaser, 1.

Felony. *See* Nonsuit.

Fixtures.

The owner of a worsted mill mortgaged it with all its fixtures. In the mill there were looms, through the feet of which nails were driven into wooden beams or plugs set into a stone floor. The nails could be withdrawn without serious injury to the floor. It was essential to the working of the looms that they should be kept steady, for which their own weight was insufficient. *Held*, that the looms passed by the mortgage.—*Holland* v. *Hodgson*, L. R. 7 C. P. (Ex. Ch.) 328.

Foreign Government.

The French Government contracted in England for the purchase of arms, to be paid for as delivered out of a fund lodged for that purpose with bankers in England, upon the receipt of certificates from J. Certificates being refused, the bankers declined to make payments. A bill in equity, in which the French Government was a defendant, praying inquiry, and accounts showing what was due under the contract, was granted, although the French Government did not appear.—*Lariviere* v. *Morgan*, L. R. 7 Ch. 550.

Fraud.—*See* Bailment; Bankruptcy, 2, 3; Settlement; Voluntary Settlement.

Frauds, Statute of.

A. entered into a contract with B. for the purchase of wool, and signed and handed to B. a memorandum of the terms of sale. B. subsequently wrote to A., "It is now twenty-eight days since you and I had a deal for my wool. . . . I shall consider the deal off as you have not completed your part of the contract. Yours, B." And on A. asking for a copy of said memorandum, B. wrote, "I beg to enclose a copy of your letter," enclosing a copy of the memorandum. *Held*, that there was sufficient memorandum of the contract signed by B. to satisfy the Statute of Frauds.—*Buxton* v. *Rust*, L. R. 7 Ex. (Ex. Ch.) 279; s. c. L. R. 7 Ex. 1; 6 Am. Law Rev. 485.

Fraudulent Preference.—*See* Bankruptcy, 3, 4; Trade-Mark; Voluntary Settlement.

Freight.—*See* Cargo Insurance, 2; Mortgage.

General Average.—*See* Insurance, 3.

Guaranty.

1. The defendant guaranteed the honesty of the plaintiff's servant. Subsequently, the servant embezzled money from the plaintiff, was discovered, and repaid the money, without the plaintiff's informing the defendant. The plaintiff retained the servant in his employ, and the latter again embezzled money from the plaintiff, who then sued the defendant on his guaranty. *Held*, that the plaintiff, by retaining the servant in his employ after the first embezzlement without informing the defendant of the same, discharged the defendant from liability for the second embezzlement.—*Phillips* v. *Foxall*, L. R. 7 Q. B. 666.

2. Under 12 Car. II. ch. 24, a testator may appoint two guardians of his child, and authorize the survivor of the guardians, in case one should die, to nominate another guardian in place of the one dying.—*In the Goods of Parnell*, L. R. 2 P. & D. 379.

Husband and Wife.—*See* Executors and Administrators, 1.

Inevitable Accident.—*See* Burden of Proof.

Infant.—*See* Guardian.

Infringement.—*See* Patent.

Injunction.

A bill was filed against a tenant for life, who was also executrix of a preceding tenant for life, praying an injunction to stop waste, for an account, and for an account of what had come to her hands as executrix of the preceding tenant for life, who was also charged with waste. Six years had elapsed from the time of the waste committed by the preceding tenant for life, but not from the date of his death. *Held*, that as an injunction could not be granted against the preceding tenant for life, there could be no account against his executrix; and that the claim was barred by the Statute of Limitations.—*Higginbotham* v. *Hawkins*, L. R. 7 Ch. 676.

Insolvency.—*See* Bankruptcy.

Insurance.

1. The value of a current policy in a life insurance company in the course of liquidation is the sum that would buy a similar policy from a safe office.—*Holdich's Case*, L. R. 14 Eq. 72.

