Canada Law Journal.

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DIARY FOR MAY.

1. Sun. ...2nd Sunday after Easter.
3. Tues...Supreme Court sittings, Primary Exam.
4. Wed...Primary Exam.
5. Thurs..Primary Exam.
8. Sun.....3rd Sunday after Easter.
9. Mon...Hon. George Brown died, 1880.
10. Tues...Court of Appeal sitt. begin. Co. Court sitt. for York begin.
11. Wed...Final Examination.
12. Thurs..Final Examination,
13. Fri.....Final Examination,
14. Sat.....Final Examination.
15. Sun.....4th Sunday after Easter.
16. Mon....Easter Term begins.
18. Wed..D. A. Macdonald, Lieut.-Gov. Ontario, 1875.
21. Sat....Confederation of B.N.A. Provinces proclaimed, 1867.
22. Sun.....Rogation Sunday. Earl Dufferin Gov.-General, 1872.
24. Tues..Queen's Birthday, 1819.
26. Thurs..Ascension Day.
29. Sun.....1st Sunday after Ascension.
30. Mon...Proudfoot, V. C., appointed, 1874.

TORONTO, MAY 15, 1881.

IT is said by the *Legal News* that a suggestion recently made to appoint a Chief Justice of the Superior Court for the Montreal Division, in the Province of Quebec, is to be carried out; and that Mr. Justice Johnson, the senior Judge of the District, will be the first Chief Justice.

WE PUBLISH in another place a decision of the County Judge of Leeds and Grenville, holding that a claim is recoverable in a Division Court on a promissory note over $100, and under $200, even though part of the claim is for notarial charges, which of course are not "ascertained by the signature of the defendant." A case recently came before Judge Ardagh of Barrie (*McCutcheon v. Creswicke*), where a somewhat similar point came up for decision. He held, under the same section of the act, that overdue interest was recoverable although the amount of the claim thereby exceeded $100. This case will come up again on a motion for prohibition, but the view of the learned judge will probably be sustained.

A CONSIDERATION of these matters suggests to us the thought that some provision should be made for the representation of the views of the judge of the court below, when constitutional points arise, and his decision comes up for review in cases of prohibition, &c. The law must, we presume, be settled at the expense of individual litigants, but it often occurs, and naturally enough, that a Division Court suitor is not sufficiently interested to employ counsel, and the consequence is that the grounds on which the case has been decided are not brought to the attention of the appellate tribunal. It would not be worth while to provide for every case of the kind, but it might be desirable so to arrange that the Attorney-General should intervene in support of the judge's ruling in cases involving important points such as questions of jurisdiction of inferior courts, construction of statutes, &c. The details could easily be worked out if the principle should commend itself to the Attorney-General. Some such provision is all the more necessary where, as in Ontario, the Legislature is composed of only one chamber and the legislation is very hurried, and the statutes not unfrequently far from being worded with exactness or clearness.

A CORRESPONDENT sends us the report of a Division Court case for publication; but as we think the judge was wrong in his ruling, we prefer simply to note the decision

briefly, and only this because it may be useful to refer to a course of procedure which was not only indefensible as a matter of strict practice, but undesirable even in a Court of equity and good conscience. An action was brought by a woman suing as her husband's administratrix. At the trial it appeared that although the action was commenced in November last, letters of administration were not applied for until the January following, and it did not even appear that the letters were in fact *ever* granted. The judge is reported to have held that the letters when granted would relate back and clothe the plaintiff with proper authority. Suppose, however, that the letters never should be granted? Possibly if they had been produced at the trial, it might not have been unreasonable for the judge to refuse a motion for a nonsuit, but there are manifest reasons why no greater latitude should have been allowed.

THE rage for early notes of recent decisions has reached the shores of the Pacific, and the Provincial Secretary of British Columbia has allowed the dreary pages of the *Official Gazette* to be enlivened by notes of cases, furnished by the judges. The number of the *Gazette* now before us gives, amongst others, the ruling of the Chief Justice on a conviction under the Fishery Act. The fishery officer, who we should judge to be more zealous than learned, seems to have convicted a disciple of Izaak Walton of fishing during a prohibited period, without putting the alleged offender to the trouble of defending himself, on the supposition that the words "convict on view" gave him that power. The outraged feelings of the British subject found vent in a *certiorari* and the Chief Justice promptly put in force the principle of natural justice that every accused person should have an opportunity of defending himself. In another case a magistrate made a conviction in the same free-and-easy manner, on an information charging him with playing cards for money, without more. A solemn warning, no doubt, but the effect of which was completely spoiled by the Chief Justice quashing the conviction on the ground that what was done was no offence at all, unless in a public place, gaming house, &c., which was not alleged. Most of the other cases refer to matters of procedure under the recently enacted Judicature Act of our sister Province.

THE RESIGNATION OF VICE-CHANCELLOR BLAKE.

We deeply regret that Mr. Vice-Chancellor Blake has resigned his seat on the Bench, apparently to return to the practice of his profession. We do so for the following amongst other reasons. In the first place, we deem it highly undesirable that any Judge should leave the Bench and return to the Bar, for practice in the Court on which he has lately presided. We believe that it tends more or less to impair confidence in the due administration of justice, and it certainly finds no sanction in British usage. In the United States, under a different system, *election* to the Bench is often sought for, that when the incumbent's term of office expires he may be able again to enter the professional struggle with the prefix "judge" to give him the reputation of being a popular, if not a learned lawyer; but we are assured the practice is strongly objected to by the friends of the profession in the United States. Nothing of that sort is, of course, applicable here; but there is a strong feeling that a descent from the Bench to the Bar (of which unhappily we have now had two within a comparatively few years) is only allowable if at all under very peculiar circumstances.

An objection also exists, in the fact that public business, for a time, at least, suffers by

changes in the Bench, and in this particular case they will suffer from the loss of a learned and most industrious judge trained in the duties of his office, his place being filled by an untried, but more especially by an untrained man. No matter how excellent the new judges of the Court of Chancery may prove, the presence of two who are necessarily devoid of judicial experience, may, for a time at least, be productive of some little embarrassment and occasional delay. We regret this step, also, on Mr. Blake's own account, inasmuch as many not familiar with the moving causes may possibly think that he was actuated by motives which we feel confident had no place in inducing him to take the step he has taken.

