DIARY FOR NOVEMBER.

1. Fri...Hon. R. A. Harrison, Chief Justice of Ontario, died, 1878.
3. Sun...Hon. W. H. Draper, Chief Justice of the Court of Appeal for Ontario, died, 1877.
5. Tues...Primary examinations—written.
6. Wed...Primary examinations—oral.
9. Sat.....Prince of Wales born, 1841.
11. Mon...Battle of Crysler's farm, 1813.
12. Tues ..Intermediate examinations.
13. Wed...Battle of Windmill Point, 1838. Intermediate examinations.
14. Thurs..Examinations for certificates of fitness.
15. Fri. ...Examinations for call.
16. Sat. ...Wilson, J., sworn in as Judge of Q. B., 1868. Gwynne, J., sworn in as Judge of C. P., 1868. Examinations for call with honors.
18. Mon...Michaelmas Term begins. Law Society Convocation meets.
19. Tues...Law Society Convocation meets.
23. Sat.....Law Society Convocation meets.
27. Wed...Frontenac died at Quebec, 1698.
30. Sat. .. St. Andrew's Day.

CONTENTS.

Canada Law Journal.

Toronto, November, 1878.

DEATH OF CHIEF JUSTICE HARRISON.

As we go to press, the melancholy news reaches us that the Hon. Robert Alexander Harrison, Chief Justice of Ontario, breathed his last this morning (1st November), at his residence in Toronto, at the early age of 45 years. The event will cause profound sorrow in the profession, who will mourn him as a brother. As for the public, they know well that they have lost one who was an able and fearless advocate, a learned, upright Judge, a faithful servant of the Crown, and an honest warm-hearted citizen. The writer and those who were for so many years intimately associated with him in the editorial management of this Journal, more especially grieve for the loss of one, who, in days gone by, was for many years its chief and most efficient Editor, and whose kindly advice and encouragement has ever since been at the service of his successors, and always gratefully received. We shall hereafter speak more fully of one, whose name is now enrolled with those of other eminent men who have so faithfully fulfilled the high office entrusted to them in this Ontario of ours.

The question as to whether it is advisable to allow prisoners to testify on their own behalf was before the Social Science Congress last year, and questions were addressed to the Chief Justices and Attorney-General in each of the States in the United States of America. The answers were, it is said, in favour of a

change in that direction. There are weighty arguments against the change, but there is undoubtedly a growing feeling that criminals should not be debarred from making explanations under oath of facts which, very generally, are known only to themselves.

Part XIV of "Robinson and Joseph's Digest" brings the cases down to "Roads and Road Companies." This number includes the important titles of Principal and Agent, Principal and Surety, Public Schools, Railway Companies, Registry Laws, Replevin, &c. We need only add that it continues to show great lucidity of arrangement and careful scrutiny on the part of the compilers. The plan has been adopted of inserting all the recent cases in their proper places in each of the headings up to the time of publication. Any confusion which might result from this will be set right by an appendix at the conclusion of the work.

A story somewhat similar to that related of Mr. Justice Hawkins in our last number, respecting the official costume of the Sheriff of Derby, is told of the late Baron Alderson. The sheriff in one of the university towns, for the sake of economy, did not provide trumpeters to attend the judges as had been the custom. The Judge, on asking the sheriff where the trumpeters were, was told by the sheriff that he considered these officials so very useless that he determined to discontinue them. "Mr. Sheriff," said the Judge very angrily, "fifty years ago I was a student of this university; when I heard the trumpeters usher the judges into this town, their notes sounded so sweetly in my ears that I determined I would one day be a judge. I have respected trumpeters ever since, and I determined *not* to discontinue them. If two of them are not here to-morrow morning I shall fine you £100."

The *Albany Law Journal* notes some cases of interest to our readers in country places, and to municipal corporations. The most recent is that of a man driving on a public highway, who was thrown out of his waggon and injured in consequence of his horses taking fright at some machinery which had been left on the road by the defendant, who was hauling it for the use of the city waterworks. The Supreme Court of Rhode Island held that while defendant had the right to transport the articles mentioned along the public highway, even though they might be such as to frighten horses, he must exercise such right in such a way as not to endanger the lives and property of others who had equal rights on the highway. In this case it was shown that while some horses passed the load without trouble, other horses had been badly frightened, and the court said that one leaving such an object as this in the highway could not be said to be using the care demanded by the law of him.

Town corporations have been held liable for damages similarly caused by other obstructions on highways—obstructions in this sense meaning any object liable to cause fright—*e.g.* burning hay, piles of lumber, &c.: *Morse* v. *Richmond*, 41 Vt. 435; *Winship* v. *Enfield*, 42 N. H. 199; *Chamberlin* v. *Enfield*, 43 id. 358; *Littleton* v. *Richardon*, 32 id. 59. In *Bartlett* v. *Hooksett*, 48 N. H. 18, the town was held to be liable in the case of a pig sty which projected into the highway, horses being frightened by the noise of the pigs therein. See, to the same effect, *Foshay* v. *Glen Haven*, 25 Wis. 288; *Stone* v. *Habbardston*, 100 Mass. 49; also, *Conkton* v. *Thompson*, 29 Barb. 218.

The words "Cause of Action," which have been the text of so much discussion both here and in England, have again been a bone of contention in our Court of Queen's Bench in the case of *O'Donohoe* v. *Wiley*, 43 U. C. R. 350. Harrison, C. J., in delivering the judgment of the Court after giving a short but interesting review of the course the decisions have taken on this subject, stated that the case of *Jackson* v. *Spittal*, L. R. 5 C. P. 542, which was agreed to by the judges in England, after a conference, in *Vaughan* v. *Weldon*, L. R. 10 C. P. 47, would be followed. It will be remembered that these cases decided that the words do not mean the *whole cause of action* but the breach alone. The same words, though in a different connection, are used in our Division Courts Act, but under that Act, for the reasons given in *Noxon et al.* v. *Holmes et al.*, 5 C. P. 541, the words are still held to mean, in accordance with the previous decisions in our own Courts, the whole cause of action, *i. e.* the contract and the breach.

We notice some typographical and clerical errors in the report of *O'Donohoe* v. *Wiley*. In the head note the case of *Jackson* v. *Spittal* is cited as *Spittal* v. *Jackson*; Rev. Stat. O. ch. 50 is referred to as ch. 20; at page 356, *Noxon et al.* v. *Holmes et al.* is spoken of as "*Noxen* v. *Holmes et al.*"; and at page 364, *McGiverin* v. *James et al.* is cited as *McGiverin* v. *Smith et al.* A good proof reader is a *rara avis*.

GARNISHING SURPLUS MONEYS.

In *Nicol* v. *Ewin* (ante, p. 171), Mr. Dalton upon a special case submitted to him for judicial opinion, came to a conclusion somewhat at variance with a decision of Draper, C. J., in *McKay* v. *Mitchell*, 6 U. C. L. J. 61. The question before the Chief Justice was as to the rights of a creditor who had obtained a garnishing order for the payment of the surplus proceeds of a sale of land in the hands of the mortgagee who had exercised his power of sale. It appeared that there were other judgments which formed liens on the land prior to the plaintiff's judgment. But it was held that the proceeds of the sale were not affected by these prior judgments and the money was ordered to be paid to the attaching creditor. Mr. Dalton, admitting that this case might represent the position at law of the rival claimants, thought that it was not so in equity, and, as he had to decide finally upon the rights of the parties, legal and equitable, he held, under similar circumstances, that the creditors who had liens in the land retained such liens by way of priority against the proceeds when the land was sold under a power of sale paramount. It became necessary to consider this question lately in England in the case of *Backhouse* v. *Liddle*, 38 L. T. N. S. 487, and an opinion was expressed by Lord Coleridge, substantially in conformity with Mr. Dalton's views. It was a case of garnishment for the surplus money of a mortgaged property which had been sold, and it was thought that had the judgment been a lien on the land it would have retained its charging efficacy as against the land when converted; but, as no steps had been taken under 27-28 Vict. c. 112 s. 1, to "levy on" an execution upon the judgment, it was held that the land was not affected by a registered judgment executed in part by a writ of *fi. fa.* unless it had been actually delivered in execution.

WHEN AN APPEAL WILL LIE FOR COSTS.

It is a general rule observed by all the Courts on the question of costs that the

Court will not entertain a case, where the subject-matter of the suit or action has been in fact settled before litigation, for the mere purpose of determining who is entitled to costs: *Griffin* v. *Brady*, 39 L. J. Ch. 136; *Re Holden*, 39 U. C. R. 88; *Samson* v. *Haggart*, 25 Gr. 543. The same principle underlies the uniform practice observed in the Courts of refusing to entertain an appeal on the question of costs alone, save in certain special and exceptional cases. In what may may be called the leading case on this subject (*Owen* v. *Griffith*, 1 Ves. Sr. 249), Lord Hardwicke said that the foundation of the rule was to prevent vexation and trouble; for, as cases in equity often depend on abundance of circumstances, about which as the reason of mankind might differ, it would create perpetual appeals. However, in that case an appeal for costs was entertained on behalf of an incumbrancer who had been deprived of costs and ordered to pay the plaintiff's costs. It was said that being an incumbrancer for a just debt, he had a lien on the estate for costs, as well as for his demand, and the deprivation of costs, therefore, affected the merits of the case. This case indicates the first and chief exception, and may be formulated thus: Where the party has a *right* to costs and is deprived of them, he can appeal. Such a case arose in *Cotterell* v. *Stratton*, L. R. 8 Ch. 295, where a mortgagee, not guilty of vexatious or oppressive conduct, was refused his costs of suit in a suit to redeem. Lord Selborne said that the right of a mortgagee in a suit for redemption or foreclosure to his general costs of suit, unless he had forfeited them by some improper defence or other misconduct, was well established, and did not rest upon any exercise of that discretion of the Court which in litigious causes was generally not subject to review. The Lord Chancellor then referred to another of such cases, namely that of a trustee, in the following language:—The contract between the author of a trust and his trustees entitled them to all their proper costs incident to the execution of the trust, by way of indemnity, out of the trust estate, as between themselves and the *cestuis que trust*. These rights resting substantially upon contract can only be lost or curtailed by such inequitable conduct on the part of the mortgagee or trustee as might amount to a violation or culpable neglect of his duty under the contract.

The effect of Lord Selborne's language as to a trustee is, however, considerably modified by the subsequent decision in *Re Hoskins' Trusts*, L. R. 6 Ch. D. 281, where Lord Justice James held that where a trustee has been deprived of costs on account of impropriety of conduct, an appeal on that ground for costs alone will not lie; and, speaking generally, he said, the costs of a trustee are subject to the discretion of the Court. See also *Taylor* v. *Dowlen*, L. R. 4 Ch. 697.

The position of trustees was again brought before the Court of Appeal in *Re Chennell*, 26 W. R. 595. An order was made directing the payment of a trustee's "costs, charges and expenses," and the Court held that was appealable. The Master of the Rolls pointed out that a great deal more than costs was included in the allowance of charges and expenses. In one sense these were in the discretion of the Court, but not in the ordinary sense. The Court had a discretion for gross misconduct to deprive a trustee of them, and, therefore, he said it is a very substantial matter, when you have a case of gross misconduct charged against a trustee, that you should deprive him of his charges and expenses out of the fund. This decision may, perhaps, afford a clue to the reconcilement of the

views of Lord Selborne and Lord Justice James above given.

Again, when persons are made parties in a representative character, and have done no wrong, they are entitled to costs, and if costs are withheld, an appeal for that alone will be sustained: *Etherington* v. *Wilson*, L. R. 1 Ch. D. 160.