2. The plaintiff insured "chartered freight, valued at £7000, at and from Sydney to Calcutta and London," for the sum of £1000, said freight being for the carriage of goods only. Upon the arrival of the ship at Calcutta, the voyage was abandoned, and the ship took coolies and rice to Mauritius. The plaintiff thereupon produced an alteration of the policy, whereby it was agreed that the voyage was to Mauritius; and it was added, "the within interest is now declared to be on freight valued at £2000," the sum underwritten remaining the same. The vessel was wrecked, and the rice and freight thereof wholly lost; but the coolies were saved, and their passage-money paid. It was customary when insuring passage-money to describe it as freight of coolies, and the premium was generally less on passage-money than on freight of merchandise. *Held*, that under the circumstances "freight" did not include said passage-money, and that therefore the freight insured was totally lost. But that, as it appeared that there was not a total loss of full freight, and as the valuation of freight refers *primâ facie* to the freight of a full cargo, the policy as applicable to such partial freight was an open policy for half the

loss of freight not exceeding, in any case, £1000.—*Denoon* v. *Home and Colonial Assurance Co.*, L. R. 7 C. P. 341.

3. In a policy of insurance upon a cargo from Taganrog to Bremen, the insurers agreed "to pay general average as per foreign statement if so made up." The master of the vessel was obliged before arrival at Bremen to give a bottomry bond for repayment of damages from perils insured against, upon ship, freight, and cargo, and on arrival an average stater made up a statement of average, in which the loss was apportioned. The owner of the cargo paid his proportion; and to pay the proportion falling upon the ship, she was sold, but the proceeds were insufficient. A supplemental average statement was made up by said average stater, in which said deficit was stated as the amount which the cargo had to pay as an additional bottomry debt. By the law of Bremen said deficit would be general average loss. *Held*, that the insurers were under the policy bound by said average statements at Bremen, whether in fact said deficit was a general average loss according to the law of England or Bremen, or not, and that they must pay the amount of said deficit.—*Harris* v. *Scaramanga*, L. R. 7 C. B. 580.

5. The plaintiff reinsured, subject to all clauses and conditions of the original policy, cargo in the D. at and from any port or ports, place or places, in any order on the west coast of Africa to the port of discharge in the United Kingdom, insurance to begin from the loading of said goods on board said ship at as above. Under the original policy, outward cargo was to be considered homeward interest twenty-four hours after the vessel's arrival at her first port of discharge. The vessel was lost more than twenty-four hours after arrival at her first port of discharge, having on board part of said outward cargo. *Held*, that the second policy attached.—*Joyce*, v. *Realm Insurance Company*, L. R. 7 Q. B. 580.

5. The defendant insurance company had a list of vessels in which were the *Socrates*, a Norwegian vessel, and the *Socrate*, a French vessel. The plaintiff and defendant entered into a contract for insurance, which the jury found was meant to be upon goods in the vessel in which they were shipped, whatever her name might be. The *Socrates* was named in the policy, but the hides were in fact shipped in the *Socrate*. *Held*, that considering the finding of the jury, the misnomer was of no consequence.—*Ionides* v. *Pacific Insurance Co.*, L. R. 7 B. B. (Ex. Ch.) 517; s. c. L. R. 6 Q. B. 674; 6 Am. Law Rev. 297.

Interest.—*See* Limitations, Statute of.

Landlord and Tenant—*See* Distress; Ejectment.

Law, Mistake of.

In an agreement for a lease the term was expressed to be for seven or fourteen years, and under the agreement the lessee entered into possession. The lessor refused to execute a lease without inserting a power for the lessor to determine the lease at the end of seven years, alleging that all his other leases had such a power, and if such power was not in said agreement, the latter was made under a mistake. *Held*, that the mistake was one of fact and not of law, and that the agreement must be specifically enforced.—*Powell* v. *Smith*, L. R. 14 Eq. 85.

Lease.—*See* Easement; Law, Mistake of.

Legacy.

1. A testator directed that all the rest, residue, and remainder of his personal estate, which might be legally applied for such purposes, should be applied equaliy between six hospitals; and he further directed that his estate should be so marshalled as to give the fullest effect to said bequest. Two only of the hospitals had power to hold real estate. The testator left pure and impure personalty. *Held*, that the impure personalty was included in the bequest to the hospitals, and should be applied to the payment of the two hospitals which could hold real estate.—*Wigg* v. *Nicholl*, L. R. 14 Eq. 92.