It cannot be denied that the deep and pronounced interest which Mr. Blake has shown, in word and deed, in philanthropic and Christian work has provoked hostile comment. His course was aggressive, and he came in contact with very strong interests; and whilst many have applauded his earnest action in such matters, others have not hesitated to state openly their objections; in fact have gone so far as to make unfavorable representations to the Government on the subject. The rule that "once a puisne always a puisne," is well recognized in England, but in this country is as much honored in the breach as the observance. As far as Mr. Blake's qualifications for the office of Chancellor are concerned, few will deny them; nor was the Government embarrassed in the selection of a good man to take the Vice-Chancellor's place in case of his promotion, inasmuch as Mr. Boyd, recognizing the services of one who was and is an old and valued friend, and his fitness for promotion to the vacant office, expressed his willingness to take the lower position. Under these circumstances it must be assumed that the Government, if not adopting the precedent they had before them in the appointment of the late Chief Justice Harrison, gave weight to the opinion that the line which Mr. Blake has marked out for himself, in regard to the matters referred to, was incompatible with the position of Chancellor, and if incompatible with that position, was also undesirable for one holding the office of Vice-Chancellor. For our part, we utterly repudiate any doctrine that would cripple the Christian liberty of a judge—that would compel the man, who of all others should be an exemplar of morals in a community, to hide his principles and his conviction. But the conclusion to a conscientious mind was, under these circumstances, not unnatural, either for the person interested to give up the prominent part that he felt it his duty to take in reference to the temperance question and to other philanthropic and religious matters, or to resign his position on the Bench. He has chosen the latter course. Whilst, as we have said, we deeply deplore this result, and whilst many who love their country and hold in high reverence the judicial position, think that the circumstances did not warrant the action taken, and whilst others again who approve of the step, regret that it should have been taken at this particular juncture, those who appreciate the motives already referred to, will admire the strength of character of one who is prepared to stand by his convictions.

RECENT JUDICIAL CHANGES.

The long delayed appointments having at length been made, it is our pleasing duty to record them. The Hon. John Godfrey Spragge, who has been Chancellor for the past twelve years, now sits as Chief Justice of the Court of Appeal of Ontario. His long judicial service, extending over a period of forty-four years (dating from his appointment as Master of the Court of Chancery in 1837), his learning and reputation, made his appointment a foregone conclusion on the death of

his lamented predecessor. He has well earned his promotion. The feeling of the Bar on the subject was plainly evinced by the congratulations he received at the various county towns where he held Court on his recent circuit; in fact, his progress was a sort of triumphal procession, judging from the numerous addresses presented to him and the dinners given in his honor. It would be almost presumption for us to speak at length of one with whose merits the profession are so well acquainted, and of whom we can say nothing that is not known to all. We shall, therefore, content ourselves with re-echoing the sentiments expressed by Mr. Bethune, Q.C., who, as senior counsel present on the occasion of his taking his seat on the opening of the Court of Appeal, tendered him the congratulations of the Bar. Mr. Bethune said:

"Before proceeding with the business of the Court, I desire, on behalf of the Bar, to offer Your Lordship our congratulations on your elevation to the high office in which you are now placed. We all regret, in common I am sure with Your Lordship, the event which rendered vacant the place you now occupy. The late Chief Justice—a distinguished judge, an able lawyer, and a splendid man—had endeared himself to all of us. Whilst regretting his early death, it gives us the greatest possible pleasure now to bear testimony to the great reputation which your Lordship attained as Chancellor in the Court of Chancery, and we now desire to express the hope that Your Lordship may be spared many years to preside over this Court, and, if possible, add to that reputation."

The Chief Justice in reply said:

"I esteem it a great honor to receive this address on behalf of such a body of gentlemen as the Bar of Ontario, not only as a mark of personal regard to myself, but also as indicating the kindly feelings which have always existed, not alone between myself and the Bar, but between the Bench and the Bar generally; a feeling on which we may well congratulate ourselves, as it not only makes the administration of justice more pleasant, but also, no doubt, conduces to its due administration in this Province. I join heartily with you in what you have said with reference to the learned and able gentleman who occupied the place which I am now called upon to fill. I believe him to have been all you have described, and an able and upright judge in everything on which he was called to adjudicate. I feel I ought not to omit to allude to the other gentlemen who have preceded me in the office I now hold. The first was the Honorable Sir John Beverley Robinson, who has been well called the Mansfield of Canada, and after him the learned and able Chief Justice Draper. Nor ought I to forget those who have preceded me in the Court I have just left. The first Chancellor was the late Hon. Mr. Blake. He was well chosen as a fit and proper person to mould and fashion the new system of jurisprudence, after the change from one to three Judges on the Bench. He labored earnestly and wisely in what was then successfully accomplished. He and Mr. Vankoughnet who succeeded him, did their best, I am sure, that above all things no suitor in the court should suffer by fault or negligence of theirs. Nothing gratified me more during my late circuit than to learn the position now occupied by the Court of Chancery compared with the position it occupied at first, when it was looked upon by suitors with prejudice and distrust. It is now regarded as the redresser of wrongs, and as giving remedy where no other remedy exists. With regard to the Bar, I know of no body of men who more appreciate real probity and what is justly right and honorable than the Bar of Ontario."

We turn now from the head of the judiciary of Ontario who has grown grey in the service of his country to the appointment of his successor on the Chancery Bench. We do so with feelings of pleasure of no ordinary kind. The promotion of Mr. John A. Boyd, Q. C., has met with unqualified approval from the bar and the country. The new Chancellor is known to all as a courteous gentleman and a favorite in the profession, a scholar of high attainments, an accomplished lawyer, gifted with an eminently judicial cast of mind, and, above all, one whose high moral excellence is all that could be wished for in one who holds a position which none should fill but those

who can looked up to with respect by all classes of the community.

Mr. Boyd, who is a gold medallist of the University, was called to the Bar in Michaelmas Term, 1863, and commenced his professional career in partnership with Mr. D. B. Read, Q.C. He subsequently became a partner in the firm of Blake, Kerr & Boyd. In October, 1870, he was appointed Master-in-Chancery, in the room of Mr. Buell. This office he resigned in 1872, and again entered the firm with which he had been previously connected.

Like Mr. Vice-Chancellor Blake, he began life by entering on mercantile pursuits; this, however, he soon left for the more congenial atmosphere of Osgoode Hall. He is a member of the Baptist Church, and occupies a high position in the Christian world. He has attained his present high position at an early age.