In *Re Chennell*, it was laid down by two of the judges that an order directing the payment of costs was not appealable merely because it specified a particular person or a particular fund by whom or out of which they are to be paid. This is opposed to earlier cases, and is the result of a construction placed upon one of the rules framed under the English Judicature Act.

When the Judge of the Court below placed on record on the face of the decree the reason why he ordered the plaintiff to pay the costs, and this was founded on the determination of a question of law, the Court of Appeal allowed the question of law to be argued, that it might determine whether the reason embodied in the decree was well founded: *Walker* v. *French*, 21 W. R. 493. Similar to this is the case where the judge below came to the conclusion that there had been a breach of an injunction, and on that ground ordered the defendant to pay costs. The Court of Appeal held that the defendant was not without a right of appeal, because these costs were not in the discretion of the Court: *Witt* v. *Corcoran*, L. R. 2 Ch. D. 69.

THE CHARITABLE SPIRIT OF THE LAW.

[*Communicated.*]

The charitable spirit of the law appears not only in the special favour shown by the Law to Charities, but also in many of the rules which form the Law of Evidence; many of which might seem to be mere deductions from the apostolic dictum, "Charity thinketh no evil."

One most striking instance of this spirit appears in the strong presumption of the law against crime and illegality—that presumption which gives the benefit of the doubt to the accused. The rule with regard to this in criminal cases is emphatically stated by Baron Martin in *Reg.* v. *White*, 4 Fost. & Finl. 383 (1865). The indictment was for scuttling a ship with intent to defraud. Baron Martin told the jury that in order to enable them to return a verdict against the prisoner, they must be satisfied beyond any reasonable doubt of his guilt; and this as a conviction created in their minds, not merely as a matter of probability. In a note annexed to the report of this case, the reporters point out that, although this is the real rule of law as to the sufficiency of proof in criminal cases, yet of late (as in the case of *R.* v. *Muller*, C. C. C. 1865) there had been observed a disposition to contract its application, and even to substitute for it a much looser rule. The reporters then quote the words of Gurney, B., to the jury in *Belamy's case*, C. C. C. 1844: "If you think the case has left you in doubt so that you cannot safely convict, you will remember that it is better that many guilty men should escape than that one innocent man should perish:" and they maintain that this is the rule laid down by every judge from Hale to Gurney.

Such, then, is the presumption of innocence in the criminal courts. Some authorities would lead us to suppose that this so strong presumption on the subject is confined to those courts. Thus in *Magée* v. *Mark*, 11 Ir. C. L. 453 (1861), —an action for penalties under the Cor-

rupt Practices Prevention Act—although the evidence for the plaintiff rested solely upon the evidence of accomplices, it was held that the jury were rightly directed that they might find for the plaintiff upon such evidence though uncorroborated. Pigot, C.B., in his judgment in this case, observed: "To lay down, as a general proposition, that the presumption of innocence in a civil case cannot be rebutted while a doubt remains, would be, I believe, to affirm a doctrine perfectly new, and calculated to create the greatest embarrassment in trial by jury." In support of this the Chief Baron cites Best on Evidence, p. 120, 3rd ed., and *Cooper* v. *Slade*, 6 H. L. C. 772, per Willes, J. Mr. Taylor, in his work on Evidence, does indeed cite *Cooper* v. *Slade* in support of the statement that in mere civil disputes, when no violation of the law is in question, and no legal presumption operates in favour of either party, the preponderance of probability, due regard being had to the burthen of proof, may constitute sufficient ground for a verdict. But he goes on to assert (p. 127, 7th ed.) that the rule, that all imputations of crime must be strictly proved, is recognised alike by all tribunals, whether civil or criminal, and is equally effective in all proceedings, whether the question of guilt be directly or indirectly raised. And certainly the cases appear to support this language. Thus, where a fire insurance company pleaded that the plaintiff wilfully burnt down the premises, it was held that the jury, before they found a verdict against the plaintiff, must be satisfied that the crime imputed to him was proved by as clear evidence as would justify a conviction for arson: *Thurtell* v. *Beaumont*, 1 Bing. 389 (1823).

So again, where there was a plea of justification in an action of libel, stating that the plaintiff had committed the forgery which the libel accused him of, to justify a verdict for the defendant, the same evidence must be given as would be necessary to convict the plaintiff if he was on trial for those offences: *Chalmers* v. *Shackell*, 6 C. & P. 475 (1834). So with bigamy in a similar case: *Wilmett* v. *Harmer*, 8 C. & P. (1839). And the application of the presumption against crime to civil as well as criminal cases—or, which is much the same thing, whether the question arise directly or indirectly—seems strikingly illustrated by comparing *Brady's case*, 1 L. C. C. 329 (1784), with *McGregor* v. *Topham*, 3 H. L. C. 147 (1850). In the former case the charge was for taking a false oath, and the Court held that it was incumbent on the prosecutor to fit the evidence to the particular fact, and to prove every circumstance which was necessary to bring it within the range of the Law, not only by clear, precise, and exact evidence, but by the best evidence that is possible to be produced. And the necessity for the best evidence is also shown by *Williams* v. *E. India Co.*, 3 East 192 (1802).

In *McGregor* v. *Topham*, 3 H. L. C. 147, the question of forgery and perjury arose indirectly in connection with the trial of an issue *devisavit vel non*, and Lord Brougham said: "All Judges in the exercise of their high offices, and indeed not only Judges, but all Christian men, ought, in common charity due from one fellow creature to another, to take that course, if it can correctly and justly be taken, which shall avoid imputing the guilt of that most horrid crime of perjury to any of the parties whose conduct comes in question."

(To be continued.)

LORD CHELMSFORD.

Frederick Thesiger, Lord Chelmsford, died last month, as we have already

stated. He has left a record as honourable to himself as it is worthy of the profession of which he was such a distinguished member. The *Law Journal* thus alludes to him :—

"The deceased nobleman was born on July 15, 1794, and was a son of Mr. Charles Thesiger, Collector of Customs at St Vincent. At an early age Mr. Frederick Thesiger entered the Royal Navy, and in the year 1807 was engaged in warlike operations before Copenhagen. After a short service at sea he turned his attentions to pursuits of a more peaceful character, and became a student at Gray's Inn ; was called to the bar in 1818, and chose the Home Circuit. In 1834 he became King's Counsel ; in 1840 he was elected member for Woodstock ; in 1844 he was made Solicitor-General, and in 1845 Attorney-General ; and in 1858 he was appointed Lord Chancellor. He also held the Great Seal a second time, in 1866, under Lord Derby ; but on Mr. Disraeli becoming Prime Minister, the Great Seal passed into the hands of Lord Cairns.

"At the bar Mr. Thesiger—or, perhaps we ought to say, Sir Frederick Thesiger—achieved a success almost without parallel. He was not quite so persuasive as Scarlett, but far more eloquent, and certainly more admired and respected. His fine presence, equal temper, pleasant manner, and excellent voice, attracted attorneys, suitors and jurymen, while his high sense of honour, courteous bearing, and real kindness of heart won the affections and esteem of the bar. Undoubtedly, he was the most popular barrister of his day, and was especially the favourite of the attorneys and solicitors of his time. In society he shone with equal brightness ; and even in his old age his jokes, sallies of humour, and anecdotes, lost nothing of their fun and point. It was the fashion to decry his 'law,' on the general principle, or rather on the common fallacy, that an eloquent man is never a profound lawyer. But a fair and unprejudiced study of his judgments in the House of Lords would lead an inquirer to form a different and more correct estimate of his powers. In truth, Nature had been liberal to him ; for she had bestowed on him bodily and mental gifts of a high order, and given him those qualities, both outwardly and inwardly, which go to make up a successful barrister and able judge.

"It must of necessity be a matter of regret to see a man of this type fall from the ranks ; but when eighty-four years of life have been completed, when every honour has been won, when the love and regard of fellow-men have been secured, when sons have risen to high places in public service, the debt of nature may be paid without a pang to the man, and without sorrow to the survivors. A life of solid happiness was the lot of Lord Chelmsford. Fortunate in public and private life, with hundreds of friends and without a foe, he might look back and acknowledge, as did the great Lord Hardwicke, that he had been singularly blessed in life. In peace and honour he has passed away, but his name will live among us for years to come."

THE MARITIME COURT OF ONTARIO.

The formation of the Maritime Court was completed by Proclamation on the 15th of February last.

The first sitting of the Court was held on the first day of last month, by Kenneth McKenzie, Esq., the Judge of the Court. Two assessors were associated with him. His Honour alluded at some length to the circumstances attending its establishment, the object of its institution, its powers and jurisdiction, speaking as follows :

"A Court of Maritime Jurisdiction for the administration of admiralty or maritime laws upon the great lakes and other inland waters of Ontario is a new institution called into existence by the Parliament and Government of Canada, invested with special jurisdiction in connection with the navigation and trade of these inland waters.

"Great Britain, the first maritime nation in the world, has had for ages officers and tribunals to afford redress for wrongs committed on the high or open seas in connection with maritime

commerce, trade, and navigation. Maritime or Admiralty Courts are those which have jurisdiction in this respect, and are governed by a system of laws peculiarly qualified to afford redress in cases of that class with which their practice is conversant, and in which the ordinary process of the Common Law would be ineffectual and inapplicable.

"Our laws and public institutions are framed and fashioned as near as can be after those of the Mother Country, and justly so. The Maritime Courts of England at the present day are the High Court of Admiralty and its Courts of Appeal, with the Admiralty jurisdiction recently extended to certain County Courts. There are also Vice-Admiralty Courts in several British Colonies and Provinces of the Empire, deriving authority from the Crown, from which appeals lie to the Privy Council.

"The Court of Admiralty for Scotland was abolished some time ago, and maritime causes are now presented in the Court of Sessions or the Sheriff's Court.

"The Maritime Courts of Ireland are the High Court of Admiralty of Ireland, and its Courts of Appeal, and jurisdiction given to local courts in regard to maritime affairs.

"Formerly the High Court of Admiralty in England was a two-fold tribunal, the one the Instance Court of Admiralty, in which controversies were decided relating to maritime contracts and wrongs committed on the high seas; the other the Prize Courts, in which the right to captures and seisures made in war was determined."

The Judge then gave a short sketch of the origin and of the jurisdiction of the High Court of Admiralty in England. He then continued:

"The jurisdiction of the English Admiralty, as actually exercised in its earliest days and for centuries afterwards, was most extended, various and ample, embracing all maritime causes of action, civil and criminal, of contract and tort, arising on the sea.

"The Commission of the Lord High Admiral of England conferred a most ample jurisdiction to take cognisance of and proceed in all matters maritime, and also of any cause, business, or injury had or done, in or upon or through the seas or public rivers, streams, havens and places subject to overflowing and ebbing of the sea, upon the shores or banks adjoining them from the first bridges towards the sea throughout England, Ireland, and the Dominions of the Crown elsewhere beyond the seas.

"In several of the British Colonies there are Courts of Vice-Admiralty. The jurisdiction of the Courts of Vice-Admiralty is derived from the Crown, and depends upon the various patents. Neither the Governor of British Colony or Dominion, the Vice-Admiral of a station, nor the Lords Commissioners of the Admiralty, have of themselves any authority to establish a Vice-Admiralty Court in any Colony or Dominion of the Crown. The Imperial Act, 26 Vic., cap. 24 (1863), was passed to facilitate the appointment of Vice-Admirals, Judges, and other officers in Vice-Admiralty Courts abroad, and to extend the jurisdiction and amend the practice of those Courts. I will refer to the matters in respect of which the Vice-Admiralty Courts have jurisdiction. The Vice-Admiralty Courts of some of the Provinces of the Dominion interest us more particularly than those existing elsewhere. The Provinces of Quebec, New Brunswick and Nova Scotia, have each a Court of Vice-Admiralty for the administration of maritime law. The Governor-General is the Vice-Admiral of the whole Dominion.

