DIARY FOR AUGUST.

1. Tues.. Slavery abolished in British Empire, 1834.
6. SUN.. 8*th Sunday after Trinity.* Prince Alfred born, 1844.
9. Wed.. Imprisonment for debt abolished in England, 1844.
12. Sat.... Candidates for Attorney to leave papers with Secretary of Law Society.
13. SUN.. 9*th Sunday after Trinity.* Sir Peregrine Maitland Lieut.-Governor, 1818.
15. Tues.. Primary examination.
16. Wed . Detroit surrendered to the British, 1812.
20. SUN.. 10*th Sunday after Trinity.*
21. Mon... Long vacation ends.
22. Tues.. Intermediate Examinations.
23. Wed.. Last day for setting down rehearing in Chancery.
24. Thur.. Examinations for admission. Candidate for call to pay fees.
25. Fri.... Examinations for call.
27. SUN.. 11*th Sunday after Trinity.*
28. Mon .. Trinity term begins.
31. Tues.. Rehearing term in Chancery begins.

CONTENTS.

THE

Canada Law Journal.

Toronto, August, 1876.

WE reprint from the *Times* the judgment of the Court of Queen's Bench in England in the *cause celebre* of *The Queen* v. *Plimsoll*. Curiously enough this case has not been reported elsewhere, and as it is not always easy to obtain a fyle of *The Times*, it seemed desirable to transfer the judgment to our columns. *The Queen* v. *Plimsoll* is the leading authority on the question as to when the Courts will grant criminal information for libel, and was referred to by the counsel for the defendant in the case of *The Queen* v. *Wilkinson* now before our Court of Queen's Bench for adjudication.

A CORRESPONDENT draws our attention to the following advertisement in a country paper:—

Geddes & Grier, conveyancers, notaries, &c., Meaford and Thornbury.

Mr. Geddes, Solicitor, will be in Thornbury on Saturday in every week, when parties requiring his professional services will find him at Mr. Grier's office.

☞Money to lend on real estate, mortgages bought and sold. GEDDES & GRIER.

Our informant states that Mr. Geddes is an attorney, but that Mr. Grier is a "self-dubbed conveyancer, &c., lately a farmer, but now in full blast as 'Lawyer Grier,' to the great injury of the profession here. Mr. Geddes has an office here, and attends once a week at Thornbury to give colour to Grier's pretensions." What the exact arrangement is between the parties we are not informed, nor is it material; but it is material that a solicitor should take what is in our opinion a most unprofessional and improper mode of increasing his business. This is one of the things that the Benchers, now that their attention is drawn to it, should take up and apply a remedy. If their powers in this and cognate matters are too limited, they should be extended so that

a reasonable protection may be given to those whose interests it is their duty to protect, within the limits of their jurisdiction.

On enquiring recently about the chances of some modern conveniences being supplied to those who spend portions of their life at Osgoode Hall, we were told that it was hoped that arrangements would soon be made for the building of a Court House in rear of the Hall, when all would be "made pleasant," but that at present there was no place large enough even to hold a wash-hand basin. This may be so, but we doubt it. We venture to suggest that even that difficulty might be overcome by an effort on the part of some of our many excellent benchers. We could not, of course, expect a lunch room, but we should be happy during the summer to subscribe towards a pump with a trough to be "thereto attached;" the tail of a "stuff" would answer for a towel; and a tin cup might, without much additional expense, be hung on a chain and fastened to the pump with a staple, for fear it might suffer the fate of several valuable text books now missing from the library.

Both in England and the United States litigants are clamouring for more judges. Business is terribly in arrear in the Supreme Court of the latter country, there being some 900 cases now in arrear, and with the present staff the evil is rapidly on the increase. In England things are not quite so bad, but the arrears are assuming gigantic proportions notwithstanding the recent changes in the administration of justice. With us the Court of Common Pleas has heard all the cases on their paper. Their brethren in the Queen's Bench have had a vastly larger share of work to do and have been struggling manfully to master it. It may be necessary in some way to turn over to the judges of the former Court some of the rules in the latter. It always happens that a larger amount of miscellaneous business finds its way to the Bench than the Pleas.