The Chancellor was sworn in by the Lieutenant-Governor of Ontario on the same day as Chief Justice Spragge. On taking his seat in the Court of Chancery, Mr. James Beaty, Q.C., on behalf of the Bar, addressed the Chancellor as follows :—

"Before the business of the court begins, I have pleasure on behalf of the Bar to express our satisfaction at your Lordship's elevation to the Bench. I am quite sure that the whole Bar congratulates your Lordship on this well-merited recognition by the Crown of your Lordship's standing and reputation at the Bar, and we are quite persuaded, from your achievements while in the profession, that you will follow closely in the steps of those able and distinguished men who have preceded you. We trust that you may long be spared to be an ornament to the Bench, as you have been a credit to the Bar. The lawyers of Ontario and the public have also much to congratulate themselves upon, in the fact that the services of the late Chancellor have been retained in a higher sphere ; and we are prepared to give him and those who preceded him great credit for establishing in this country that system of equity jurisprudence which in principle, and especially in its practical and faithful administration, is second to none in the world."

The Chancellor in reply spoke to the following effect:—

"It would be mere affectation on my part to say that I am not gratified by my appointment to this position, not merely by the fact, but also by the manner of it, and especially by the manner in which it has been received by the profession. The preferment came upon me unsolicited, and I value it all the more on that account. From the congratulations I have received from members of the Bar privately and thus publicly, I feel encouraged and emboldened to hope that I may be able in some measure to answer the anticipations you have expressed. I feel that it is a matter of no small difficulty to discharge the duties of this office, filled as it has been by the distinguished men and eminent jurists to whom you have referred. I trust, however, that, aided by your sympathy and co-operation, I may be able in some degree to follow in the steps of my predecessors in office. There is one thing I shall never forget, that I myself have been a member of the Bar, and that under our system the Bench and the Bar are so dependent on each other that one cannot afford to slight or to belittle the other. Wherever we find the Bar industrious and able we find the same qualities on the Bench. These considerations induce me to hope that I shall not fail in discharging my duty to the Bar and to the public as well. No happier omen could happen at the outset of my judicial career than the words of welcome you have given me. I hope that in the future I may never do or say anything which will cause any one of you to regret or to retract one word of the encouragement and commendation you have expressed to-day."

RETROACTIVE LEGISLATION.

The Act passed in the recent session of the Ontario Legislature "for Protection of Public Interest in Rivers, Streams, and Creeks" (c. 11), has, by virtue of some of its provisions, caused public attention to be turned to the question of retroactive legislation. It is obviously of great importance that, if possible, sound principles of legisla-

tion should be ascertained and followed in this matter. Parliament being practically omnipotent, it is only by the prevalence of sound ideas of public morality in the community that there can be any protection against acts of gross tyranny. Indifference to vested rights has been long noted as one of the characteristics of modern democracy, and any danger there may be in this tendency is obviously increased where the legislative body is small,—where there is only one House,—and where measures are passed and become law with great rapidity, and often after only slight discussion.

"All *ex post facto* laws are more or less unjust," is a dictum of Vankoughnet C., in *Low* v. *Morrison*, 14 Gr. 192. But a very slight consideration of the subject shows that there are different kinds of retroactive laws, and if all are objectionable, they certainly are so in very different degrees. For example, the above dictum of the Chancellor was uttered in reference to 25 Vict., c. 20, which abolished the extended period for bringing an action formerly given to absentees, but allowed a year's grace from the date of passing, during which actions brought should not be affected. This concession obviously renders the statute far less open to objection than it would have been had it laid it down simply that "such had always been the law." The statute 21 Jas. I., c. 16, sec. 7, which 25 Vict., c. 20, amended, did not permit time to run against an absentee at all. If, then, the 15 Vict., c. 20 had specially excluded from its operation all who were absentees at the date of its passing, it would in no sense have been retroactive; but would have been analogous to the Act respecting the rights of aliens in real property (R. S. O., c. 97), which enacts that nothing therein contained shall affect any right or title legally vested in, or acquired by, any person whomsoever before the passing of the Act.

Where, however, the statute gives due notice that the law shall not have any operation till after a definite and extended period, during which actions may be brought, the rule against laws being construed to have a retroactive effect does not apply. (Dwarris on Statutes 542, Ed. 2, *Towler* v. *Chatterton*, 6 Bing. 258; *Reg.* v. *Leeds and Bradford Ry.*, 21 L. J. M. C. 193.)

Another kind of retroactive statute is that referred to by Mr. Hardcastle (Const. of Stats. 198), in illustration of his statement that sometimes it is expressly enacted that an enactment shall be retrospective. It is the only example he cites in support, and is the Imp. 22-23 Vict., c. 35, sec. 32, which 23-24 Vict., c. 38, sec. 12, enacts shall operate retrospectively. This statute authorizes any trustee, where not expressly forbidden by the instrument creating his trust, to invest any trust funds on real securities in any part of the United Kingdom, or in certain stock, and declares he shall not be liable on that account merely, as for a breach of trust.

We can distinguish a third kind of retrospective legislation in the Imp. 6 Geo. IV. c. 16, which enacts that (secs. 54, 55) it shall not be lawful for an annuitant to sue the surety for the payment of his annuity when the grantor has become bankrupt, until he shall have proved under the commission against such bankrupt for the value of such annuity or for the payment thereof; which statute was declared in *Bell* v. *Bilton* 4 Bing. 615, to be retrospective, and to apply to annuities granted before the statute was passed.

Again, there are cases where Acts have apparently, but not in reality, a retrospective operation. Thus, since by the Wills' Act, Imp. 7 Will. IV. c. 26, sec. 24 (R. S. O. c. 106, sec. 26) every will is construed as taking effect as if it had been executed immediately before the death of the testator, it comes to pass that if an Act of Parliament is passed after a will has been executed, but before the death of the testator, the will may be affected by the Act. (Hardcastle Const. of Stat. 207; *Capron* v. *Capron*, L. R. 17 Eq. 295; *Haslock* v. *Pedley*, L. R. 19 Eq. 273).

Lastly, there are certain statutes which

appear to be of the kind referred to by Jessel, M. R., in *re Joseph Suche & Co.*, L.R. 1 Ch. D. 50, where he says:—"It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, *unless in express terms they apply to pending actions*, do not affect them." There have been statutes passed in England at different times taking away the right of prosecuting certain pending *quitam* actions to recover penalties for certain kinds of gaming; *e.g.*, Imp. 8 and 9, Vict., c. 109, sec. 16.

It is easy to distinguish all such cases from the recent act of the Ontario legislature. In the first kind mentioned a certain time is given during which vested rights may be enforced to their full extent; in the second, if not made retrospective, trustees would have had to remove any trust funds then invested in such funds and securities simply to re-invest them in similar ones and then claim the benefit of the statute; the third kind rather relate to modes of procedure than affect vested rights; while the last relating to actions by informers can scarcely be called an interference with vested rights.