"Shortly after the Treaty of Paris, on the 10th of February, 1763, 'by which Canada was ceded by the Crown of France to that of Great Britain his Majesty King George the Third issued a Commission under the Great Seal of the High Court of Admiralty of England, establishing a Court of Vice-Admiralty for the Province of Quebec, to have jurisdiction therein according to the civil and maritime laws, and ancient customs of His Majesty's High Court of Admiralty of England, and this Court has been continued by repeated Commissions down to the present time, so far as Lower Canada or the Province of Quebec is concerned.' The above extract is taken from the preface to the volumes of Stuart's reports of cases decided in the Vice-Admiralty Court of Lower Canada, a copy of which every proctor of our Maritime Court should possess, if possible.

"On the 19th March, 1764, a Commission constituting the Governor-in-Chief of the Province of Quebec (Governor Murray), Vice-Admiral of the same, conferring on him great powers in Admiralty matters, civil and criminal, issued. This Commission is tested at London, 'in the High Court of Admiralty of England, under the Great Seal thereof.' The jurisdiction conferred on the Vice-Admiral was restricted to 'matters occurring on the sea and shores, creeks, or coasts of the sea or maritime, as in, upon, or by all fresh waters, ports, public streams, or places overflown whatsoever, within the ebbing and flowing of the sea and high water.'

"On the 27th October, 1838, a Commission under the Great Seal of the High Court of Admiralty of England issued, appointing the Hon. Henry Black, Judge of the Vice-Admiralty Court of Lower Canada. The jurisdiction of the Court was restricted by this Commission, as in

the Commission to the Governor, to the sea, public streams, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea or high water mark. It thus appears that the Vice-Admiralty jurisdiction has been regulated by the ebbing and flowing of the sea. I believe it has always been so in England. In England, between high and low water was, on all hands, held to be the sea when the tide was in. But in places where there was no flowing or ebbing of the sea or tide, the Admiralty Court, as a general thing, had no jurisdiction. The Vice-Admiralty Court of Quebec, or Lower Canada, in such jurisdiction, was regulated by the flux or reflux of the tide, and not beyond. As the tide of the sea never extended to the great lakes and inland seas and rivers of Ontario, the maritime commerce on the Lakes Ontario, Erie, Huron, Superior, and the portions of the Rivers St. Lawrence, Ottawa, and others belonging to Canada, was left without maritime or Admiralty laws, which existed with great advantages elsewhere. The maritime commerce of the inland seas of Ontario, Erie, Huron and Superior, and the great rivers of St. Lawrence and Ottawa and in the Welland and other Ontario canals, have so immensely increased that a delay of a tribunal to enforce the rights and duties in connection with matters arising out of the shipping and navigation, trade and commerce, in the rivers, lakes, canals, and inland waters of Ontario would operate unjustly to a large and meritorious class of men, seafaring men, and to maritime commerce, &c.

"Many well informed people have not realized the extent and magnitude of the maritime commerce of Ontario. While the Bill for the establishment of a Maritime Court of Ontario was in progress, I looked into the matter with some care, and I was astonished at the result myself. Looking at the tables annexed to the report of the Minister of Customs for 1875, it will appear that the number of vessels which entered the several ports of the Provinces of Quebec, New Brunswick, Nova Scotia, and Prince Edward Island during the fiscal year ending 30th June, 1875, was 7,881, that is to say :—From Great Britain, 1,522 ; from British Colonies, 1,226 ; from the United States, 4,238 ; from other countries, 895. The number of vessels that cleared out of these ports during said fiscal year was 7,724. Looking at the same tables, so far as they regard Ontario, it will be seen that during the same fiscal year ending on the 30th June, 1875, that 11,812 vessels entered the ports of Ontario, 3,931 vessels more than entered all the ports of the three Eastern Provinces of the Confederation. Canadian steam vessels then entering Canadian ports 2,896 ; Canadian sail vessels, 4,058 ; United States steam vessels, 2,227 ; United States sail vessels, 2,581 ; make a total number of 11,812. On examining the report of the Minister of Inland Revenue for 1875, it will appear that 11,496 vessels passed through the St. Lawrence Canal during the season of navigation ending 31st December, 1874, I think it may be reasonably inferred that about the half of these vessels would go to the Province of Quebec, and the other half come into the Province of Ontario. Then giving half this number to Quebec and the other Eastern Provinces, about 16,290 vessels passed through the canals within Ontario. The Province of Quebec would, for the year 1874, nearly stand thus—5,748, being about half the number of vessels passing through the St. Lawrence Canal, 5,410 passed through the Ottawa Canal, and 3,285 through the Chambly Canal, in all, 14,433 vessels.

"Looking at these figures, which I think are substantially correct, and at this Province as the largest and richest of the Dominion, with great lakes, rivers, and canals, and with a water coast from Lake St. Francis to Thunder Bay, every reasonable mind must see that the rules and laws which protect and regulate the maritime commerce and trade in other Provinces and countries should be applicable to Ontario, and that the general rules and laws of the sea should be enforced on the great inland seas and rivers by a Court with a jurisdiction *in rem* on these inland waters so far as practicable. The propriety of establishing a Court with such jurisdiction has been discussed for several years, and urged on Government for a long time, and a respected citizen of Toronto, who is here present to-day, as one of the first assessors of the new Maritime Court of Ontario (I mean Captain Taylor), was among the first who saw the necessity of introducing the general rules and laws of the sea into this Province, and advocated the establishment of a Court among us with maritime jurisdiction, to protect the just rights of seafaring men and maritime commerce.

"The Imperial authorities could not see their way clear how to deal with this matter in the outset, but in 1876 the late Minister of Justice, Mr. Blake, visited England on behalf of the Dominion Government, to confer with her Majesty's Government regarding, among other things, the question of Maritime Jurisdiction upon the inland waters of this Province. He addressed the Secretary of State for the Colonies, the Earl of Carnarvon, reminding him that the Canadian Government had come to the conclusion that the proper course was to establish Courts of Maritime Jurisdiction on the great lakes and other inland waters of Canada by local legislation. After a conference with the Registrar of the High Court of Admiralty, and further correspondence with the Colonial Department, the Imperial

authorities conceded the right claimed in this respect by the Canadian Government to establish a Maritime Court here by Canadian legislation. After his return to this country, the Minister of Justice introduced a Bill into the House of Commons at Ottawa to establish such a Court. It passed both Houses of Parliament, and received the Royal assent on 28th April, 1877, and became law as "The Maritime Jurisdiction Act, 1877," 40 Vic., cap. 21.

"The first and second sections of the Act point out the maritime rights and remedies and the jurisdiction of the Maritime Court to enforce them. The rest of the Act respects the appointment of officers, judge, surrogate judges, registrar, marshal, assessors, and the providing of the proper machinery for the working of the Court for the benefit of the public according to law.

"The right to constitute what is called a suit or proceeding *in rem* in a Maritime Court is peculiar to Admiralty and Maritime Courts. The above Act confers on this Court, in the most ample manner, jurisdiction to entertain suits and proceedings *in rem*. Proceedings *in rem* are against the ship, cargo, freight, or the thing itself, and do not extend to the person unless some person intervenes and assumes the responsibilities of the controversy. But so far as the ship or thing itself is concerned, all the world are bound by the decree of the Court. By the regular process of the Court, all parties who have an interest in the thing are warned to come in and defend it, and therefore it is said that the whole world are parties to an Admiralty cause, and bound by its decision. The right to proceed *in rem*, to enforce what is termed, in maritime phraseology, maritime lien by legal process, is one of the prominent attributes of a Court of Maritime Jurisdiction. A maritime lien is a legal claim or privilege which a person has on the ship, cargo, or thing to satisfy a demand or claim against it. It does not include or require possession like ordinary common law liens, but travels with the ship or thing (the *res*) into whosoever's possession it comes. Proceedings *in rem* enable a plaintiff to enforce such specific lien on the property to which the lien attaches.

"The Dominion Maritime Jurisdiction Act of 1877 provides that the Maritime Court of Ontario shall have, as to inland waters of Ontario, all such jurisdiction as belong in similar matter within the reach of its process to any existing British Vice-Admiralty Court. The Imperial Act, 26 Vic., cap. 24, the Vice-Admiralty Courts Act of 1863, indicate the matters of which our Maritime Court have jurisdiction, namely:—Claims for seamen's wages, for master's wages, and for his disbursements on account of the ship; for pilotage; for salvage of any ship or vessel or of life or goods therefrom; for towage; for damage done by any ship or collision; claims in respect of bottomry or respondentia bonds; claims in respect of any mortgage where the ship has been sold by a decree of the Court and the proceeds are under its control; claims between the owners of any ship or vessel touching the ownership, possession, employment or earnings of such ship or vessel; claims for necessaries supplied in this Province to any ship or vessel of which no owner or part owner is domiciled within this Province at the time of the necessaries being supplied; claims in respect of building, equipping or repairing within any British possession of any ship or vessel of which no owner is domiciled within the possession at the time of the work being done. These are the principal matters of which the new Court shall have jurisdiction. This Court shall not have jurisdiction in any prize cause or in any criminal matter, breaches of the regulations, relations relating to the Royal Navy, or of any seizure for breaches of the revenue laws, or of any violations of the Foreign Enlistment Act, or of the laws made relating to the abolition of the slave trade, or to the capture and destruction of pirates and piratical vessels, and other matters which were in former times decided in the Prize Court.

"The Governor-General in Council may from time to time appoint surrogate or substitute judges, who shall have such of the powers of the judge as may be conferred by his commission. Surrogate judges should be appointed at some of the prominent points as soon as possible.

"I have dwelt on this subject at some length, looking upon the matter as I do, as a subject of new interest and special importance to a large and meritorious class of people in Ontario. The 'Maritime Jurisdiction Act, 1877,' was enacted by Canadian legislation with the consent of the Imperial authorities, being the first time I believe that local legislation was employed to regulate maritime laws in the dominions of the Crown abroad any where. This all-important Act extends for the first time admiralty or maritime rules and jurisdiction to the great lakes, the inland seas, rivers, and canals of Ontario, and abrogates for ever the narrow and old fashioned ideas which confined the authority of maritime rules and laws within the ebb and flow of the tide, high water mark, and below the first bridge. For the future under our Maritime Act navigability, so far as the water is concerned, will be the true test of maritime jurisdiction.

"And why should it not be so? the navigation and water commerce of our great lakes, rivers, and canals are essentially the same as that carried on elsewhere within the ebb and flow of tides. It has been properly remarked by an intelligent American writer, that in all the arrangements in lake and river commerce, there is

nothing to distinguish it from other maritime commerce of the world. There is not a contract or a wrong, not a want, right or a duty, not a construction, or a contrivance, a utensil, a material, or a supply, nor an agent of commerce, animate or inanimate, that is met with on the widest, the stormiest and saltest ocean that has not its counterpart on these mighty lakes and rivers, and the same rules of law should prevail. A salvage, an average, a bottomry, a case of wages, of freight, tonnage, of wharfage and the like, on Lake Superior, Lake Huron, Georgian Bay, Lake Erie, Lake Ontario, and the River St. Lawrence, are as clearly cases of admiralty and maritime jurisdiction, and as much subject to the admiralty and maritime law, as similar cases in the Black Sea, the Bosphorus, the Dardanelles, the Baltic, the Irish Channel, the Straits of Magellan, or the Gulf of St. Lawrence. Their nature is the same everywhere, they are maritime everywhere, be the waters fresh or salt, having a tide or tideless, and for the future they will be the same in the Province of Ontario and Dominion of Canada."