We spoke last month of the Winslow Extradition case. We are glad to be able to refer to the following very sensible remarks on the subject in the *Albany Law Journal*, one of the best of the legal journals in America. Strange as the assertion may seem, there *really are* some people in the United States whose moral sense is not blighted, and who know what is right and are not afraid to own it. If a few more were so to assert themselves, they would soon raise the character of what might be, and in some respects is, a great nation:

"The course of our government and our courts in regard to the trial of extradited criminals is calculated to discourage future improvements in the law of extradition, if not to compel other governments to abandon treaties already in existence between them and us. The government of Great Britain refuses, it is said, to surrender Winslow until our government shall give some guaranty that he will be prosecuted only for the offence for which extradition is procured. This is, as we have frequently maintained, entirely just and reasonable; nevertheless, our Department of State, with characteristic blindness to the new and better views of international intercourse, refuses bluntly to comply with this condition of Great Britain. Now, the treaty of 1842, which contains the provisions relating to extradition between Great Britain and this country, has no limitation of the kind indicated. But, if there is any common-law of nations, we should suppose that it would supply the deficiency. If our government refuse to comply with the condition that an extradited person shall be tried only for the offence for which extradition is procured, we do not believe that we shall long be able to maintain extradition treaties with other governments at all. In this connection it may be well to notice that Judge Benedict has decided that Lawrence, whose extradition was procured from England, may be tried for any offence whatever, irrespective of the manner in which he was brought into the jurisdiction of the courts. We repeat, that, if such counsels are to prevail in

the Department of the State, and such opinions in the courts, we shall soon find that no government will care to keep up extradition relations with us."

MULTIPLICATION OF REPORTS.

It is related of Lord Wensleydale that he considered a judgment imperfect if it did not refer to every case in the books that bore on the question in controversy. In a similar vein, Lord Mansfield said in *Rex* v. *Wilkes*: 4 Burr. 2549: "I never give a judicial opinion upon any point until I think I am master of every material argument and authority in relation to it." It was possible for these judges, living at the time they did, to give practical effect to their views. But now-a-days, such is the multiplication of reported decisions, that judges are inclined to enunciate very different opinions. For example, in one of the suits in the European arbitration, Mr. Fischer, Q.C., having cited cases decided by the Master of the Rolls and Lord Cairns in the Albert arbitration, Lord Westbury said he would, out of deference to the authorities cited, reserve his decision. At the same time, he remarked that nothing was so miserable in our law as the existence of any number of reported cases which might be cited in support of almost any proposition, reminding him of the saying that a certain person could quote Scripture for his own purpose.

While our system of law remains as it is, uncodified, subject to yearly expansion by legislative addition and modification, which is in turn interpreted, and sometimes only made intelligible by judicial decision, it is simply impossible to avoid the necessity of an interminable issue of reported cases. This being assumed, the best method of minimizing the difficulty of mastering the law is by ascertaining and adhering to some well-defined rules in the determination of what cases shall be reported. The vast multiplication of the volumes of reports which it is necessary for a Canadian lawyer to consult fills the mind with consternation. First of all, there are our own Common Law and Equity series, the practice cases, the decisions in appeal, and the new series presently to be issued of the judgments of the Supreme Court at Ottawa. Then, as the Dominion Statutes are common to all the Provinces, there will be decisions of the courts of one Province which the practitioners in the other Provinces cannot afford to overlook. Then there are, of course, all the reports of decisions in the English courts, which of themselves involve no small amount of labour and time to overtake. Besides all this there seems to be, both in the mother country and here, a hankering after decisions in the United States courts, which necessitates an overhauling of their multitudinous volumes, where certainly cases can be found going to support every possible view of every possible subject of litigation.

But, as touching cases which alone should be published, it has been well said that there are two classes of cases which are worthy of being reported. *Firstly*, cases which decide a new point or principle, such as those which settle the meaning of a statute which has not yet received a construction, where such construction was really doubtful in the absence of decision; or which lay down the rule of expediency to be applied to some new combination of elements in social, commercial or political existence, which the course of events brings forward. *Secondly*, cases, which though they do not decide absolutely new points or principles, nevertheless afford typical illustrations of the application of old points or principles to large or frequently recurring classes of instances.