We have not found any precedent really parallel to the Act we are principally concerned with. By R. S. O., c. 115, sec. 1,—(C. S. U. C., c. 48, sec. 15), it was enacted that all persons might float saw-logs and timber down all streams. In *Boale* v. *Dickson*, 13 C. P., 337, it was held that a river, not before capable of being used for running timber, was not brought within the statute by reason of its being rendered available for such purpose by the erection of a slide. This case was followed by *Whelan* v. *McLachlan*, 16 C. P. 102, and the law remains thus declared by properly authorized courts, in discharge of their proper function in the commonwealth. The new Act, however, (sec. 2), gives a right to all persons to use rivers on which improvements *necessary to render them navigable or floatable* have been made by others for the purpose of floating down timber, subject to the payment of reasonable tolls, which (sec. 4) are to be fixed by the Governor in council. It, then, proceeds to enact (sec. 5): "The foregoing provisions of this Act shall apply to all such constructions and improvements as have hitherto been made, as well as to such as may be in course of construction or shall hereafter be constructed." And (sec. 10) if any suit is now pending, the result of which will be changed by the passage of this Act, the court, or any judge of such court, having authority over such suit or over the costs, may order the costs of the suit or any part thereof to be paid by the party who would have been required to pay such costs if this Act had not been passed.

There is no need to call attention to the practical results of these retroactive sections. The case of Mr. McLaren, which notoriously gave rise to the Act spoken of, illustrates them clearly enough. A man who had been just declared by a properly authorized court to be vested with a valuable property and legal rights, has had those rights, not purchased, but deliberately taken away from him by the Legislature. It is indeed difficult to see on what principle such legislation can be defended.

For our own part we feel disposed to say with Burke in his Reflections on the French Revolution: "We entertain a high opinion of the legislative authority; but we have never dreamt that parliaments had any right whatever to violate property, to over-rule prescription. . . . . I find the ground upon which your confiscators go is this; that indeed their proceedings could not be supported in a court of justice; but that the rules of prescription cannot bind a legislative assembly. So that this legislative assembly of a free nation sits, not for the security, but for the destruction of property, and not property only, but of every rule and maxim which can give it stability."

STREET RAILWAYS.

While rival street railway companies are invoking the aid of motions, affidavits, injunctions, and the choicest weapons of the legal armory in general, to assist them in their beneficent mission, it may not be amiss to call attention to the recent American case of *Walling* v. *Germantown Passenger Railway Co.*, which sets in a strong light the almost forgotten, or we should rather say, neglected principle, that such companies owe certain duties to the public as well as to themselves. The action was brought for the death of Bernard Walling, through the alleged negligence of the defendant company. Over four years ago the deceased, who was standing on the front platform of a crowded street-car, and only able to keep his place thereon by holding with one hand to the iron of the dasher, and with the other to an iron bar under one of the windows, was forced from his hold by several passengers being thrown against him while the car was rounding a corner, the result being that he was run over and killed. From a judgment in favor of plaintiff in the court below, the defendants took a writ of error. The judgment of the court below has, however, been sustained, and the doctrine re-affirmed that "riding on the front platform of a street-car which is crowded is not contributory negligence *per se*, precluding a recovery for the death of a passenger occurring while so riding." We may remind our readers of the somewhat analogous case in our own Courts of *Cornish* v. *The Toronto Street R. Co.*, 23 C. P. 355, where it was held that the fact of the plaintiff not proving affirmatively that he was holding on to the iron rail of the front platform of a crowded car, at the time when he was thrown off by a jolt and injured, was not a ground for non-suit.

The judgment of the Pennsylvania Supreme Court is given *in extenso* in the *Albany Law Journal* (Vol. 23, p. 371), and will be found very interesting and conclusive. We quote two or three sentences, the truth and appositeness of which will commend themselves to every Torontonian at least.

"Conductor, driver, and passengers acted as if there was room, so long as a man could find a rest for his feet and a place to hold on with his hands. Nor was that action exceptional. Notoriously it was very common in 1876, and perhaps it is not infrequent at this day. The companies do not consider such practice dangerous, for they knowingly suffer it and are parties to it. Their cars stop for passengers when none but experienced conductors could see a footing inside or out. The risk in travelling at the rate of six miles an hour is not that when the rate is sixty or even thirty. An act which would strike all minds as gross carelessness in a passenger on a train drawn by steam-power, might be prudent if done on a horse-car. Rules prescribed for observance of passengers on steam railroads, which run their trains at great speed, are very different from those on street railways. In absence of express rules every passenger knows that what might be consistent with safety on one would be extremely hazardous on the other.

"Street railway companies have all along considered their platforms a place of safety, and so have the public. Shall the court say that riding on a platform is so dangerous that one who pays for his standing there can recover nothing for an injury arising from the company's default?"

BURIAL GROUNDS—WHEN A NUISANCE.

We recently referred (*ante*, p. 184) to two peculiar cases decided in the United States Courts, bearing upon the rights of husbands and wives to choose the last resting place of their deceased partners in life. The minds of our readers will therefore be prepared for another case presenting a somewhat different aspect of this grave subject. It has been decided by the Maine Supreme Judicial Court in the case of *Monk* v. *Packard* that a burial ground

per se is not a nuisance; *i.e.*, that in order to become a nuisance "the graves or their contents must be such in their effect as naturally to interfere with the ordinary comfort physically of human existence, and the inconvenience must be something more than fancy, delicacy or fastidiousness." In this case the defendants had removed a family graveyard of theirs from one part of their property to another, the result being that the graves which in their original location could only be seen from the back rooms of the plaintiff's house, were in their new position plainly visible from the front windows and door, the nearest grave being about forty feet from and opposite to the window of his sitting-room. The plaintiff, not unnaturally, objected to this unexpected addition to the landscape, and sought solace for his wounded susceptibilities in an action on the case for nuisance, the damage done him being in due course of law assessed by a jury at twenty-five dollars. This verdict has, however, been set aside by the Supreme Court, who held that there was no sufficient evidence of damage to the plaintiff s physical healthlth,or his olfactories, or the water in his well, resulting from the alleged nuisance, and that the depreciation in the market value of his property, and the interference with the comfortable enjoyment of his dwelling-house, looked at from a mental point of view, were not sufficient grounds in law to sustain the verdict. The part of the judgment which deals with the latter branch of the case is interesting and clearly stated, and we therefore make no apology for reproducing it.