Many cases have already been brought before this Court, and it is reasonable to suppose that its business will much increase as time goes on. There are to be three sittings in the year for the trial of contested cases, and the Judge holds Chambers once a-week. The Surrogate Judges have not yet been appointed, but we understand that they will be shortly.

We hope when any case of importance is decided to report it for the benefit of our readers.

LAW SOCIETY

Trinity Term, 42nd Victoriæ.

The following is the *resumé* of the proceedings of the Benchers during this term published by authority :

Monday, 26th August, 1878.

In the absence of the Treasurer, Mr. D. B. Read was elected Chairman of Convocation.

The Report of the Examiners for Call was read showing that the following gentlemen had passed their examination, namely, Messrs. H. P. Sheppard, I. Campbell, F. P. Betts, A. B. Aylsworth, R. Dulmage, H. T. Beck, M. Wilson, W. H. Ferguson, W. E. Higgins, T. Haslett, J. C. Hegler, F. W. Patterson, J. G. Kelly, E. L. Chamberlain, M. Sheppard, Jr., N. H. Ray.

Ordered that Messrs. Sheppard, Campbell, Betts, Aylsworth, Dulmage, Beck, Wilson, Ferguson, Higgins, Haskett, Hegler, Patterson, Chamberlain, Sheppard and Ray be called to the Bar.

Ordered that the following gentlemen be granted their certificates to practise as Attorneys, namely, Messr Sheppard, Haverson, Shepley, Jeffrey, Ross, Blackstock, Rolph, Barclay, Best, Dowsley, Haines, Lawrence and Going.

The Report of the Examiners upon the Intermediate Examinations was read and adopted.

The following gentlemen presented petitions which were read and referred to the Legal Education Committee, namely, Messrs. Sweet, Riordan, Taylor, Darling, Lane, Loughead and Zimmerman.

Ordered that the recommendation of the Committee in the case of Joseph Cooper, Assistant in the Library, be adopted.

Thursday, 27th August.

Ordered that D. B. Read, Esq., Q. C., be chairman in the absence of the Treasurer.

Ordered that Elliott Travers be granted his certificate of fitness on production of his diploma and complete certificate of Mr. Peter McCarthy. The petitions of G. T. Goodeve and J. C. McCarthy were referred to the Legal Education Committee.

The Report of the Examining Committee on the Primary Examinations was

read, showing that the following gentlemen were entitled to be admitted as Students-at-Law and Articled Clerks, namely,—

Graduates.

William Riddell, John Graham, David Philip Clapp, Adam Johnston, George Gordon Mills, George William Beynon, John Henry Mayne Campbell, Charles Millar, Thomas Alfred O'Rourke, Edward Robert C. Proctor, Conrad Bitzer, John Russell, John William Russel.

Matriculants.

W. J. Taylor, Harry Thorpe Canniff, Thomas Parker, A. Douglass Ponton, Albert Edward Dixon, and, as an articled clerk, Eudo Saunders.

Junior Class.

J. L. Murphy, A. G. Clarke, W. B. Dickson, W. G. Wallace, T. K. Porteous, D. H. Tennent, M. S. McCraney, J. Telford, C. H. Clementi, W. Hawke, J. B. Paterson, J. W. Hanna, C. H. Cline, G. W. Danks, C. A. Hessin, P. E. Harding, C. Henderson, J. Campbell, J. G. Cheyne, F. E. Bertrand, T. Moffat, S. O. Richards.

Articled Clerk.

A. F. Godfrey.

Ordered that the Examiners be paid one hundred and thirty dollars for their services.

The Report of the Committee on Legal Education was adopted, recommending that after Hilary Term, 1879, the subjects for the Matriculation Examination of Students-at-Law be the same as those prescribed for each year by the University of Toronto for the Pass Examination at the Junior Matriculation of Students in the Faculty of Arts, with the option as to Greek or French and German as now prescribed, and that after the same Term the Law Society hold two examinations in each year, one at Michaelmas Term and one at Hilary Term for the admission of Students-at-Law and Articled Clerks, and that the Matriculation Examination in the University of Toronto be substituted for the Primary Examinations of Students-at-Law during Easter and Trinity Terms.

September 6th, 1878.

The petition of Isidore F. Hellmuth was read and referred to the Committee on Legal Education.

The petitions of R. S. Neville and D. B. Robertson were referred to the same Committee.

The Report of the Finance Committee recommending a grant of $150 to W. E. Hodgins to assist in the publication of the Ontario Legal Directory was adopted.

Mr. Read gave notice that he would next Term move that the Report of the Legal Education Committee on the subject of Primary Examinations of candidates for admission as students be reconsidered, that no action be taken thereon, and that it is inexpedient that students should be admitted to the Law Society on the Matriculation Certificate of any University.

SELECTIONS.

MR. JUSTICE KEOGH.

Few men have occupied a more prominent position or played a more active and distinguished part in the great drama of public life than the Right Hon. William Keogh, who has now passed away in most distressing circumstances. He was the eldest son of Mr. William Keogh, solicitor, of Corkip, in the County of Roscommon, and was born in Gardiner Street, Dublin, in the year 1817. His mother, to whom he was warmly attached, and of whom he boasted with filial pride that he inherited from her whatever talents he possessed, was before her marriage a Miss French, of Galway, an accomplished lady and of

good family. He received his education in Dublin, and entered Trinity College, where he obtained honours. He posessed a taste for classical literature, and at an early period of his academical career applied himself, with an ardour which long survived his youth, to the study and practice of oratory. In the College Historical Society he found a field in which his cultivated gifts and acquirements had free scope and were stimulated by the excitement of debate and the successes which he achieved. He was also a member of another debating society connected with the Dublin Library. Both his argumentative skill and declamatory power won for him the highest distinction, and he soon rose to the foremost rank of spokesmen. On obtaining his degree he was called to the bar in 1847, and chose the Connaught circuit, with which he remained connected until his elevation to the bench. He did not devote his great abilities to the study of dry technical details, and never obtained distinction as a subtle pleader or profound lawyer; but he possessed the marvellous faculty of collecting the leading facts of a case and the salient points of law which might be applied to them with effect, and, above all the qualifications of an advocate, an eloquence which was always earnest and forcible, and at times so impassioned as to take the feelings if not the judgment of an audience by storm. He was appointed Solicitor-General in 1850. The pursuits of the bar did not afford sufficient employment for his oratorical abilities, and he conceived at an early period an ambition to enter Parliament. The desire was encouraged by friends connected with each of the two Government factions in the State; and it was no slight tribute to his popularity that he was woed as a political ally by both. In 1850 the general election afforded an opportunity for gratifying his wish, and he offered himself as a candidate for the representation of Athlone, standing, it is said, as the *protégé* of Mr. Attwood, a wealthy English gentleman. He was opposed by Mr. Norton, the husband of Mrs. Norton, of literary fame; and there was a sharp encounter between them, which ended in Mr. Keogh's return. On that occasion he had a narrow escape of meeting his fate. The place selected for the meeting was a large barn or outhouse; and he addressed the "free and independent" electors and non-electors from an open window space, the frames having been taken out for the purpose. A wooden bar was placed against the middle; and this was the only protection to the speaker. In the course of a vehement passage, in which he denounced his antagonism of the Government in a Demosthenic style—and, in fact, the words seemed to be translated from a philippic—he struck the bar with such vehemence as to displace it, and he was in imminent danger of falling into the yard below, when a reporter who was close beside him at once caught him by the arm and pulled him back. In the House of Commons his *prestige* as a speaker was great, and he delivered some impressive speeches which held the ear of the House. Among the most successful was an attack on Mr. Roebuck, and his denunciation of the Irish Ecclesiastical Titles Bill introduced by Lord John Russell. This won him great favour among the Roman Catholic clergy and people of Ireland, and he was regarded as a leading champion of the Church. This circumstance made their subsequent hostility the more bitter and implacable when he gave judgment in the Galway election case, unseating Captain Nolan and declaring Major Trench duly elected on the ground that the return of the former had been obtained by intimidation used by the Roman Catholic clergy, whose conduct he stigmatised with unsparing severity. His attack upon the Ecclesiastical Titles Bill was followed by a speech in the Rotunda, delivered in the presence of Cardinal Cullen and other prelates, on the defeat of the Aberdeen Coalition Ministry and the return of Lord John Russell to power. He accepted office in 1855 as Attorney-General. This acceptance first destroyed his popularity and exposed him to great obloquy. He had been a member of the party of independent opposition, and is reported to have made a speech on a festive occasion in Athlone, in which he took a vow that he would never take office under the Government. This has been represented as a solemn oath, and

he was held up to execration as a perjurer. No explanation of the actual facts, however, has ever been given, for he treated the attack on him with contemptuous silence. In 1856 he was raised to the bench as second justice of the Court of Common Pleas. His judicial career was remarkable for his fearless independence and resolution to vindicate the majesty of the law. Irrespective altogether of parties or persons, he castigated all whom he believed to deserve it, no matter what position they occupied or what relation they held towards him or others. It was his lot to be engaged in some election petition and other trials in which religious and political questions were mixed up, and his judgment was one almost certain to give offence to one party in the action. He incurred the resentment of each at different times, but chiefly by his Galway judgment. The undying enmity of the Roman Catholic priesthood and populace pursued him with relentless fury to his death-bed. His judgments are marked by great ability and outspoken condemnation of improper practices. He unseated Sir Arthur Guinness and Mr. Plunkett, the Conservatives, with as inflexible a determination as he unseated Mr. Whitworth and Captain Nolan, the Liberals. He was a sincere and earnest Roman Catholic, and was intolerant of clerical dictation and coercion, and never hesitated to denounce it. In this respect, notwithstanding the calumnies uttered against him, he was always consistent. One of his earliest and most remarkable speeches at the bar was a scathing denunciation of a priest at Sligo, who was prosecuted for horse-whipping a woman. His political views were Liberal in the largest sense; and this, as well as his genial manners, made him a favourite with the educated classes. In private life he was universally esteemed as a warm and generous friend and a most agreeable companion. His conversational powers were of a rare quality, marked by unflagging animation and a ready flow of wit and humour, which showed a pleasant if not a brilliant array around the convivial circle. He had a strong frame, and, until the last circuit, seemed to be in the enjoyment of good health; but the first symptoms of decay then showed themselves, and were noticed with concern, but no one apprehended a collapse so speedy and so sad.

—*Law Journal.*

THE PROMOTION OF LORD CAIRNS.

The public will learn with satisfaction a confirmation of the report that the Lord Chancellor was about to be advanced in the peerage. Lord Cairns enjoys the esteem alike of his colleagues and his party, of the public and of the profession of which he is the head. He has long been recognized as one of the most accomplished lawyers of his time, and he is universally trusted as a prudent, able, and conscientious statesman. Few even of his opponents, therefore, will grudge him his well-earned promotion to an Earldom. It seemed at one time, indeed, as if his health was likely to force him to relinquish an active share in politics. For a short period he occupied the position of leader of the Conservative party in the House of Lords when it was rendered vacant by the retirement of the late Earl of Derby; but, as he was compelled to resign this position on the ground of ill-health, it must have seemed more than doubtful whether he would be able to resume office on the return of his party to power. These apprehensions, happily, proved to be groundless. Lord Cairns became Lord Chancellor for the second time in 1874, and, to the satisfaction of all, his strength has been so far restored as to enable him to discharge without intermission the arduous duties of his high office, and to bear his share of responsibility in the prolonged and trying crisis through which the country has lately passed. That his powers, matured by time and experience, are still as great as they ever were, we have lately had abundant proof. Our readers will hardly have forgotten the great debate in the House of Lords last Session on the Constitutional question involved in the summons of troops from India. It was to Lord Cairns that the duty fell of explaining the acts and the policy of the

Government; his chief opponent was Lord Selborne, and the battle, therefore, was one of giants. If the issue was determined, as such issues commonly are, under a system of party government, by numbers quite as much as by argument, the contest between the two leading disputants was yet a keen and close one, and Lord Cairns showed throughout an unusually protracted address the courage of a statesman and the acumen of a consummate lawyer. It is both natural and according to precedent that when a great policy has been brought to a successful issue the national approval should find expression in the honours which are the proper and usual reward of statesmen. Every one will rejoice, therefore, that a proper meed of public approbation should fall to the share of the Lord Chancellor. He has fairly won his honours, and we must hope that he may long be spared to enjoy them.