Many lawyers, and even judges, advocate the printing of all judgments, the reasons of which have been written out by the judge. But we think it is not every considered judgment which should be reported. Every unconsidered judg-

ment should certainly not be reported. And every judgment, whether considered or not, which is given without reasons, should not be reported. Such is the opinion of Jessel, M.R., in *Fitzgerald* v. *Chapman*, 24 W.R. 131. No doubt it is well for judges to state or write out the reasons which influence them in coming to the conclusion which they do arrive at, and this for the main reason so well expressed by Lord Eldon in *Wright* v. *Ritchie*: 2 Dow. 383, in which he says: "If pronounced by a judge from whose decision there lay an appeal, counsel and the advisers of parties had an opportunity of weighing well the grounds of the decision; and when the matter came to the court of last resort, where the principles were settled which must regulate the decisions of inferior tribunals, it was their duty to consider all the principles to which facts in all their varieties might afterwards be applied." But it would be a grand mistake to report all such cases where the decisions are mere repetitions of former cases, or where the conclusion depends upon the particular facts of the case.

It is well to have a record of all cases decided such as is supplied in England by the Weekly Notes, and such as is being and will be supplied here, we trust, by the Notes of Cases published from time to time in this journal, under the direction of the Law Society. But it would be a mere accumulation of useless matter to insist that every such judgment should be reported *in extenso*.

One grievous fault in many reports is the lack of condensation, especially in the statement of facts. The Common Bench reports, as issued under the auspices of Mr. Scott, are notable illustrations of this vice, and he is not without imitators in some of the Ontario Reports. Another fault is the entire absence of any statement of facts, except what is to be collected from the references and allusions in the judgment. The facts of the case should be succinctly stated, and separated from the judge's decision upon those facts. To borrow the quaint admonition of Sidney Smith: "The reporter should think on Noah, and be brief. The ark should constantly remind him of the little time there is left for reading; and he should learn, as they did in the ark, to crush a great deal of matter into a very little compass."

CANADA REPORTS.

ELECTION CASE.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

South Ontario Election Petition.

Abram Farewell, (*Petitioner*) *Appellant*, v. Nicholas W. Brown, (*Respondent*) *Respondent.*

32 *Vict. cap.* 21, *sec.* 66—*Treating.*

Held, 1. That the above section is limited in its effect to tavern-keepers, &c., who alone can sell or give liquor so as to avoid the election. Draper, C.J., dissented, holding that sec. 66 extends to all persons who sell or give liquor in a tavern.

2. That the words of the section "Municipalities in which the polls are held," and "within the limits of such municipality," are not confined to the municipality in which are held the polls at which the voters who are treated are entitled to vote. The prohibition extends to the selling or giving liquor within the limits of any municipality of the Riding in which a poll is being held, irrespective of the person to whom the liquor is sold or given.

[January 22, 1876.]

This petition was tried before Mr. Justice Wilson, at Whitby, on May 11th, 12th and 13th, 1875. He gave judgment dismissing the petition. From this judgment the petitioner appealed.

The first ground of appeal was, that the keeper of the hotel called 'Ray's hotel,' in the town of Whitby, was guilty of a corrupt practice in giving spirituous or fermented liquors at his tavern on the day of polling, and during the hours appointed for polling, to divers persons, and that the respondent was present when liquor was given as aforesaid and consented thereto.

In the particulars delivered this charge was formulated thus: "That the respondent, on the said day of polling, and during the hours appointed for polling, gave spirituous and fermented liquor to and drank with divers electors, to the petitioner unknown, at Ray's hotel, in Whitby." Their Lordships declined to entertain this as a ground of appeal, as the allegations therein differed in a material point from the charge in the particulars, and it was not

enquired into or adjudicated upon, nor did the evidence seem to support it.

The other grounds of appeal were :

2. That the giving of spirituous or fermented liquor in a certain tavern in Oshawa on the day of polling, and during the hours appointed for polling, by Francis Clarke to one Jordan, referred to in the said judgment, was a corrupt practice which avoided the respondent's election.

3. That W. H. Thomas, referred to in the said judgment, was an agent of the respondent, and that the said W. H. Thomas was guilty of a corrupt practice in giving liquor to divers persons at Oshawa, in Hallett's hotel, on the day of polling, and during the hours appointed for polling.