2. A testator bequeathed personal estate to trustees of a town, in trust, to apply such estate to the same charitable purposes as those to which certain town funds were applicable. Said town funds were applicable, among other things, to the purpose of land. *Held*, that the bequest was good.—*Wilkinson* v. *Barber*, L. R. 14 Eq. 96.

3. A testator bequeathed his residuary estate, upon trust, to pay the income equally between his three daughters, and if all or either of them should die leaving issue, then to pay one-third of the principal among the issue of each of said daughters who should die leaving issue, in equal shares; and if only one of said daughters should die leaving issue, to pay the whole residue among such issue; but if all said daughters should die without leaving issue, then over. One daughter died leaving children, and a second childless. *Held*, that cross-remainders were to be implied between said daughters and their families; and that the class of issue to take under said bequest must be ascertained at the death of the daughter leaving such issue; therefore, one moiety of the share of said daughter dying childless must go to the children of the second daughter, and the other moiety by way of accretion to the share of the third daughter.—*In re Ridge's Trusts*, L. R. 7 Ch. 665.

See Ademption; Annuity; Appointment; Executors and Administrators.

Letter.—*See* Contract, 1; Evidence; Frauds, Statute of.

Lien.—*See* Set-off; Vendor and Purchaser, 1.

Life-Estate.—*See* Annuity.

Limitations, Statute of.

The maker of a note, made six years before this action brought, had been sued within six years for interest on the note, and judgment being given against him, had paid the same. *Held*, that the note was not taken out of the Statute of Limitations, as no new promise to pay could be inferred from said compulsory payment of interest.—*Morgan* v. *Rowlands*, L. R. 7 Q. B. 493.

See Injunction.

Marshalling Assets.—*See* Legacy, 1.

Master and Servant.

The knowledge of a servant, who has charge of his master's dog, that the dog is ferocious, is knowledge of the master.—*Baldwin* v. *Casella*, L. R. 7 Ex. 325.

See Guaranty ; Seduction.

Mines.—*See* Trespass.

Minor.—*See* Guardian.

Misnomer.—*See* Insurance, 5.

Mistake of Fact.—*See* Insurance, 5 ; Law, Mistake of ; Vendor and Purchaser, 1.

Mistake of Law.—*See* Law, Mistake of.

Mortgage.

A vessel was mortgaged to secure a certain sum, and afterward mortgaged to other parties to secure a second sum. The second mortgagees then advanced money upon the security of an express charge on the freight then in course of earning, and gave the charterers notice of their charge. The mortgagor also borrowed £800 for insurance purposes, giving the lenders a charge therefor on the freight, which the first mortgagors agreed should be a prior charge. The first mortgagees afterward made a further advance, secured by a mortgage of ship and freight, and subsequently took possession of the ship, having had no notice of the second mortgage, or second mortgagees' charge upon the freight. *Held*, that the £800 borrowed by the mortgagor, and the sums due the first mortgagor upon both his mortgages, must be paid before the amount due the second mortgagees.—*Liverpool Marine Credit Co.* v. *Wilson*, L. R. 7 Ch. 507.

See Bankruptcy, 5 ; Fixtures.

Negligence.

1. The plaintiff was a passenger to D. on the defendant's railway, and was in the last carriage. The train stopped at D. late at night, with the body of the train alongside the platform, but the last carriage was opposite to and about four feet from a receding part of the platform, where passengers could not alight ; the platform was long enough for the whole train to be drawn up alongside of it. There was no invitation to alight, but the train was at its final standstill before resuming the journey. The plaintiff stepped out, expecting to step on the platform, but fell on the rails, and was injured. *Held*, that there was evidence of negligence on the part of the defendants' servants to go to the jury.—*Cockle* v. *London and South Eastern Railway Co.*, L. R. 7 C. P. (Ex. Ch.) 321; s. c. L.R. 5 C.P. 457 ; 5 Am. Law. Rev. 299.

2. The plaintiff was tenant from year to year of the ground floor, and the defendant of the second floor in the same building. By an accident the water escaped from a water-closet on the defendant's premises, and damaged the plaintiff's premises and goods. The defendant was not guilty of negligence. *Held*, that the defendant was not liable for the damage. *Ross* v. *Fedden*, L. R. 7 Q. B. 661.