The career of a great lawyer almost necessarily divides itself into two distinct parts, and the early brilliancy of the advocate is often eclipsed in the mature fame of the judge. It is well known that when Brougham first became Lord Chancellor he considered himself to have suffered in political prospects as well as in personal fortune by his enforced retirement from the Bar. It may have been in part owing to his premature promotion, as well as to temperament, that he never quite succeeded in sinking the advocate in the judge, nor the politician in the statesman. There has been no such abrupt solution of continuity in the career of Lord Cairns. He was elevated to the Bench and subsequently to the Woolsack, not so much for political reasons as on grounds of personal fitness, universally acknowledged without distinction of party. It hardly needs to be said that he had served his party ably and faithfully in Parliament; but it may be added that he had won the esteem of his opponents and the confidence of the public by his judicial temper and sagacity long before he quitted the Bar for the Bench. It is so long since he first became a Judge, that men have almost had time to forget his earlier career at the Bar and as a member of the House of Commons. They will recollect, however, that no lawyer on either side was more highly esteemed than Sir Hugh Cairns; and if the fame of the Lord Chancellor has surpassed that of the former Solicitor and Attorney-General, it is not so much because the latter was insignificant as because Lord Cairns has continued to advance in public esteem. As Lord Chancellor in two Administrations he has more than fulfilled the promise of his earlier career, and his services both to his profession and to the State are fitly rewarded by his advancement to the rank of an earl.

The promotion of a Lord Chancellor to the higher ranks of the peerage is by no means a matter of course. From the Revolution in 1688 down to the year 1850 there were eighteen Lord Chancellors, several of whom held office more than once. But of these only eight in all became earls, and only seven by actual creation. The great Lord Somers, whom Horace Walpole described as "one of those divine men who, like a chapel in a palace, remain unprofaned while all the rest is tyranny, corruption, and folly," never became an earl, though the title was subsequently acquired by his descendants of a collateral branch. He was succeeded by Lord Cowper, who was created an earl in 1718. Lord Chancellor Harcourt only achieved the rank of viscount. Parker, the last Lord Chancellor who was impeached, became Earl of Macclesfield in 1721. Philip Yorke, who was Lord Chancellor from 1737 to 1756, was created Earl of Hardwicke in consideration of his long service to the State. "He valued himself," says Lord Chesterfield, "more upon being a great Minister of State, which he certainly was not, than upon being a great Chancellor, which he certainly was." But he was a man of great sagacity and uprightness, and, as another of his contemporaries said of him, when he rose in debate it seemed like public wisdom speaking. He was succeeded by Lord Henley, who ultimately became Earl of Northington. The mediocre Bathurst, who owed his promomotion chiefly to his respectable mediocrity, became an earl by succession, not by creation. Like his successor, Lord Thurlow, he had to smart under the caustic sarcasm of the incorrigible John

Wilkes. When the latter was elected Lord Mayor, Bathurst is said to have contemplated annulling the appointment on the ground of unfitness. "If his Lordship disallows my nomination," said Wilkes, "I shall have to petition His Majesty to remove the Lord Chancellor on the ground of incompetence." The Chancellor yielded to the affront and sanctioned the appointment. Wedderburn, who held the Great Seal with the title of Lord Loughborough, was created Earl of Rosslyn before his death, but the name of Loughborough is the one which is associated with his tenure of office. Lord Eldon, the consummate lawyer, and almost the last of those stern and unbending Tory statesmen to whom the first Reform Bill seemed like the letting loose of a new and destructive deluge, was made an earl in 1821, after he had held the Great Seal for eighteen years in all, and for thirteen consecutively. After Lord Eldon's retirement no Lord Chancellor was made an earl until Lord Cottenham's promotion on his retirement in 1850. Brougham and Lyndhurst, like the successors of Lord Cottenham up to the present time, did not rise beyond the rank of baron. We will not pretend to say whether the precedent of Cowper and Macclesfield, of Hardwicke and Eldon, is more worthy of imitation than that of Somers and Thurlow, of Erskine, Lyndhurst, and Brougham, but we are sure that the public judgment will trouble itself little about precedent, and will only see in the Lord Chancellor's promotion the well-earned reward of a laborious, an honourable, and a blameless career.—*Times.*

HAS THE 29TH OF FEBRUARY A LEGAL EXISTENCE?

This apparently simple question was recently decided in one of the Inferior Courts of Indiana, in the affirmative (6 *Cent. Law Jour.*, p. 301). The same question it appears was formerly presented to the Indiana Supreme Court, in *Swift* v. *Toucey*, 5 Ind. 196, but was only incidentally passed upon; Stuart, J., in that case referring to the statute, 21 Hen. III., *de bissextilli anno*, and saying: "This ancient statute being prior to 4 James I., made in aid of the common law, and not inconsistent with our institutions, *would seem* to be in force in this State."

Following this *dicta* it was held in *Craft* v. *The State Bank of Indiana*, 7 *Id.* 219, that a note dated February 25, 1848, at ninety days, payable in Indiana, was payable May 29, and that the protest May 27, was premature. The Court say: "If the 28th and 29th days of February in the bissextile year are to be treated as one day, the demand was premature," citing *Swift* v. *Toucey*. In *Kohler* v. *Montgomery*, 17 *Id.* 220, the same question arose, and presentment was held premature, with the statement, "Commercial February has but twenty-eight days;" and in *Porter* v. *Halloway*, 43 *Id.* 35, the same ruling was adhered to.

In the case before Judge Mallott (*Tranter* v. *Helphenstine*), it appeared that the Indiana statute requires a summons to be served *ten days* before the return day. The summons was served February 25, and judgment taken by default March 6. And it was claimed that, the 29th of February intervening, there was a previous service of *nine days* only, and the Court acquired no jurisdiction.

As the Indiana decisions on the subject rest upon the *obiter dictum* in *Swift* v. *Toucey*, and the statute 21 Hen. III., had never been examined by the Supreme Court in any of the cases decided, the learned Judge considered himself at liberty to look into the question independently of the ruling of the Supreme Court.

First, said the Court, as to the proposition that, commercial February has but twenty-eight days. If it be true that, by the rules of the law merchant, February has but twenty-eight days, it is reasonable to presume that, in some of the numerous and exhaustive works upon bills, notes, and commercial law, the rule would be found laid down as a part of the law. I have pretty thoroughly examined the English and American reports and digests, and have found no case holding that doctrine. It is not found in the works of Kent, Story, Parsons, Byles, or Daniels. In "Edwards on Bills," 513, it is stated that February 28 and 29 count as one day; but the author cites only the statute 21 Hen. III., and a

local statute of New York in support of it. In "Chitty on Bills," a large number of British statutes are cited; but the statute 21 Hen. III., is not even referred to. But the learned author inferentially controverts the doctrine declared in *Kohler* v. *Montgomery*. He says: "On a bill dated January 28, 29, 30, or 31, and payable one month after date, the time expires on February 28, in common years; and, in the three latter cases (January 29, 30, 31), in leap year on the 29th."

After a critical examination of the English statute, the Court decided that it was intended to settle the "year and a day," within which time certain acts in the English practice were required to be performed; and it dealt with the year as an entirety, and had no relation to fractional parts of the year, whether expressed in days or months. "No one would think," said the Court, "that the statute in question required that the 28th and 29th days of February should be regarded as having only twelve hours each. Is a man who works on February 28 and 29 to have pay for one day only? Is one who borrows money on February 27, for one day only, entitled to the use of it for one day longer—and that, too, without interest? Has a judgment, rendered February 28, no priority as a lien over one rendered on February 29? Could a man, sentenced to be hung on February 29, be legally executed on February 28? Could a man, indicted for selling whisky on Sunday, February 29, escape punishment on the plea that he sold the liquor on the latter part of Saturday, February 28?" The service, therefore, was held to be sufficient.—*Washington Law Reporter.*

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

CHANCERY.

V.-C. Proudfoot.] [October 23.

FLEURY v. FLEMING.

Injunction—Simple contract creditor.

Held, following the decision in *Abell* v. *Morrison*, 23 Grant, 109, that a creditor by simple contract was entitled to an injunction to restrain his debtor from disposing of his property with a view of evading execution, although the creditor had not obtained judgment: *St. Michael's College* v. *Merrick*, 1 App. R. 520, referred to and distinguished.

V.-C. Proudfoot.] [October 23.

GOULD v. STOKES.

Will, construction of—Conversion into personalty.

A testator directed his executors to sell and realize all his estate in such manner as they should think proper, and the residue, after sundry devises and bequests, he desired them to divide into certain shares, one of which he directed to be equally divided among the daughters of his son, S. V., deceased, to be paid to them on their attaining 21, or sooner if the executors should think it for their advantage; and in the event of the death of any of his granddaughters without leaving issue, her or their shares to be equally divided among their surviving sisters or their heirs.

Held, that this operated as a conversion of the estate into personalty, and the words "dying without leaving issue" referred to the period of distribution; that is, when the legatees attained 21; and, therefore, that the share of one of them who had died after the testator, and after having attained 21, without issue, went to her personal representatives.

V.-C. Proudfoot.] [October 23.

OWSTON v. GRAND TRUNK RAILWAY CO.

Purchase of right of way—Tenant pour autre vie—Demurrer.

The bill alleged that tenants *pour autre vie* had sold and conveyed to a railway company land for their roadway. After the cesser of the life estate the parties entitled in remainder filed a bill against the vendors and the company, seeking discovery as to what estate or interest the vendors had conveyed, stating that the company alleged they had paid the vendors the full price of the fee in the land, and that they (the vendors) were liable to account for the price so paid, and prayed for an account and payment to the plaintiffs of a proper share or proportion thereof:

Held, on demurrer by the vendors, that no sufficient ground of equity was alleged against them; the plaintiffs, however, to be at liberty to amend their bill as they should be advised.

CANADA REPORTS.

QUEBEC.

ELECTION CASES.

SUPERIOR COURT.—[In Chambers.]

In Re Montreal Centre Election.

Election—Count—Ballots opened by Returning Officer.

Held, where the returning officer opened the envelopes containing the ballots as transmitted by the deputy-returning officers, that the Judge could not recount the ballots under section 55 of the Dominion Election Act.

[Montreal, September 30, 1878.

An election having been held for Montreal Centre, and an application having been made under section 55 of the Election Act for a count of the ballots by a Judge, it appeared that the returning officer had removed the ballots from the envelopes in which they had been transmitted to him by the deputy-returning officers, and had made them into two packages.

Devlin, and *Archambault*, Q.C., for petitioner.

Lacoste, Q.C., and *Curran*, Q.C., for respondent.

Rainville, J., said the law was very clear and precise, that the ballots as transmitted by the deputy-returning officers should remain in the same state until opened by the judge, on a demand being made for a count. The returning officer in the present case had, therefore, exceeded his duty in opening the envelopes. Under the circumstances, His Honour said he could do nothing, and he would declare the impossibility of taking any action, and leave the returning officer to adopt such course as he might be advised. Each party to pay his own costs on this application.*

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR MAY, JUNE, AND JULY, 1878.