4. That Frank Gibbs, referred to in the said judgment, was an agent of the respondent, and that the giving of liquor by the said Frank Gibbs to divers persons in a tavern at Oshawa, on the day of polling, and during the hours appointed for polling, was a corrupt practice.

The facts as to the second charge above set out, and known as Clarke's case, sufficiently appear hereafter in the judgment of the learned Chief Justice of Appeal.

James Bethune for the appellant.

Hector Cameron, Q.C., for the respondent.

Draper, C.J.—I have doubted the correctness of the decision in Clarke's case, and am not sorry to find that the learned Judge had also a considerable degree of doubt, as I should not, unless upon the clearest conviction, depart from his deliberate opinion.

The facts seem to be as follows : One Jordan was a voter, whose residence was in Whitby, and who was a voter in that municipality. During the time of the election he was working in Oshawa—both places, though separate municipalities, being within the electoral division of South Ontario. Clarke, whose agency appears to be sufficiently proved, went to Oshawa on the polling day to bring Jordan up to vote at Whitby, and treated him in an hotel at Oshawa to a glass of whiskey. This was held not to be a violation of the 66th sec., because the liquor was not given by Clarke to Jordan within the municipality in which the poll for the town of Whitby was held. No question was asked as to the hour when this treating took place—no doubt suggested as to its being within the hours appointed for polling, *i. e.* from nine a.m. to five p.m. Considering that to make this treating a corrupt practice, which, if committed by an agent without the actual knowledge and consent of the candidate, would avoid the election, it cannot have been overlooked at the trial, and as the evidence shows that Clarke drove from Whitby to Oshawa to get Jordan ; that Clarke had told him when they had got to his (Jordan's) own place that he could stop there and go down after dinner and vote ; and that no point has been suggested on either side that the treat was or was not within the hours appointed for polling, I shall assume it to have been so.

I have already expressed my opinion upon this section in the *Lincoln case*, but I avail myself of this opportunity to add a few observations.

So far as keeping peace and good order at elections is concerned, it can make little difference, as between two coterminous wards or municipalities, in which of them persons who commit a breach of the peace drank the liquor which overcame their discretion and influenced their disorderly proceedings. The distance between municipalities in which polls are being held at the same time may be such as to render quite unnecessary any provision against dangers to arise from the prohibited cause, and ought to repel the idea that the Legislature had the prevention of any such danger in their contemplation. But it would be little, if at all, less absurd to hold that treating voters in municipality A, who being excited to lawlessness and influenced by liquor, went into adjoining municipality B, where they created a disturbance, would not be within the mischief intended to be prevented by the Act, as if the tavern in which the liquor was given to them was in municipality B.

Further ; I see nothing in sec. 66 which makes the fact that the person to whom liquor is given is or is not a voter an element in the matter prohibited, that is, selling or *giving to any person* within the limits of such municipality. There is no necessity that a man should be a voter to make selling or giving liquor to him on the polling day an offence subject to penalty. In Jordan's case, if he had not been a voter, giving liquor to him in a tavern in Oshawa would have been a violation of the law, assuming as I do that the day in question was appointed for holding the polls in the municipality in which the tavern stood.

I think we surmount most of the difficulties suggested by holding that section 66 is confined to the regulation of hotels, taverns and shops in which liquors are ordinarily sold. On the day appointed for polling they must be kept closed under a penalty. No liquor must be sold or given to any person in any such hotel, &c., on the polling day. The words, "within the limits of such municipality" may perhaps be

redundant, but the word *such* confines the construction to the municipalities mentioned in the former part of the section, which may, I think, be properly treated as part of the description of the hotels, &c., which are to be kept closed, namely : of hotels, &c., situate in "the municipalities in which the polls are held."

Adopting this conclusion, I am of opinion that Clarke was an agent of the respondent, and did, in violation of section 66, give spirituous liquors to one Jordan in a tavern in Oshawa, which was a municipality in which a poll was held on that day, appointed for the polling, and within the polling hours, and that the election was therefore void and should be set aside with ease.