See Burden of Proof ; Principal and Agent ; Trespass.

New Trial.—*See* Nonsuit.

Nonsuit.

In an action of trover a verdict was found for the plaintiff. A rule for a new trial was applied for on the ground that the evidence tended to prove felony, and that the judge should have directed a nonsuit. *Held*, that the judge could only try the issue raised in said action, and properly refused to nonsuit the plaintiff.—*Wells* v. *Abrahams*, L. R. 7 Q. B. 554.

Passage-Money.—*See* Insurance, 2.

Partnership.—*See* Bankruptcy, 3.

Patent.

It appears that if a machine is made with defects which render it useless, an inventor, who afterward makes a machine which remedies such defects, may maintain his patent, even though his machine is in some respects similar to the other.

If a machine produces a new article, a better article, or a cheaper article than before, it seems that the machine may be patented, although it embodies the mere arrangement of common, elementary, mechanical materials, and although it produces no result of a different nature than that accomplished by other mechanical arrangements.—*Murray* v. *Clayton*, L. R. 7 Ch. 570.

See Trade-Mark.

Payment.—*See* Principal and Agent, 2.

Perpetuity.—*See* Devise, 4.

Personal Estate.—*See* Devise, 4.

Policy.—*See* Insurance.

Profession.—*See* Mortgage.

Post.—*See* Contract, 1.

Power.—*See* Appointment ; Probate.

Principal and Agent.

1. The by-law of a railway company provided that no passenger should be allowed to enter any of the carriages or to travel therein without having first paid his fare and obtained his ticket ; and also that porters of the company should do the work assigned to them, and do all in their power to promote the comfort of the passengers and the interests of the company, but no express power was given to remove a passenger in a wrong carriage. The plaintiff received injuries by being violently pulled from a carriage on said railway by one of its porters, who was under the mistaken belief that the plaintiff was in the wrong carriage. *Held*, that the act of the porter was within the scope of his employment, and that the company was liable for the plaintiff's injuries.—*Bayley* v. *Manchester, Sheffield, & Lincolnshire Railway Co.*, L. R. 7 C. P. 415.

2. The plaintiff sold goods to R. in ignorance of the fact that R. purchased for a principal. The principal in good faith received the goods, and paid R. for them. Subsequently, the plaintiff discovered that R. had a principal. *Held*, that after said *bonâ fide* payment to R. it was too late to come upon the principal.—*Armstrong* v. *Stokes*, L. R. 7 Q. B. 598.

See Broker ; Cargo ; Master and Servant.

Priority.—*See* Mortgage.

Digest of English Law Reports.

Probate.

A woman made a will in execution of a power, giving an annuity in case she should have no children, or her children should die under age. She had children, who survived her. Administration with the will annexed was refused, as there was no one to whom, as intended under the will, it might be granted. General administration was granted.—*In the Goods of Graham*, L. R. 2 P. & D. 385.

See Executors and Administrators.

Protest.—*See* Bills and Notes, 2.

Proviso.—*See* Devise, 4.

Railway.—*See* Negligence, 1; Principal and Agent, I.

Remainder.—*See* Legacy, 3.

Rent-Charge.—*See* Distress.

Rescision of Contract.—*See* Vendor and Purchaser.

Residuary Estate.—*See* Ademption; Annuity.

Revocation.—*See* Executors and Administrators; Will.

Sale.—*See* Vendor and Purchaser, I.

Sealed Instrument.—*See* Specific Performance.

Seduction.

The plaintiff's daughter was seduced while in the situation of governess, but on a three days' visit to the plaintiff, with the employer's permission. While at home on the visit, the daughter assisted in domestic duties. *Held*, that the action was not maintainable, as there was no evidence of service to the plaintiff at the time of seduction, and she was not in the plaintiff's service at the time of confinement.—*Hedges* v. *Tagg*, L. R. 7 Ex. 283.

Set-off.