(*From the American Law Review.*)

Annuity.

1. Testator gave some annuities, and then bequeathed his personal estate not specifically disposed of to trustees, "to stand possessed thereof upon trust, out of the income thereof to pay and keep down such of the annuities hereinbefore bequeathed as for the time being shall be payable, and subject thereto" upon other trusts. The income of the personal estate was less than the amount of the annuities. *Held*, that the deficiency should be made up out of the capital.—*In re Mason. Mason* v. *Robinson*, 8 Ch. D. 411.

2. By a deed of separation made in 1860, between M. and his wife, he covenanted to pay each of their six daughters an annuity of £200, to cease, in each case, if M. and his wife should come together again. The wife died in 1871, and M in 1874, the latter intestate. They had had not lived together again. *Held*, that the annuities paid during M.'s life were not advancements, and that the value of the annuities at the death of M. should be brought into hotchpot.—*Hatfield* v. *Minet*, 8 Ch. D. 136.

Appointment.—See Settlement.

Arbitration.

The plaintiff and the defendants, G., N., F., all British subjects, entered into partnership articles for carrying on business in Russia, with the head office at St. Petersburg. The articles were in the Russian language, and registered in Russia. G. and N. had the privilege to demand back their capital within a year; and, if their demand was not satisfied within a month, they could wind up the firm. "In case of any disputes arising between the parties, . . . such disputes, no matter how or where they may arise, shall be referred to the St. Petersburg commercial court. . . . The decision of such court shall be final." G. and N. duly demanded their capital, and took steps in Russia to secure it by winding up proceedings. The plaintiff thereupon began an action in England, alleging that there were parts to their agreement, all executed in England, although one was translated into Russian, and by one of the English parts he was to have compensation for the withdrawal of

* The judgment of Hagarty, C.J., in the Centre Wellington case, to be hereafter reported, would seem to throw doubt on this decision.—Ed. L. J.

G. and N; that the proceedings for winding up were taken without his knowledge and consent: and that they were invalid, and not according to Russian law. He claimed a dissolution, compensation according to the English agreement, and the appointment of a receiver in England. Defendants moved for a reference of all matters to St. Petersburg. *Held*, that the agreement in the articles to refer was a good arbitration clause under the Common-Law Procedure Act, 1854, and a stay of proceedings was ordered to await the result of proceedings in the Russian court.—*Lap* v. *Garrett*, 8 Ch. D. 26.

ATTORNEY AND CLIENT.

1 Shipowners sued the charterers for not discharging the cargo according to the charter-party, and in a subsequent action the charterers resorted to their remedy over against the merchant on the contract of sale. *Held*: that correspondence between the charterers and their solicitor in the first action, and between their solicitor and the shipowners' solicitor and relating to the question in the second action, were privileged, and need not be produced in the second action,—*Bullock* v. *Corry*, 3 Q. B. D. 356.

2. In an action by a company against its former engineer for money wrongly charged to it in the final account with him, the defendant applied for inspection of three documents scheduled in the plaintiff's affidavit of discovery, and consisting of shorthand notes of conversations, between an officer of the company and the chimney-sweep, and between the chairman of the company and the present engineer, and a statement of the facts drawn up by the chairman, all prepared for submission to plaintiff's solicitor for his advice as to their action, two of which had already been submitted to him. Refused, on the ground that the documents were privileged.—*The Southwark and Vauxhall Water Co.* v. *Quick*, 3 Q. B. D. 315.

See SOLICITOR.

AUCTION.—See SALE, 3.

BEQUEST.

S. died in 1628, leaving a will containing a bequest of £1,000 for "the relief and use of the poorest of my kindred, such as are not able to work for their living, *videlicet*, sick, aged, and impotent persons, and such as cannot maintain their own charge. . . . And my will is, that in bestowing . . . my goods to the poor charitable uses, which is, according to my intent and desire, those of my kindred which are poor, aged, impotent, or any other way unable to help themselves, shall be chiefly preferred." The income from the charity fund became very large. *Held*, that the bequest was a charity; that the objects of it were primarily the kindred of the testator, actually poor; and if, after such were provided for, something remained, it should be applied to the relief of poor persons in general, by the doctrine of *cy près*. A well-to-do person among the kindred could not take, although by comparison "poorer" than some others of the kindred. *Dictum* of WICKENS, V.-C., in *Taylor* v. *Gillham* (L. R. 16 Eq. 581), criticised.—*Attorney-General* v. *Duke of Northumberland*, 7 Ch. D. 745.

See TRUST, 2; WILL, 5.

BILL OF LADING.—SALE, 2.

BILL OF SALE.—See SALE, 4.

BILLS AND NOTES.

A check had been given for a debt, when a trustee or garnishee process was served upon the debtors, whereupon they ordered payment on the check to be stopped. The check had not been presented. *Held*, that the stopping of payment of the check revived the debt, and the debt was held by the trustee process.—*Cohen* v. *Hale*, 3 Q. B. D. 371.

See SALE, 2.

BONUS.—See WILL, 5.

BOUNDARY.—See LANDLORD AND TENANT, 2.

BURDEN OF PROOF.—See SLANDER.

BY-LAWS.—See RAILWAY, 2.

CANCELLATION OF STOCK.—See COMPANY, 1.

CARRIER.—See COMMON CARRIER.

CAUSA PROXIMA.—See NEGLIGENCE, 1.

CHARITY.—See BEQUEST; TRUST, 1; WILL, 4.

CHECK.—See BILLS AND NOTES.

CLASS.—See WILL.

COLLUSION.—See JUDGMENT.

COMMON CARRIER.—See RAILWAY.

COMPOUNDING FELONY.—See SURETY.

CONCEALMENT.—See SURETY.

CONDITION.—See SALE, 3; WAIVER.

CONSIDERATION.—See SALE, 4; SETTLEMENT, 1.

CONSTRUCTION.—See ANNUITY, 1; BEQUEST; CONTRACT, 1; LANDLORD AND TENANT, 1; RAILWAY, 2; TAXES; WILL, 1, 2, 3, 4.

CONTRACT.

1. Contract in writing, by plaintiffs, to cut and lengthen and repair defendant's ship, "to enable the vessel to be classed 100 A 1" at Lloyd's, for £17,250 and the old material. Reference was made for details to specifications annexed to and forming part of the contract. These specifications consisted of two items, headed respectively "lengthening" and "iron-work." Under the first were particulars stating, among other things, that all the "iron and wood work" of certain portions of the vessel named was to be "new and complete," and every way "in accordance with Lloyd's rules to class the vessel A 100." The other item

read as follows: "The plating of the hull to be carefully overhauled and repaired [but if any new plating is required, the same to be paid for extra]." "Deck beams, ties, diagonal ties, main and spar deck stringers, and all iron work, to be in accordance with Lloyd's rules for classification." The words standing above in brackets were erased, but left legible, and were signed by certain initials. *Held*, in an action for extra pay for new plating, that, if new plating was required to render the ship 100 A 1 at Lloyd's the plaintiffs were obliged, according to the contract, to furnish it without extra pay, and that the erased words could not be used as proof of the intention of the parties. —*Inglis* v. *Buttery*, 3 App. Cas. 552.

2. Action for specific performance of an agreement by defendant to take at par 2,000 shares in the plaintiff company, at such times as should "be required for the purposes of the company." At the time of the above agreement, the directors of the company agreed to pay the defendant, "in consideration of his services," £4,000, by a draft payable in twelve months from date, and to be dated on the day when he should pay for the said 2,000 shares in full. The directors had no authority to issue shares below par. The defendant set up in defence that he had rendered no services to the company, and that the object of the two agreements was to issue shares to him at a discount; that the two agreements formed in fact only one contract, and the two parts were made separate, in order to enable the directors to evade said limit on their powers, and he asked to have his name removed from the list of subscribers. *Held*, that he must take and pay for the shares in full. He could not set up the fraud of the directors, in which he had colluded, in order to invalidate the contract, and the contract was divisible. He was left to another action to recover his £4,000 if he could.—*Odessa Tramways Co.* v. *Mendel*, 8 Ch. D. 235.

3. The plaintiff wrote the defendant's agent for the sale of a leasehold as follows: "In reference to Mr. J.'s premises . . . I think £800 . . . about the price I should be willing to give. Possession to be given me within fourteen days from date. . . . This offer is made subject to the conditions of the lease being modified to my solicitor's satisfaction, which I am informed can be done." A few days afterwards the agent wrote: "We are instructed to accept your offer of £800 for these premises, and have asked Mr. J.'s solicitor to prepare contract." The lease was modified as required by plaintiff's solicitor. *Held*, that the two letters formed a complete contract.—*Bonnewell* v. *Jenkins*, 8 Ch. D. 70.

See Corporation; Sale, 1, 2; Surety.

Contribution.—See Salvage, 2.

Conversion.—See Insurance; Settlement, 2; Will, 1, 5.

Copyright.

Defendant adapted a plan from a French novel and drama, in which it was found as a fact that he had introduced two unimportant "scenes or points" or "scenic representations" already used by plaintiff in an adaptation previously made by him, but which had no counterpart in the French original. *Held*, that, under the Dramatic Copyright Act, 3 & 4 Wm. 4, c. 15, § 2, the defendant was not liable, inasmuch as the portions taken were not material and substantial.—*Chatterton* v. *Cave*, 3 App. Cas. 483; s. c. L. R. 10 C. P. 572; 2 C. P. D. 42; 10 Am. Law Rev. 464; 11 id. 690.

Corporation.

By Act of Parliament, it was provided that every contract above £50, made by a public corporation like the defendant, should "be in writing, and sealed with the common seal" of the corporation. The jury found that the defendant corporation verbally authorized its agent to order plans for offices of the plaintiff; that the plans were made, submitted, and approved; that the offices were necessary, and the plans essential to their erection; but the offices were not built. *Held*, that the plaintiff could not recover. Distinction between trading and public corporations.—*Hunt* v. *The Wimbledon Local Board*, 3 C. P. D. 208.

See Company.

Costs.

Where a defendant admitted his liability for the debt sued on, and set up a counterclaim exceeding the plaintiff's in amount, the defendant was refused security for costs against the plaintiff, as being a foreigner, residing out of the jurisdiction.—*Winterfield* v. *Bradnum*, 3 Q. B. D. 324.

See Mortgage, 1.

Covenant.—See Landlord and Tenant, 1, 3; Partnership, 1.

Coverture.—See Married Women.

Covin.—See Judgment.

Cy-pres.—See Bequest.

Damages.

In an action for damages, injury to plaintiff's buildings by the withdrawal of lateral support through mining operations carried on by the defendant on the adjacent land, a referee found £400 damages already accrued, and £150 prospective damages. *Held* (Cockburn, C. J.,

dissenting), that prospective damages could be recovered. *Backhouse* v. *Bonomi* (9 H. L. C. 503) and *Nicklin* v. *Williams* (10 Ex 259) discussed.—*Lamb* v. *Walker*, 3 Q. B. D. 389.

See NEGLIGENCE, 1; TRADE-MARK, 2.

DEED.—See MORTGAGE, 2.

DELIVERY.—See RAILWAY, 3; SALE, 2.

DEMURRER.

Claim that the defendants, by placing refuse and earth on their land, caused the rain-water to percolate through and flow upon the plaintiff's adjoining land and into his house, as it would not naturally do, and that substantial damage was caused thereby. *Held*, not demurrable.—*Hurdman* v. *The North Eastern Railway Co.*, 3 C. P. D. 168.

DEVISE.—See TRUST, 1; WILL, 1.

DIRECTOR.—See COMPANY, 3.

DISCOVERY.—See ATTORNEY AND CLIENT, 1, 2.

DISCRETION OF TRUSTEES.—See TRUST, 2.