My brothers consider section 66 of the Act of 1868 does not affect any person except the keeper of the hotel, tavern or shop, who is subjected to a penalty in three cases :

1. Not keeping the hotel, &c., closed.

2. Selling liquor (in his tavern, &c.,) during the polling day.

3. Giving liquor in his tavern, &c., during the polling day.

The whole three are made corrupt practices if committed during the hours appointed for polling. I hope the Legislature will remove the doubts by a clear statement.

Burton, J.—[After referring to the charge spoken of in the first ground of appeal.]

The three remaining charges, assuming that in all or some of them the agency is established, are charges of giving liquor in a tavern by an agent within the hours appointed for polling, and involve the necessity of our placing a construction upon the language of the much-debated 66th section of the Election Act of 1868.

We had occasion to consider this section before in the *North Wentworth* and *North Grey cases*, and then held that there having been a clear violation of the section by the hotel-keeper, which was made a corrupt practice by the Act of 1873, and that corrupt practice having been committed with the knowledge and consent of the candidate in each case, there was no alternative but to declare the election void and the candidates disqualified. But it is contended on the part of the petitioner that the latter part of this section is general in its terms, and is not to be restricted to the parties aimed at or intended to be referred to in the first part, viz., the keeper of any hotel, tavern or shop in which spirituous or fermented liquors or drinks are ordinarily sold—but extends to any person within the municipality, and that the penalty imposed is confined to the offence of selling or giving referred to in that portion of the section.

The clause in question, with several others, having for their object the preservation of peace and good order at elections, is to be found in the 22nd Vict., cap. 82. That to which this section corresponds was consolidated in the Consolidated Statutes of Canada, cap. 6, as section 81, and ran thus : "Every hotel, tavern or shop in which spirituous or fermented liquors or drinks are sold shall be closed during the two days appointed for polling in the wards or municipalities in which the polls are held, in the same manner as it should be during divine service ; and no spirituous or fermented liquors or drinks shall be sold or given during the said period, under a penalty of $100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives any spirituous liquors or drinks, as aforesaid."

So far there would have been no room for doubt, but in re-enacting this section in the Election Act of 1868, the words relating to the period of divine service are omitted ; the words "to any person within the municipality" are added after "gift," and instead of affixing a distinct penalty upon the keeper for neglecting to close, and another penalty upon him for selling or giving, the clause concludes, "under a penalty of $100 in every such case." If these words have the effect of extending the penalty to each case of omitting to close a tavern, hotel or shop, as well as to each case of selling or giving, there would be no good reason that a wider signification should be given to them when read in connection with the later part of the section than the former. The *party liable* to the penalty for *omitting to close* must be the keeper. Why should they be construed as extending to *every person* when read in connection with the remainder of the section ? My own view is that the new enactment is in substance the same as the former one. It is impossible to believe that if the Legislature had intended to effect so sweeping a change, they would have left it to be inferred, or as a question for argument, instead of making it clear by the insertion of a few words. It would be such a mistake that, in the language of Mr. Baron Bramwell, it would be an imputation upon that body to suppose it.

It is true, that for omitting to close the hotels there could be only the one penalty—the offence being complete whether kept open for one hour or for the whole day—whilst each separate sale or gift would, I presume, constitute a separate offence : *Brooks qui tam* v. *Milliken*, 3 T.R. 509.

I can see no good reason for holding that the

Legislature intended to confine the penalty to a portion only of the offences enumerated in the 66th section, or for holding, as suggested by Mr. Justice Gwynne, that the whole, viz., the *keeping open and the sale*, should be regarded as but *one* offence, complete only in the event of spirituous liquors being sold or given. In *Newman* v. *Beudyshe*, 10 A. & E. 11, a conviction for keeping open the house, for selling beer and for suffering the same to be drunk and consumed in the house, was held bad, as including three several offences in one conviction, for which the defendant might have been distinctly convicted.

It is said that if it had been intended to limit section 66 to hotel and shop keepers it would have been easy to have so expressed it. To my mind it is so expressed—the first part of the section over-riding and being the key to the whole. But if there is any doubt or ambiguity I have already intimated my opinion that in the construction of statutes it is not to be presumed that the Legislature intended to make any innovation upon the Common Law further than the case absolutely requires. The law rather infers that the Act did not intend to make any alteration other than what is specified, and beside what has been plainly pronounced; for if the Parliament had had that design, it is naturally said they would have expressed it. It is further argued, however, that the word "give" indicates an intention to extend the Act to other parties beyond the keepers of hotels, but it must be borne in mind that that word is to be found in the original Act, where the penalty was unquestionably restricted to the keeper of the hotel, &c., and, as Mr. Justice Gwynne suggests in the *Lincoln case*, was probably added to prevent the possibility of the party proceeded against for the penalty evading the statute by setting up as a defence that he did not sell but gave the drinks.