Action upon a judgment. Plea of set-off of a judgment obtained by defendant against plaintiff. Replication that said first judgment was for costs, and that plaintiff's attorney had a lien for his costs upon the amount payable under said judgment, wherefor the plaintiff was suing as trustee of said attorney. *Held*, that there was a proper case of set-off.—*Mercer* v. *Graves*, L. R. 7 Q. B. 499.

See Bill and Notes, 1.

Settlement.

Where a man made a voluntary settlement of the bulk of his property, without fraudulent intent, when he contemplated trade; or, in fact, six weeks afterward, entered into trade, the settlement was held void against his creditors, who became so in the course of such trade.—*Mackay* v. *Douglas*, L. R. 14 Eq. 106.

See Trust; Voluntary Settlement.

Ship.—*See* Bill of Lading; Bottomry Bond; Burden of Proof; Character-Party; Insurance, 3; Jurisdiction; Mortgage.

Specific Performance.

An agent of a railway company, duly authorized by the latter, entered into a verbal agreement with the plaintiff for the construction of buildings upon the company's land, the company to pay £500 a year rent, or, in lieu of that, £5000. All contracts by the company were required to be under seal. In a suit for specific performance, *held*, that the case was one of a money contract not enforceable in equity, even though there was no valid contract in a court of law.—*Crampcon* v. *Varna Railway Co.*, L. R. 7 Ch. 562.

See Law, Mistake of.

Statute.—*See* Guardian; Principal and Agent; Voluntary Settlement.

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

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

Steamship.—*See* Bills of Lading.

Succession.

A testator domiciled in Portugal directed that certain personal property should be collected by his executors and invested in English funds in trust to pay an annuity to the testator's sister; after her death the fund to form part of the testator's residuary estate, and be divided among his children. *Held*, that when the executors had invested the fund in the above trust, a subsequent devolution of the fund to said children was a succession under the English Succession Duty Act.—*Attorney-General* v. *Campbell*, L. R. 5 H. L. 524.

Surety.—*See* Bills and Notes, 1; Guaranty.

Tacking.—*See* Mortgage.

Tax.—*See* Succession.

Title.—*See* Vendor and Purchaser, 2.

Total Loss.—*See* Insurance, 2.

Trade-Mark.

One Ford was the inventor of a shirt, which he called "Ford's Eureka Shirt," which trade-mark he used several years, affixing it to a particular part of the shirt. He also, by advertisement, and in every invoice which he gave customers, described himself as patentee of said shirt. The defendant sold shirts which he marked "The Eureka Shirt" in the same part as that marked as above by Ford. *Held*, that Ford, by putting his name before "Eureka," did not lose his right to the latter word as a trade-mark; and that the misrepresentation as to the shirt being patented would be no defence to an action at law, and that therefore the defendant should be enjoined from applying the mark "Eureka" to his shirts.—*Ford* v. *Foster*, L. R. 7 Ch. 611.

Trader.—*See* Settlement.

Trespass.

In the defendant's land were hollows caused by the subsidence of the ground over spots which had been worked out in mining operations. Heavy rains caused water to overflow from the watercourse into the hollows, thence into the defendant's mines, and thence into the plaintiff's mines. The defendant had diverted the watercourse, and thereby lessened its liability to overflow, and had not been guilty of negligence in working his mines. *Held*, that the defendant was liable for the damages to the plaintiff's mine.—*Smith* v. *Fletcher*, L. R. 7 Ex. 305.

Trover.—*See* Broker ; Nonsuit.

Trust.

The trustees of a marriage settlement gave certain bankers a power of attorney to receive the dividends of any sum of consols standing in their joint names, and pay the same to the husband during life. The husband subsequently directed the bankers to purchase additional stock in the consols, and to make the investment in said trustees' name. No notice of said investment was given to the trustees. *Held*, that said investment was to be held upon the same trusts with the settled fund, and that there was no resulting trust to the husband.—*In re Curteis' Trusts*, L. R. 14 Eq. 217.

See Annuity ; Legacy, 2 ; Set-off ; Succession.

Unstamped Instrument.—*See* Evidence, 1.

Vendor and Purchaser.