DISTRIBUTION.—See ANNUITY, 2.

DIVISIBLE CONTRACT.—See CONTRACT, 2.

DOCUMENTS, INSPECTION OF.—See ATTORNEY AND CLIENT, 2.

DOMESTIC RELATIONS.—See HUSBAND AND WIFE.

ERASURES.—See CONTRACT, 1.

EVIDENCE.—See CONTRACT, 1; SLANDER; WILL, 1.

EXCHANGE, BILLS OF.—See BILLS AND NOTES.

EXECUTION.

Sect. 87 of the Bankruptcy Act, 1869, provides that "where the goods of any trader have been taken in execution for a sum exceeding £50" within a specified time before bankruptcy, proceedings on it shall be restrained. Appellants got judgment for £54, but endorsed the writ for £43 only. *Held*, that the execution was good for that sum, notwithstanding the judgment for more than £50.—*In re Hinks. Ex parte Berthier*, 7 Ch. D. 882.

EXTRINSIC EVIDENCE.—See WILL, 1.

FENCE.—See NEGLIGENCE, 2.

FIRE INSURANCE.—See INSURANCE.

FORECLOSURE.—See MORTGAGE, 1, 2.

FOREIGN TRIBUNAL.—See ARBITRATION.

FRAUD.—See CONTRACT, 2; SALE, 1, 4; TRADE-MARK, 2.

FRAUDS, STATUTE OF.—See SALE, 3.

FUTURE DAMAGE.—See DAMAGES.

GARNISHEE PROCESS.—See BILLS AND NOTES.

HOTCHPOT.—See ANNUITY, 2.

HUSBAND AND WIFE.

1. A wife's property was, on her marriage, settled to her separate use, without power of anticipation. A judgment was obtained in the Queen's Bench against her for debts contracted previous to her marriage; and, in an action in the Chancery Division, to enforce this judgment against her separate estate, *held*, that the judgment debt and costs should be recovered against her separate estate, in spite of the restraint against anticipation in the settlement, under the Married Women's Property Act, 1870, which provides that "the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts [contracted before marriage] as if she had continued unmarried."—*London & Provincial Bank* v. *Bogle*, 7 Ch. D. 773.

2. When a wife sues for separate estate, the husband should be made a defendant, not a plaintiff. The Judicature Act has not changed the practice.—*Roberts* v. *Evans*, 7 Ch. 830.

3. Under the Married Women's Property Act, 1870, the husband must still be joined as defendant when an action is brought against the wife to charge her earnings in a pursuit carried on by her apart from her husband.—*Hancocks* v. *Demeric-Lablache*, 3 C. P. D. 197.

See MARRIED WOMEN.

IMPLIED TRUST.—See TRUST, 1.

INCOME.—See ANNUITY, 1.

INFANT.

By the marriage settlement, made under the direction of the court, of a young lady then "an infant of seventeen years and upwards," certain property of hers was vested in trustees, among other things to reinvest the same, "with the consent of" the said infant and her husband, and after the death of either with the consent of the survivor, at the discretion of the trustees. The wife had the first life-interest. *Held*, that the wife, though an infant, could give her "consent" to a reinvestment, as contemplated by the settlement. She could exercise a power, though coupled with an interest.—*In re Cardross's Settlement*, 7 Ch. D. 728.

See SETTLEMENT, 1.

INJUNCTION.—See PARTNERSHIP, 2; TRADE-MARK, 1, 2; WAY.

INSURANCE.

By the terms of a lease, dated Sept. 29, 1870, the lessee had the option to purchase the premises at an agreed price, by giving notice before Sept. 29, 1876, of his intention to do so. Th lessor covenanted to insure, and did insure. May 6, 1876, the buildings were burnt down, and the lessor received the insurance money. Sept. 28, 1876, the lessee gave notice of his intention to purchase, and claimed the insuranc money as part payment. The lease contained

nothing as to the disposition of the insurance money. *Held*, that the lessee was not entitled to it. *Lawes* v. *Bennett* (1 Cox 167) criticised; *Reynard* v. *Arnold* (L. R. 10 Ch. 386) explained.—*Edwards* v. *West*, 7 Ch. D. 858.

Intention.—See Contract, 1.

Interest.—See Waiver.

Joint Tenant.—See Trust, 1.

Judgment.

The plaintiff sued defendants, to recover a penalty for violation of the Sunday statute, 21 Geo. 3, c. 49. The action was brought Aug. 17, 1877, in respect of a violation of Sunday, August 15. October 20, one R. brought suit against the defendants to recover for all the Sundays from and including August 15, to the date of the writ. Judgment in this suit went by default, and was pleaded in bar by defendants when plaintiff's suit came up. It appeared that defendant's attorney got R. to allow the use of his name to bring the suit, in order to cut off suits by others for the penalty, and in order to gain time to apply to the Home Secretary for a remission of the penalties; that R. never intended to enforce the judgment, or to have any thing further to do with the matter, but that he did not know of the suit brought by the plaintiff. *Held*, that R.'s judgment was obtained by covin and collusion, and could not be pleaded in bar of plaintiff's suit; and, moreover, the claim of plaintiff for the penalty became a debt from the date of his writ, and was not affected by subsequent suits.—*Girdlestone* v. *The Brighton Aquarium Co.*, 3 Ex. D. 137.

See Execution.

Jurisdiction.—See Arbitration.

Laches.—See Principal and Agent.

Landlord and Tenant.

1. In a lease of a large new warehouse, the lessor covenanted that he would "keep the roof, spouts, and main walls and main timbers of the warehouse in good repair and condition." There was also a provison, that, "in case the said warehouse . . . shall . . . be destroyed or damaged by fire, flood, storm, tempest, or other inevitable accident," there should be a reduction or discontinuance of rent until the building should be again tenantable. While the warehouse was being used by the tenant in a reasonable manner for the purpose which it was let for, the upper-floor beams broke, and two of the outer walls cracked and bulged, so that extensive repairs were made by the lessor, during the progress of which the tenant could not occupy the building. The lessor brought an action against the lessee for the amount expended in repairs, and the latter made a counter-claim for the rent paid by him under protest in respect of the time consumed in making the repairs. *Held*, that the covenant to keep "in good repair" meant such a condition as such buildings must be in, in order to answer the purpose for which they are used. If this particular building was in poor repair when leased, it was not enough to keep it merely in that condition. The lessee could not claim a rebate of rent under the clause "or other inevitable accident," nor any damages for occupation during the repairs, as the covenant to repair implied leave to enter for that purpose. *Saner* v. *Bilton*, 7 Ch. D. 815.

2. A tenant is bound to keep the boundary between his landlord's land and his own distinct and well defined during the continuance of the lease, as well as to render it so at the end of the lease.—*Spike* v. *Harding*, 7 Ch. D. 874.

3. Lease by defendant to plaintiff of a basement, "together with the full and undisturbed right and liberty to store cartridges therein." The lessor covenanted to keep the premises and the landing-pier adjoining in proper repair and condition "for storing, landing, or shipping away cartridges;" and there was a covenant for quiet enjoyment. Before the lease ran out, the Explosive Act, 1875, rendered it no longer lawful to keep cartridges in the premises. Defendant gave plaintiff notice to remove the cartridges; and plaintiff refusing, defendant removed them himself. Plaintiff brought an action on the lease to restrain defendant from obstructing the storing of the cartridges, and to require him to render it possible for cartridges to be lawfully stored on the premises, and for damages. *Held*, reversing the decision of Fry, J., that judgment must be for the defendant.—*Newby* v. *Sharpe*, 8 Ch. D. 39.

See Insurance; Negligence, 2; Way.

Lease.—See Insurance; Landlord and Tenant; Negligence, 2; Partnership, 2; Way.

Legacy.—See Will, 5.

Letters, Contract by.—See Contract, 3.

Libel.—See Slander.

License to Enter.—See Landlord and Tenant, 1.

Lien.—See Sale, 2.

Life-estate.—See Married Women, 2; Will, 5.

Luggage.—See Railway, 1, 3.

Maintenance and Education.—See Trust, 2.

Market Overt.—See Sale, 1.

Marriage Settlement.—See Infant; Settlement.

MARRIED WOMEN.

1. A testatrix bequeathed to her "niece M. J., the wife of R. H.," a share in a fund resulting from real and personal estate, after the termination of a life-interest in the same. The testatrix further declared that every provision made for any woman in the will was made and intended to be for her sole and separate use, without power of anticipation, and that her receipt alone should be a sufficient discharge for the same. The tenant for life died before the testatrix, and the fund had been ascertained and paid into court. *Held*, that it should be paid out to her on her separate receipt.—*In re Ellis's Trusts* (L. R. 17 Eq. 409) commented upon.—*In re Croughton's Trusts*, 8 Ch. D. 460.

2. T. was married in 1846, and became insolvent in 1861, and had no assets. In 1876, his wife became entitled under her father's will to £500 a year for life, remainder to her children. The will did not settle the income to her separate use, and there was no marriage settlement. The husband contributed nothing to the wife's support. The general assignee claimed half the income for the creditors. *Held*, that the court could settle it all on the wife, in its discretion; and such settlement was made.—*Taunton* v. *Morris*, 8 Ch. D. 453.

See HUSBAND AND WIFE.

MORTGAGE

1. A mortgagor was obliged to take out letters of administration, in order to perfect the title of the mortgaged premises to the mortgagee. In an action for foreclosure and payment of the sum due on the mortgage, *held*, that the mortgagor was not entitled to have the costs of taking out the letters paid out of of the mortgaged property.—*Saunders* v. *Dunman*, 7 Ch. D, 825.

2. *Held*, that a person mentioned in a deed with two others, as a party to it, but who never executed it, could not maintain an action to have the deed declared void. *Held*, also, that one of three co-mortgagees could not maintain an action to foreclose, making the mortgagor and his two co-mortgagees defendants.—*Luke* v. *South Kensington Hotel Co.*, 7 Ch. D, 789.

See SETTLEMENT, 2; WAIVER.

MORTMAIN ACT.—See WILL, 4.

NEGLIGENCE.

1. The defendant used his premises for athletic sports. A private passage, having a carriage-track and footpath, ran by his place, the soil of which passage belonged to other parties, but over which there was a right of way. In order to prevent people in carriages from driving up the road to his place to see the sports over the fences the defendant, without legal right, and, as found by the jury, in a manner dangerous to persons using the road, barricaded the carriage-road by means of two hurdles, one placed on each side of the road, leaving a space in the centre, which was ordinarily left open for carriages, but on occasion of the games was closed by a bar. Some person unknown moved one of the hurdles from the carriage-road to the footpath alongside. The plaintiff, passing over the road in a dark night in a lawful manner, and without negligence, came in contact with the obstruction on the footpath, and had an eye put out thereby. *Held*, that the defendant was liable for the injury.—*Clark* v. *Chambers*, 3 Q. B. D, 327.

(*To be continued.*)

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

FIRST INTERMEDIATE EXAMINATIONS: TRINITY TERM, 1878.

Equity.

1. "Equity will not suffer a wrong without a remedy." Explain this maxim.

2. What declaration of trust must be proved by writing?

3. What was the object of the statute 13 Elizabeth, cap. 5?

4. What is an implied trust?

5. It is said that "Equity never wants a trustee," What is the meaning of this expression?

6. In the case of a written contract for the sale of lands, the vendor refusing to carry out the contract, what remedy has the vendee (*a*) At Law, (*b*) In Equity?

7. Explain the rule as to the appropriation of payments.

Smith's Common Law—Con. Stats. U. C. Caps. 42 & 44, and Amendments.