"Nor can the verdict be sustained upon the sole ground of the cemetery's proximity to the plaintiff's premises and the consequent depreciation of the market value of his property. For a repository of the bodies of the dead is as yet indispensable, and wherever located it must *ex necessitate* be in the vicinity of the private property of some one who might prove its market value injuriously affected thereby. *New Orleans* v. *Wardens, etc.*, 11 La. Ann. 244.

But assuming that the jury, in respect to these matters, found in behalf of the defendants and concluded that there was no injury to the plaintiff's property, or to his physical health or comfort, and based their verdict solely on the ground that on account of its relative position with the plaintiff's house, the cemetery inevitably meets his immediate view whenever he looks from the north window of his sitting-room or steps from his door, and that thereby the comfortable enjoyment of his dwelling-house is interfered with—then the defendants contend that the verdict is against law—upon the ground that such discomfort is one purely mental, and is not a cause of action.

It cannot be doubted that the law recognizes that to be a nuisance which is naturally productive of sensible personal discomfort as well as that which causes injury to property. *St. Helen's Smelting Co* v. *Tipping*, 11 H. L. Cas. 642. But it must injuriously affect the senses or nerves. Thus sound, whether caused by a locomotive blowing off steam, the ringing of bells or the barking of dogs, whenever it becomes sufficient to injuriously affect residents in the neighborhood, is actionable. *First Baptist Church* v. *R. R. Co.*, 5 Barb. 79, and cases there cited. To become actionable, the effect of sound must be such as naturally to interfere with the ordinary comfort, physically, of human existence, and the inconvenience must be "something more than fancy, delicacy, or fastidiousness." Cooley on Torts, 600.

Cemeteries are not necessarily even shocking to the senses of ordinary persons. Many are rendered attractive by whatever appropriate art and skill can suggest, while to others of morbid or excited fancy or imagination they become unpleasant and induce mental disquietude from association, exaggerated by superstitious fears. The law protects against real wrong and injury combined, but not against either or both when merely fanciful.

The human contents of these graves cannot, as they lie buried there, offend the senses in a legal point of view. The memorial stones alone affect the senses, and the same would result to the superstitious, though nothing human lay beneath them. If this burial ground is under the circumstances a private nuisance, then it is also a public nuisance to every traveller who passes on that road, as well as every soldier's monument in the country. See

Cooley on Torts, 602 *et seq.*; *Barnes* v. *Hathorn*, 54 Me. 124.

We think the verdict is against law, and it must be set aside."

NOTES OF CASES.

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SUPREME COURT.

From Ontario.] [April.

COSGRAVE v. BOYLE.

Promissory note—Death of endorser—Notice of dishonor—37-38 Vict. c. 47, Sec. 1. D.

The appellants discounted a note made by P. and endorsed by S. in the Bank of Commerce. S. died, leaving the respondent his executor, who proved the will before the note matured. The note fell due on the 8th May, 1879, and was protested for non-payment, and the Bank, being unaware of the death of S., addressed notice of protest to S. at Toronto, where the note was dated, under 37-38 Vict. c. 47, sec. 1 (D). The appellants, who knew of S.'s death before maturity of the note, subsequently took up the note from the Bank, and relying upon the notice of dishonor given by the Bank, sued the defendant.

Held, reversing the judgment of the Court of Appeal for Ontario, that the holders of the note sued upon when it matured gave a good and sufficient notice to bind the defendant, and that the notice so given enured to the benefit of the appellants.

O'Sullivan, for appellants.

McMichael, Q. C., for respondent.

SUMMERS v. COMMERCIAL UNION ASSURANCE COMPANY.

Interim receipt—Agent, power of—Broker cannot bind company.

This was an action brought on an interim receipt, signed by one D. Smith, as agent for the respondent company at London. One of the pleas was that Smith was not respondents' duly authorized agent as alleged. The General Managers of the company for the Province of Ontario—Messrs. Westmacott and Wickens—had appointed, by a letter signed by both of them, one Williams, as general agent for the city of London. Smith, the person by whom the interim receipt in the present case was signed, was employed by Williams to solicit applications, but had no authority from or correspondence with the head office of the company. In his evidence Smith said he was authorized by Williams to sign interim receipts, and the jury found he was so authorized. He also stated that Westmacott was informed that he (Smith) issued interim receipts, and that Westmacott said he was to be considered as Williams' agent. There was no evidence that Wickens, the other head officer, knew what capacity Smith was acting in.

Held, affirming the judgment of the Court of Appeal for Ontario, that Williams had no power to delegate his functions, and that Smith had no authority to bind the respondent company.

H. Cameron, Q. C., and *Bertram* for appellant.

C. Robinson, Q. C., and *Miller* for respondents.

From New Brunswick.]

RAY, et al, v. LOCKHART, et al.

Will—Surplus—Whether residuary personal estate of testator passed.

Among other bequests the testator declared as follows: "I bequeath to the Worn-out Preachers' and Widows' Fund, in connection with the Wesleyan Conference here, the sum of £1,250; to be paid out of the moneys due me by Robert Chesnut, of Fredericton. I bequeath to the Bible Society £100. I bequeath to the Wesleyan Missionary Society, in connection with the Conference, £1,500." Then follow other and numerous bequests. The last clause of the will is, "Should there be any surplus or deficiency, a *pro rata* addition or deduction, as may be, to be made to the following bequests, namely,—The Worn-out Preachers' and Widows' Fund, Wesleyan Missionary Society, Bible Society." When the estate came to be wound up, it was found that there was a very large surplus of personal estate, after paying all annuities and bequests. This surplus was claimed

on the one hand under the will by these charitable institutions, and on the other hand by the heirs at law, and next of kin of the testator, as being residuary of his estate undisposed of under his will.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the "surplus" had reference to the testator's personal estate, out of which the annuities and legacies were payable, and, therefore, a *pro rata* addition should be made to the three above named bequests, Statutes of Mortmain not being in force in New Brunswick.

Barker, Q. C., and *Sturdee*, for appellants.
Kaye, Q. C., and *Stockton*, for respondents.

COURT OF CHANCERY.

FULL COURT—APRIL 19.

ANDERSON V. BELL.

Will—Construction of—Distribution of estate—Accumulation—Per capita or per stirpes.

The testator bequeathed his residuary estate, all other property, in lands, mortgages, stocks, to his grandchildren, "the children of J. C., and of my daughter, A. J. B., wife of D. B., share and share alike, on their coming of the age of twenty-five years, to be finally determined and paid to them on the youngest coming of the age of twenty-five years. Provided, nevertheless, that each on coming of the age of twenty-five years receives a portion of not more than half what their share will be on the youngest coming of age. (Then directions were given as to keeping books of accounts and managing the estate). And when the books so audited show the revenue of my said estate, after paying the before mentioned bequests, taxes, and other charges on the same, amounts to £500, then half of such revenue or income be divided, share and share alike, between the families of my son, J. C., and the family of my daughter, A. J. B." (The other half going into the estate).