1. Property was advertised for sale by auction, and stated to be a reversion in fee after a life-estate. At the sale the auctioneer read certain conditions of sale, in which the property was stated to be subject to two mortgages. No copy of these conditions was handed to the purchasers. The plaintiff, who was deaf, purchased the estate, with no knowledge of the mortgages, and paid a deposit. *Held*, that the contract, having been entered into under a mistake, induced by the advertisement of the vendor which should have mentioned the mortgages, must be rescinded, and the deposit returned with interest, and that there was a lien for the same upon the property.—*Torrance* v. *Bolton*, L. R. 14 Eq. 124.

3. The defendant contracted to sell a certain estate to the plaintiff, and received a deposit. The defendant's abstract of title showed a voluntary conveyance of the estate by the defendant, but no evidence was given to show that the conveyance was, and had always continued to be, voluntary. *Held*, that the plaintiff was entitled to recover his deposit, both because of said want of evidence, and also because, even if said conveyance were voluntary, the vendor had no title, and could not compel the vendee to make his title good by his own act in accepting a conveyance.—*Clarke* v. *Willott*, L. R. 7 Ex. 313.

Voluntary Settlement.

1. A debtor, being in a very weak state of health and mind, distributed his property among his children, receiving in consideration of part of the property a small annuity. *Held*, that as the children knew that the creditors would be defeated by said distribution, it was void against creditors, by 13 Eliz. ch. 5, even though the debtor had no fraudulent intention.—*Cornish* v. *Clark*, L. R. 14 Eq. 184.

2. A testator raised money wherewith to pay his debt, and then executed a voluntary settlement of the residue of his property, with no intention of defrauding his creditors. The settlement was held valid, although the settlor did not use the whole of the money raised in payment of his debts, whereby some of them were unpaid.—*Kent* v. *Riley*, L. R. 14 Eq. 190.

Waiver.—*See* Ejectment.

Waste.—*See* Injunction.

Watercourse.—*See* Trespass.

Way.—*See* Easement.

Will.

A testator tore up his will under the mistaken impression that it was invalid, but afterward collected and preserved the pieces until his death. *Held*, that there had been no revocation of the will.—*Giles* v. *Warren*, L. R. 2 P. & D. 401.

See Ademption ; Appointment ; Devise ; Executors and Administrators ; Guardian ; Legacy ; Probate.

Words.

"*Family.*"—*See* Devise, 1.

"*Freight.*"—*See* Insurance.

"*In Possession.*"—*See* Devise, 4.

"*Necessity.*"—*See* Cargo.

"*Steamship.*"—*See* Bill of Lading.

REVIEWS.

The Rule of the Law of Fixtures, by Archibald Brown, M. A., Edin. and Oxon and B. C. L. Oxon. and of the Middle Temple, Esquire, Barrister-at-Law. Second Edition. London, Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1872. 8vo., price 9s. (sterling), cloth.

Hitherto there have been several works published as to the Law of Fixtures. But the author of this work treats the subject in a new style.

Former authors have contented themselves with grouping the decisions among the different classes of persons as to whom questions of fixtures generally arise, such as heir and executor, landlord and tenant, mortgagor and mortgagee, tenant for life, or tenant in tail and remanderman or reversioner. But Mr. Brown endeavours to make clear the decisions as to fixtures by the aid of history. He opens his first chapter by saying : "It has been said of history that it finds its entablature in law; it may conversely be said of law that it finds its explanation in history." Thence he proceeds to expound the law of fixtures by the light of history.

He shows that the word fixtures is not mentioned among the "Termes de la Ley," —does not so much as once occur either in the abridgment of Bacon or Viner ; as a substantive head of law it occurs in Comyn's Digest in the addenda only, and not in the principal part of the work. He then traces the growth and its changes under the following heads. The old law of fixtures, being the law of the strictly agricultural and necessary classes of

fixtures; Practical avoidance of the rigour of the early law; The law of the mixed agricultural and trade proper and the domestic or ornamental classes of fixtures; Statement and illustration of the rule of the law of fixtures as evolved from the cases; The measure and method of annexation being the first of the three subsidiary elements of the rule; The construction of some written documents, being the second of the three subsidiary elements in the rule; The derivative relations of the contending parties being the third of the three subsidiary elements of the rule.