1. Define "Mayhem." When is it excusable?

2. In how far is the utterer of a mere repetition of a slander liable, when he is not the author of the scandal? Would such repetition make any difference in the liability of the original utterer, and if so, under what circumstances?

3. What is the meaning of the technical term "parol contract"?

4. Under what circumstances can a distress for rent be made upon land in respect of which the rent is not payable and not included in the demise?

5. Sketch shortly, as laid down by Mr. Smith, the duties and liabilities of a Solicitor to his client.

6. What is necessary to constitute a binding acceptance of a bill of exchange? Give reasons for your answer.

7. Under what circumstances will a person making a representation as to the credit of another be liable on such representation? Give reasons for your answer.

Second Intermediate.

Equity.

1. What is the extent of the duty of a mortgagee in possession as to keeping the mortgaged premises in repair?

2. What is a lien? Give an illustration of an equitable lien.

3. What is meant by "the wife's equity to a settlement?" In your answer, shew the grounds for the interference of equity with the legal rights of the husband.

4. Under what circumstances will the Court of Chancery remove children from the custody of their father and place them under the care of a third person to act as guardian?

5. Under what circumstances will inadequacy of consideration constitute a ground for setting aside a bargain, and when not?

6. What is an injunction? What is its object?

7. What is a bill of discovery?

Broom's Common Law and Statutes.

1. Define a writ of "prohibition. To what class of cases is it applicable?

2. What difference is there between the liability (*a*) of the heir, (*b*) the personal representative of an obligor where neither is named in the bond?

3. Discuss the question whether a representation can be fraudulent if the person making it have no knowledge of its falsehood?

4. What should be shown by a plea of "no consideration" in an action by the endorsee against the acceptor of a bill? Give reason for answer.

5. In how far does a pawnbroker warrant the title to goods when he sells them merely as a forfeited pledge without further undertaking in regard to them?

6. What statutory provision is made for the examination of officers of a corporation by judgment creditors of the corporation?

7. Give Mr. Broom's definition of a crime.

Certificate of Fitness.

Equity.

1. State generally the cases in which relief will and in which it will not be given on the ground of accident.

2. Define shortly the law with regard to the right of a person who has made improvements on the lands of another to an allowance therefor (1) before any statutory provisions, (2) since statutory enactment.

3. A trustee for the sale of lands becomes the purchaser himself. His *cestui que trust* on learning the fact files a bill to have the sale declared void; the trustee alleges that he paid the full value of the lands. Is this a good defence to the suit? Give reasons.

4. One of several sureties is obliged to pay the debt to the creditor. What are his rights as regards (*a*) the creditor, (*b*) the principal debtor, and (*c*) his co-sureties, respectively? State fully.

5. Enumerate and explain the cases in which equity will enforce specific performance of a parol agreement for the sale of lands, notwithstanding the provisions of the Statute of Frauds.

6. Upon what grounds does equity interfere to restrain actions at law, and how does it justify this apparent interference with the process of other Courts?

7. Give the rules with regard to the obligation of a purchaser to see to the application of the purchase money, 1st, irrespective of statutory enactments; 2nd, having regard to statutory enactment.

8. Is there any difference, and, if so, what, in the liability of one of the several trustees, and one of several executors for moneys, which are not received by him, but by his co-trustees or co-executors, but for which he joins in giving a receipt? Explain fully.

9. If a defendant desires production of documents by the plaintiff, how can he obtain it: 1st. Where the plaintiff is an individual? 2nd. Where the plaintiff is a corporation?

10. In what cases, and how, can a certificate of *lis pendens* be obtained? What is its effect, and what must be done in order to render it effectual?

Call to the Bar.

Byles on Bills—Stephen on Pleading—Common Law Pleading and Practice.

1. What are "letters of credit" and "cir-

cular notes," and what is the legal effect of the issue of such.

2. State accurately the circumstances under which the vitiation by fraud of the consideration for a bill will be a defence to an action on a bill.

3. A bill is endorsed conditionally so as to impose on the drawee, who afterwards accepts, a liability to pay the bill to the endorsee or his transferees in a particular event only. The bill is passed through several hands between endorsement and acceptance, and is finally paid by the acceptor before the condition is satisfied. How will this affect the liability of the acceptor to the payee?

4. What is the effect of a material alteration of a bill by an endorsee (*a*) on his rights against prior parties on the bill, (*b*) on his rights against his endorser, (*c*) on the rights of a subsequent *bonâ fide* transferee for value?

5. Sketch briefly the history of the action of ejectment tracing it from its original to its present form.

6. In cases tried at *Nisi Prius*, with a jury, where the Judge either does not wish or is not required by the parties, to give his opinion on points of law raised at the trial, what are the different courses referred to by Mr. Stephen, which may be pursued for determining such questions of law? Give any recent statutory enactments tending to facilitate such cases.

7. How should an estoppel be set up (*a*) when it appears on the face of the adverse pleading; (*b*) when it does not so appear? Answer fully.

8. "It is not necessary to state matter of which the Court takes notice *ex officio*." Explain and illustrate this rule.

9. What right of peremptory challenge of jurors have parties in a civil action? Give authority for your answer.

10. State briefly the practice in relation to the examination of parties to Common Law actions before trial. What provision is there as to the use in evidence of depositions so taken?

Best on Evidence—Smith on Contracts.

1. Explain, after Mr. Best, the expression "evidence is either *ab intra* or *ab extra*."

2. State and explain the three "guarantees" or "sanctions" of truth among men in their intercourse with each other as referred to by Mr. Best.

3. What difference is there as to the *effect* of evidence (*a*) in civil, (*b*) in criminal proceedings?

4. Amongst the "infirmative hypothesis" affecting real evidence, Mr. Best mentions "*forgery of real evidence.*" Explain the meaning of this, and shew the causes in which such forgery may have its origin as stated in the text book.

5. State the circumstances under which "*dying declarations*" are admissible in evidence.

6. Distinguish between a *patent* and a *latent* ambiguity, giving examples of each. What is the rule as to the explanation of each by verbal evidence?

7. A owes B $50. C for a consideration paid, promises A verbally that he will pay the debt. Can this promise be enforced? If so, why? if not, why not?

8. A who has no interest in the life of B, furnishes him with money to insure his life upon the understanding that A shall have the benefit of the assurance, and a policy is obtained accordingly. Give reasons for or against the validity of such policy.

9. Two persons agree to fight for a wager, and deposit the amount in the hands of a stakeholder. Discuss the question whether the money can be recovered back from the stakeholder.

10. What difference is there between the power of (*a*) a general agent and (*b*) a particular agent to bind the principal?

CORRESPONDENCE.

Chief Justice Osgoode.

To the Editor of CANADA LAW JOURNAL.

SIR,—In the work of the Rev. Dr. Scadding, lately published, there is a steel engraving of the late Hon. William Osgoode, first Chief Justice of Upper Canada.

I think it would be very much desired by the profession generally, if an oil painting were prepared from the illustration, and hung at Osgoode Hall with the other portraits there.

By allowing this suggestion to appear in your journal, I have no doubt the Benchers would see to its being carried into effect.

LEX.

[In November, 1876, we suggested that the series of portraits in Osgoode

Hall, should be perfected by obtaining those of Osgoode, Powell, Scott, and Campbell. We are not aware whether any steps have been taken to supply the deficiency. It should be done at once, for as time goes on the difficulty of obtaining reliable portraits of these old workers necessarily increases.—Ed. L. J.]

FLOTSAM AND JETSAM.

The Chicago Bar Association has undertaken the somewhat difficult but very necessary work of removing from the ranks of the profession in Chicago all disreputable practitioners. It has accomplished something, for it has caused the disbarment of one who procured his license to practice by fraud, and has presented to the court for disbarment an advertising divorce lawyer. In reference to this individual the court has not rendered its decision, but he now repudiates the idea of being in the divorce business, so that if he escapes with his license it will not be a triumph for the divorce fraternity. We hope the association will keep at its good work.—*Albany L. J.*

A comical instance of a man playing upon his own name sprang out of absent-mindedness. Sir Thomas Strange, calling at a friend's house, was desired to leave his name. "Why," said he, "to tell the truth I have forgotten it." "That' strange, sir!" exclaimed the servant. "So it is, my man. You've hit it," replied the judge, as he walked away, leaving the servant as ignorant as before.

Law Society of Upper Canada.

OSGOODE HALL,

TRINITY TERM, 42nd VICTORIÆ.

During this Term, the following gentlemen were called to the Bar; namely:—

Henry Pigott Sheppard.
Isaac Campbell.
A. Bristol Aylsworth.
Richard Dulmage.
Harry Thatcher Beck.
Matthew Wilson.
William Henry Ferguson.
William E. Higgins.
James Carruthers Hegler.
Frederick William Patterson.
Eugene Lewis Chamberlain.
Maxfield Sheppard.
Neil A. Ray.

And the following gentlemen were admitted as Students of the Law and Articled Clerks, namely:—

Graduates.

William Riddell.
David Philip Clapp.
Adam Johnston.
George Gordon Mills.
George William Beynon.
John Henry Mayne Campbell.
Charles Millar.
Thomas Alfred O'Rourke.
Edward Robert Chamberlain Proctor.
Conrad Bitzer.
John Russell.
John William Russell.

Matriculants.

W. J. Taylor.
Harry Thorpe Canniff.
Thomas Parker.
A. Douglas Ponton.
Albert Edward Dixon.

And as an Articled Clerk—

Eudo Saunders.

Junior Class.

J. L. Murphy.
A. G. Clarke.
W. B. Dickson.
W. G. Wallace.
T. K. Porteous.
D. H. Tennent.
M. S. McCraney
J. Telford.
C. H. Clementi.
W. Hawke.
J. B. Patterson.
J. W. Hanna.
C. H. Cline.
G. W. Danks.
C. A. Hesson.
R. E. Harding.
C. Henderson.
J. Campbell.
J. G. Cheyne.
F. E. Bertrand.
T Moffat.
S O. Richards.

Articled Clerks.

A F. Godfrey and
Hugh McMillan, as of Easter Term.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AND ARTICLED CLERKS.

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

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

CLASSICS.

Xenophon, Anabasis, B. I.; Homer, Iliad, B. I.; Cicero, for the Manilian Law; Ovid, Fasti, B. I., vv. 1-300; Virgil, Æneid, B. II., vv. 1-317; Translations from English into Latin; Paper on Latin Grammar.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar; Composition; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects instead of Greek:

FRENCH.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or GERMAN.

A Paper on Grammar. Musaeus, Stumme Liebe. Schiller, Lied von der Glocke.

Candidates for Admission as Articled Clerks (except Graduates of Universities and Students-at-Law), are required to pass a satisfactory Examination in the following subjects:—

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

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

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

After Hilary Term, 1879, the Matriculation Examination will be as follows:—

SUBJECTS OF EXAMINATION.

Junior Matriculation.

CLASSICS.

1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.

1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog. I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1880 { Xenophon, Anabasis. B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

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

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.
Composition.

Critical analysis of a selected poem :—

1879.—Paradise Lost, Bb. I. and II.

1880.—Elegy in a Country Churchyard and The Traveller.

1881.—Lady of the Lake, with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

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

Optional Subjects.

FRENCH.

A Paper on Grammar.

Translation from English into French Prose—

1878 and 1880 } Souvestre, Un philosophe sous les toits.

1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

GERMAN.

A Paper on Grammar.

Musaeus, Stumme Liebe.

1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.

1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer. / Die Kraniche des Ibycus.

INTERMEDIATE EXAMINATIONS.

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. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination shall be as follows :—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CALL, WITH HONOURS.

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, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

FOR CERTIFICATE OF FITNESS.

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

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

SCHOLARSHIPS.

1st Year. — Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

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, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

4th Year. —Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleadings Equity Pleading and Practice in this Province,