Held, (1) that the children referred to took *per capita*, and not *per stirpes*. (2), that when the eldest attained the age of twenty-five years he was entitled to receive one half of his share, payment of which could not be delayed, and that date must be taken as the period at which those to take were to be ascertained; and that any child born subsequent to the time the eldest child attained twenty-five was excluded; and all born before that period were entitled to share in the estate. (3), that the children did not take vested interests—the gift to each being contingent on the attaining of twenty-five. (4), that twenty-five was the age at which the parties became entitled to an arrangement as to the amount of their shares; and (5), that the trustees could charge the shares of any who had been overpaid with the excess of such payments.

April 22.

IN RE TRELEVEN & HORNER.

Vendors and Purchasers' Act—Description of lands conveyed—Assent to sale by tenant for life—Appointment of interested trustee—Practice.

A description of land in a deed, which refers to the same as part of a lot whose number is given, and which then goes on to say that the metes and bounds are more particularly set out in a deed, which is referred to by date, names of parties, date and number of registration, is a good description.

Land was settled on a trustee, in trust for the use of H. till marriage, and then upon other trusts for the husband and wife as tenants for life, and ultimately providing for the issue; the assent of the tenant for life was necessary for a sale; and there was power in the deed to appoint H. as a trustee on the original trustee's refusing etc., to act. The trustee had an absolute discretion as to forfeiting and applying the estate among or for the benefit of the parties to the deed in case of anticipation or attempted anticipation. The original trustee resigned and appointed H. and conveyed to him.

Held, that the consent of H. and his wife as tenants for life satisfied the condition as to the assent in case of a sale; that H. as trustee was entitled to receive the purchase money, and that the purchaser was not bound to see to its application.

But it having been suggested by the Court that the appointment of H. as trustee was not one which the Court would have made, the matter again came on for argument, when it was

Held, that H. was placed in a position in which his interest as one of the parties to the deed upon forfeiture might conflict with his duty as trustee, and that the Court would not have made and could not sanction his appointment.

Though on a bill filed for specific performance, if the infant children ultimately entitled under the settlement were made parties, the Court might order the completion of the sale and payment of the money into Court for investment, where the *corpus* of the estate would be protected for the children, yet on an application under the vendors' and purchasers' act in the absence of the other parties to the settlement, it would not compel the purchaser to accept the title.

Blake, V. C.] [April 22.

RE FLETCHER et al.

Solicitor and client—Judgment and execution—Summary application.

Upon the taxation of solicitor's costs against their client it was shown that large sums of money belonging to their client had reached their hands, and after deducting the amount of the costs a considerable balance remained due the client, for which he had, under the order of taxation, issued an execution, but the sheriff had been able to realize only a small portion of the debt and thereupon a motion was made to strike the solicitors off the roll in default of payment of the amount remaining due. The Court, however, in view of the fact that the client had treated the claim as a debt from the solicitor to himself and proceeded to a sale of all that he could seize under the execution, he could not fall back on a right which he had and might have exercised; unless in addition to the non-payment of the money, misconduct on the part of the solicitor could be shown that would warrant the interference of the Court, and refused the application with costs.

CHANCERY CHAMBERS.

Blake V. C.] [March 1.

SINGER v. C. W. WILLIAMS MANF. COY.

Foreign commission—What must be shown on application for.

On an application for a foreign commission to examine a witness who is travelling, it should be shown that he will remain at the place where the commission is directed a sufficient time to allow of its due execution.

Hoyles, for the appellants,
Watson, for the plaintiffs.

COMMON LAW CHAMBERS.

Hagarty C. J.] [April.

REGINA *ex rel.* GRANT v. COLEMAN.

REGINA *ex rel.* DWYRE v. LEWIS.

Quo warranto—Municipal election—County Court Judge—Jurisdiction.

A County Court Judge directed the issue of writs of *quo warranto* returnable before him to test the validity of the election of certain aldermen of the city of Ottawa. Before appearance the same Judge set aside all proceedings with costs on certain exceptions to the writs taken before him.

Held, on an application for a *mandamus* to compel him to try the cases, that he had power to set aside the writs, and that his powers under the Municipal Act being co-extensive with those of a Superior Court Judge in such cases, there was no appeal from his decision.

Hagarty C. J.] [May 9.

WOODRUFF v. CANADA GUARANTEE CO.

Verdict—Interest.

In an action on a bond of indemnity it was agreed at the trial that plaintiff should have a verdict for $700, subject to a legal question which was afterwards decided in plaintiff's favor.

Held, that plaintiff was not entitled to interest on the verdict under R. S. O., ch. 50, sec. 269.

REPORTS.

ONTARIO.

COUNTY COURT OF LEEDS AND GRENVILLE.

BURNS V. ROGERS, ET AL.

Division Courts — Jurisdiction — Promissory note—Notarials.

Held, That an action to recover a balance of over $100, and less than $200, upon a promissory note which had been protested might have been brought in a Division Court, even though the notarial fees formed a part of the amount claimed by plaintiff.

[Brockville, April 14.

This action was brought to recover an amount of over $200 alleged to be due to plaintiff. At the trial at the last October sittings, without a jury, a verdict was rendered in favor of the plaintiff for $154. No certificate of costs was asked for.

Upon taxation of costs, the defendants contended that plaintiff was only entitled to Division Court costs, and that they had a right to set off County Court costs. The clerk declined to allow plaintiff County Court costs without the Judge's permission. The parties subsequently (14th April, 1881,) appeared before the Judge.

J. C. Ross for plaintiff, claimed that the fact of notarials having been included in the claim, and of the amount thereof not having been ascertained by the signature of defendants, ousted the Division Court of jurisdiction. He cited *Eaton* v. *Rosenthal*, in County Court of York (Nov. 25, 1880, not reported), *Elliott* v. *Gray*, cited in O'Brien's D. C. Manual, 1880, p. 14, *Keroack* v. *Scott*, County Court of Hastings, not reported, and CANADA LAW JOURNAL, ante, p. 136.

Webster for defendants, cited Con. Stat. U.C. cap. 42, secs. 13 and 14 (latter sec. carried into R. S. O., cap. 50, sec. 144); R. S. O., cap. 50, secs. 347 and 348; *Vogt* v. *Boyle*, 8 Prac. R. 249, and Division Court Act, 1880, sec. 2, and note thereto in Sinclair's D. C. Acts.