He himself describes "The rule of the Law of Fixtures" as an attempt to gather up in one manageable formula all the numerous factors or elements requiring to be considered in advising upon modern cases. He attempts to arrange his so called factors or elements in the order of their relative importance.

Notwithstanding the use of some hazy expressions he handles the subject with considerable ability. He must have devoted a great deal of time to the reading and arranging of the cases so as to collect in order "the numerous factors or elements" appertaining to his subject.

The first edition of his work was published in 1871. It was in the judgment of the author himself open to the patent defects of "Sketchiness," and "Fragmentariness." The second edition was published in September last. His aim in the second edition has been to give the work an "independent character." He has in the second edition freely availed himself of decisions of the American Courts. They are certainly "free and independent." The confusion created by the American cases has in our judgment made a confused subject more confounded. They are noticeable for want of uniformity more than for any other characteristic. In some of the States barns and even houses are looked upon as personalty. In others trade machinery is looked upon as part of the freehold. It is a pity that the author did not travel from this field of confusion across the line which separates Canada from the United States, and rest for a short time in the Canadian field, where he would have discovered several decisions which would have added to the value of his work if not to its independence.

The subject of fixtures as trade and commerce increase is becoming daily of increased dimensions. Works on fixtures are for this reason to be welcomed, and we welcome Mr. Brown's work as being a novel, painstaking and reliable treatise on the law of fixtures. He has adopted the American system of writing his work in sections or paragraphs and consecutively numbering them. Where a book is likely to be one of authority and to pass through several editions this mode is much preferable to the ordinary English mode of numbered pages. The Index of matters is not so full as we would like to see it, but is by no means meagre. It demands peculiar talent to make a good index. Many persons imagine that any man who can write a book can write a good index for it. This is a mistake by many authors. It would be as difficult for some good authors to write a good index as for some good index makers to write a good book. The aptitude for the one is not proof of aptitude for the other.

The book, containing as it does, 200 pages, is printed with clear type and on superior paper. It, like all works published by Stevens & Haynes is, as regards mechanical execution all that can be either desired or required. Messrs. Stevens & Haynes have the ability to dress up the ideas of an author in a most captivating and becoming style.

A very remarkable man has just retired from the American Bench. Sir John Coleridge is said to have made the longest speech on record—and that is something if not to be proud of, at least to remember. Mr. Justice Nelson, Chief Justice of the United States Supreme Court, can boast that he sat on the Bench longer than any Judge that ever lived. Lord Mansfield served 22 years, and Lord Eldon 28. Chief Justice Marshall was 34 years on the Bench. Chief Justice Taney 30 years, Justice Story 34 years, and Chancellor Kent about 25 years. Chief Justice Nelson was appointed a circuit Judge in 1823, and therefore he has been on the Bench nearly half a century. He reached the age of 80 years on the 10th of last November, and a local journal says, "His massive frame, and strong mind, and cheerful temperament, all give promise of a long and useful life."—*Exchange.*

Law Society—Hilary Term, 1872.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 36th Victoria.

During this Term, the following Gentlemen were called to the Degree of Barrister-at-Law :

Robert Hebbr Bowes.
Allan John Lloyd.
James R. Roaf.
John George Killmaster.
Isaac Baldwin McQuesten.

And the following Gentlemen received Certificates of fitness :

R. McMillan Fleming.
J. Bruce Smith.
J. George Killmaster.
James R. Roaf.
Allan J. Lloyd.
Isaac B. McQuesten.
Peter Cameron.
Rupert E. Kingsford.
Alexander Sampson.
Wicksteed.

And on Tuesday, the 4th February, the following Gentlemen were admitted into the Society as Students of the Laws, their Examinations having been classed as follows :

University Class.

James Joseph Wadsworth, M. A.
Alexander Haggart, B. A.
Samuel Clarke Biggs, B. A.
Elliott Travers, B. A.
Julius Lefebvre, B. A.

Junior Class.

Charles H. Connor.
Thomas G. Meredith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.