MCDONALD, Co. J.—The second section of the Division Courts' Act, 1880, extends the jurisdiction of those courts to "all claims for the recovery of a debt or money demand, the amount or balance of which does not exceed two hundred dollars and the amount or original amount of the claim is ascertained by the signature of the defendant or the person whom, as executor or administrator, the defendant represents." The balance found due to the plaintiff upon the note sued on in this cause was between $100 and $200, and could clearly have been recovered by suit in the proper Division Court at Gananoque. But the plaintiff insists that the amount found due included $1.44 for notarials and postages, and that such latter sum, not having been "ascertained by the signature of the defendant," the Division Court is ousted of jurisdiction. As a matter of fact I am, at this late date, unable to say whether the amount found due did include notaria's and postages, but, assuming that it did, I still find against plaintiff's contention.

Section 13 of cap. 42 of Con. Stat. U. C. which, apparently, as being a matter for Dominion legislation, has been left untouched in the revision of the Statutes of Ontario, (see vol. 2, page 2374), enacts that "All bills, drafts, or orders drawn by persons in Upper Canada on persons in this Province, and all promissory notes made or negotiated in Upper Canada, if protested for non-payment, shall be subject to interest from the date of the protest, or if interest be therein expressed as payable from a particular period, then from such period to the time of payment; and in case of protest the expense of noting and protesting and the postages thereby incurred shall be allowed and paid to the holder over and above the said interest."

It is true that to enable the plaintiff to recover the amount of notarials proof must be given, either by the production of the protest or otherwise. But I do not think this alters the aspect of the case. The amount of such notarials is given to him by the statute, and I look upon it as a sort of accretion to his claim which is not to be considered in deciding as to whether an action could have been brought in the Division Court, unless indeed the amount of such notarials carries the whole amount of the claim beyond two hundred dollars.

It is with some doubt that I have arrived at this decision, and the more so as it differs from judgments which I understand have been already given by the learned Judge of the County Court of York, and the learned Judge of the County Court of Hastings. Possibly a

decision of a final nature might be obtained upon an application to one of the Superior Courts, or a judge thereof, for a *mandamus* to compel a Clerk of a County Court to tax County Court costs in a case in which this question is involved. Meantime, I must decide that the Clerk can only tax costs to the plaintiff upon the Division Court scale.

REVIEW.

A TREATISE ON THE LAW OF CHOSES IN ACTION, together with an Appendix of Forms and Statutes. By J. James Kehoe, of Osgoode Hall, Barrister-at-Law. Toronto: Carswell & Co., 1881.

Mr. Kehoe has chosen an important and difficult head of law for the subject of his first venture in legal authorship; nor has he had the advantage enjoyed by the great majority of legal writers, who profit by the researches, and take warning from the errors, of their predecessors. Mr. Kehoe, as he reminds us in his preface, has chosen a subject which has remained hitherto without a commentator,—a fact not greatly to be wondered at when we remember that the Statute which may be said in a sense to have created it, or at all events to have given it its peculiar character and importance, is only about eight years old. We refer, of course, to the Statute of 35 Vict., cap. 12 (R. S. O., cap. 116, ss. 6-12), which made choses in action assignable at law by any form of writing, and thus extended to common law a doctrine which had long been familiar to Courts of Equity. The little work before us is mainly, though by no means exclusively, concerned with the interpretation and illustration of the principles laid down in this Statute, and the reported cases depending thereon, which are of continually increasing number and importance. Mr. Kehoe's book is not, however, a mere commentary on a single statute, as a glance at the table of contents will show, but a clearly and logically arranged *resume* of the leading topics included in the general subject of Choses in Action. Starting in the first chapter with a discussion of the various definitions which have been given of the term, and a general statement of the old legal doctrine, and the changes introduced by modern legislation, he proceeds in the second chapter to state the leading principles relating to Rights of Action. The subject of Equitable Assignments is next dealt with, followed by a statement of the Common Law doctrine, both before and after the Statute of 35 Vict. The fifth chapter deals with a number of particular assignments, which possess peculiar features of their own, though controlled to a greater or less extent by the general principles enunciated in the previous part of the volume. Separate chapters are devoted to the transfer of Corporation Debentures, and of Bills of Lading, and the assignment of securities by a creditor to a surety who has paid his debt. The ninth chapter deals with Maintenance and Champerty, the tenth with the exceedingly difficult subject of the Choses in Action of Married Women, and the eleventh and last with the Pleading of Assignments. From this bird's-eye view of the contents, our readers will see the wide range and variety of the topics with which Mr. Kehoe has dealt, and though in a volume of little over 150 pages, it could scarcely be expected that his treatment of them should be exhaustive and complete, we have no hesitation in saying that this little book will be found a valuable help towards the understanding of this comparatively new and undoubtedly difficult branch of law. We may mention that the value of this volume for practical purposes is much enhanced by a useful appendix of Forms and Statutes, and an excellent index.

CORRESPONDENCE.

Division Court Equity—Bills and notes—Bona fide holder.

To the Editor of the CANADA LAW JOURNAL:—

The defendant, in an action of *Harding* v. *Hartney*, in the Fifth Division Court of the county of Renfrew, bought from T. E. W. & Co., apple trees to the amount of $27.00, for which he gave his note, payable to T. E. W. & Co. or bearer. T. E. W. & Co. sold this note to the plaintiff, a broker in Brockville along with other notes to the amount o $1000.00. At the trial the making of the note was admitted, and the defence set up was that T. E. W. & Co. had verbally agreed to attend

to the trees and replace those that had died, also to take half payment in fruit. The defendant paid into court $18.00, as full payment for the proportion of the apple trees that had lived. T. E. W. & Co. had failed to replace the dead ones. The learned judge asked for evidence from plaintiff that the note was taken by him without notice of the facts set up in defence.

The plaintiff thereupon called evidence to prove that the note was bought before maturity for value and contended that where defendant had only shown a partial failure of consideration, the onus of proving notice was thrown on the defendant. Also, that if he did prove notice, it would not be a defence, and was proceeding to read authorities on both points, when the Judge stopped him, and would not allow authorities to be read, stating that he wished to get to the bottom of the case. In obedience to the ruling of the Court, the plaintiff was called, and swore that he bought the note *bona fide* without notice, and for good value. The Judge then asked plaintiff what he paid for these notes from T. E. W. & Co. He replied that he bought the whole lot for $800 at a discount, or shave of 20 per cent.; that it was his business, and he considered he had paid as much as the paper was worth.

The Judge then asked plaintiff to compute what he paid for this note sued on, at a shave or discount of 20 per cent., and expressed his intention of giving judgment for that amount. It was contended that the plaintiff was entitled to full amount of note and interest since maturity, at six per cent., and it was proposed to cite authority, but the Judge gave judgment for $21.60, being 80 per cent. of amount of note, interest on that since maturity of note and costs.

The above is a synopsis of a case decided on the 11th March last.

If this is law, all old ideas as to the free transfer of negotiable securities are at an end. The banks had better close their doors.

On the question of the *onus probandi* raised in the above case, I proposed when stopped to cite the following authorities: *Berry* v. *Alderman*, 14 C. B. 95; *Fitch* v. *Jones*, 1 Jur. N. S. 854; *Whittaker* v. *Edmunds*, 1 M. & R. 445; *Mills* v. *Barber*, 1 M. & W. 425; Byles on Bills, pp. 189 *et seq.*, and cases there cited.

As to the question whether a *bona fide* holder of a note for value without notice, can maintain an action for the full amount of note, I deemed the law so well established that no authority was required; however, I was prepared to cite the cases mentioned in Byles on Bills, p. 267 *et seq.*

Now, sir, the judgment of the learned judge above reported, has been explained to me on the ground that it was an equitable one, and that the Division Court Act gives such powers to Division Court Judges. I do not think it does, and if it does, it should, in my humble opinion, be amended.

As to the judgment being an equitable one, I think there can be only one opinion about that, always excepting the opinion of His Honor. The question, to my mind, is simply this—whether it is more equitable to protect an innocent purchaser for value in the practice of a legitimate business, than to protect a careless and not altogether innocent maker of a note such as the one above described. I might mention here that the defendant was a literate man, and signed his own name.

I may be wrong in my views of the above judgment. If I am—and I am open to conviction—I shall be glad to be put right by you, sir, or any of the readers of your valuable journal.

I am, yours, &c.,

JAMES CRAIG.

Renfrew, May 4th, 1881.

[We confess, if the case is correctly stated, and at present we must presume it is, that we should have decided the case differently. Neither law nor substantial justice seems to warrant the finding.—ED. L. J.]

To the Editor of THE CANADA LAW JOURNAL.

Married Women.

SIR,—A correspondent signing himself a "Barrister," in the December number of the LAW JOURNAL, refers to the then recent decision of V. C. Malins of *Pike* v. *Fitzgibbon*, as being opposed to the decision of our Court of Appeal in *Lawson* v. *Laidlaw*, 3 App. R. 77, and warns the profession and County Court judges to be

careful about following that decision until the decision of the V. C. was further dealt with by the Court of Appeal. This was proper enough, but one of the judges of the Queen's Bench, in a recent judgment of that court, was somewhat less cautious, I had almost said less courteous, in referring to the decision of our Court of Appeal. He refers to one of the resolutions laid down by the court, in that case, in these terms : "This resolution has, however, received a rude shock in the recent cases of *Pike* v. *Fitzgibbon*, L. R., 14 Ch. Div. 837, and *Flower* v. *Bullen*, 14 Ch. Div. 665, which have gone very far towards removing, if they have not altogether removed, the foundation upon which the *extraordinary construction* put upon the clause in question was built."

The decision in *Pike* v. *Fitzgibbon* has now been reversed by the unanimous decision of the Court of Appeal in England, consisting of James, Brett, and Cotton, L.JJ., holding that a married woman cannot, by her engagement, bind anything but separate estate to which she is entitled at the time ~~when~~ the engagement is entered into, thus affirming the decision in *Lawson* v. *Laidlaw*. Another portion of the same learned judge's judgment is open to criticism. It is to this effect. (45 U.C.R., p. 526). "This resolution still further proves how illusory the remedy at law would be, for the intelligent married woman would take care that the property with reference to which she might be supposed to have contracted would not wait to be charged with a judgment."

Did the learned judge never hear of an intelligent man, married or unmarried, disposing of his property without waiting for the execution, and a little inquiry might have satisfied him that the creditors might be equally powerless in equity. In *Robinson* v. *Pickering*, in which the same V. C. granted an injunction to prevent the trustees of a married woman from parting with the property till the action was heard. The Court of Appeal at once reversed the decision, holding that the general engagements of a married woman, contracted on the credit of her separate property, do not create any charge on that property, and that till the creditor has established his right by a judgment, he cannot prevent the married woman from dealing with her property.

ANOTHER BARRISTER.

FLOTSAM AND JETSAM.

THE LATE LORD BEACONSFIELD.

An overwhelming national calamity in the death of a great statesman dwarfs ordinary occurrences into insignificance. It is said that very early in his wonderful career the late Lord Beaconsfield was in the office of an attorney. We do not care to inquire into the accuracy of this statement, for it cannot be pretended that the law can claim any share in the formation of his character. Rather, if it be true, is it matter for congratulation that his exuberant genius so quickly escaped from the cramping operation of a lawyer's avocations, and the depressing influence of a lawyer's office upon the imagination. It is for us only to recognise in his death the loss of one whose oratory soared far above that of any judge or advocate of his generation, and who in the European Council, where the debate assumed the most difficult form of contentious proceedings, exercised in their highest perfection the art, the skill, and the tact which carry men to the highest pinnacle of forensic fame. To the deceased the Legal Profession owes a great deal as one of the most brilliant romance writers of the age, in whose works the tired pleader has found refreshment and relaxation, and the weary advocate reinvigorated his mind in the intervals of work in preparation for renewed efforts in the dusty arena of courts of justice. Sharing, as so many lawyers do, in the double contest of the Bar and the Senate, they appreciate most thoroughly the severe loss which the country and the world has sustained, and we feel sure that no body of men regrets more profoundly than the Legal Profession the disappearance of Lord Beaconsfield from the scene of his splendid triumphs.—*Law Times.*

In the general grief at the death of Lord Beaconsfield, lawyers will not forget that he entered upon the business of life as a lawyer. Like the rest of the early history of Mr. Disraeli, little is known, with certainty, of his career in the law, except that it was short. He is believed to have been articled to a solicitor in Old Jewry; but what was the name of his principal, and how he came to leave the law, is without even a tradition. His disciples in the legal profession may well have found internal evidence of an acquaintance with legal processes. Mr. Disraeli's statements of the law were always precise and singularly accurate: while he had a remarkable facility for taking in the effect of proposed legislation, however complicated. His appreciation of the legal bearings of political questions was sound; and his presence in the House of Commons at the time of the Bradlaugh incident would probably have saved the House from a ridiculous situation.—*Law Journal.*