But there is an additional reason for concluding that the Legislature did not intend to effect so sweeping a change under a section which purports in its introductory clauses to deal only with hotels and shops where spirituous or fermented liquors are sold. In such a case we may fairly refer to and examine other parts of the Act for the purpose of ascertaining the intent of the Legislature. On referring then to the 61st section, we find that the candidate, or any other person, is authorised to furnish drink or any other entertainment to any meeting of electors, even on the polling day, at his or their usual place of residence. Here, then, we have a clause in the same statute expressly permitting what another section, in as express terms, prohibits, if the construction contended for by the petitioners be the correct one.

Now that the elections are all held in one day, a literal compliance with the first portion of the 66th section would be impracticable, there being no such exception as is to be found in the English Acts in favour of the reception of travellers, and in the amendment to the Act that has just been introduced, I see that it has been omitted; but, whatever may be meant by closing a hotel on the day of polling, it is directed, and the failure to do so made a distinct offence.

I will refer only to one other matter which confirms me in the opinion that in the construction of this clause we should give no further effect to the words than they clearly and unmistakeably bear, which is this: The Legislature, in what is popularly known as the Dunkin Act, has declared that no prohibitory law shall be passed by any municipal councils without the consent of the ratepayers, and, whilst declining to pass such a law themselves, have left it in the power of the ratepayers to make such an enactment. Are we to suppose that they intended inferentially to pass such a law, even for a limited period, when they re-enacted a clause which, when first passed, applied only to hotel and shop keepers selling spirituous and fermented liquors.

For these reasons I am of opinion that the person, and the only person, liable to the penalties imposed by the Election Act of 1868 is the hotel or hop keeper, or person acting in that capacity; that he, and he alone, is the person who is guilty of a violation of the Act, by selling or giving liquors, and so liable under the Act of 1873 to the additional penalties imposed by it if within polling hours; and whilst the investigation of this case has more fully confirmed me in the conviction of the correctness of the decision of the Court, which declared that a violation by the hotel keeper of this section, with the knowledge and consent of the candidate, avoided the election and entailed the penal consequences affixed by the statute, I am not prepared to hold that the agent of the candidate is guilty of a corrupt practice in treating at a hotel within the prohibited hours. To do so would be in effect to hold that there could be two penalties for the same offence, when the statute has imposed only one.

My conclusion, therefore, is that there has been no violation of the 66th section within the meaning of the Act of 1873.

Patterson, J.—[After stating the case and referring to the first ground of appeal as being removed altogether from their consideration].

The other grounds of appeal charge as violations of section 66 the giving of liquor to various persons by agents of the candidate during

the hours of polling, the persons in each case being treated by the agents at a tavern; but the agents not being the tavern-keepers, but merely casual guests.

In this respect the three charges are precisely alike. The questions peculiar to each case are those touching the fact of the agency and the places where the drinking took place,

It is contended by the appellant that under section 66 the giving of spirituous or fermented liquors *by any person* to any other person during the day appointed for polling is made penal, and, by the Act of 1873, is a corrupt practice. On the other side, it is insisted that the section applies only to those who sell or give in the character of keepers of a hotel, tavern or shop in which spirituous or other fermented liquors or drinks are ordinarily sold. It seems to me that we must either construe the clause literally, and give their full effect to the words "no spirituous or fermented liquors or drinks shall be sold to any person;" or we must read the words with which the clause commences as indicating the class to which the whole clause applies; and read the clause as if worded to the effect that "no keeper of a hotel, tavern or shop in which spirituous or fermented liquors or drinks are ordinarily sold, shall open his hotel, &c., during the day appointed for polling; nor sell or give to any person, &c." This was evidently the effect of the clause as it stood in C. S. Can., cap. 6, sec. 81, where it forms, as it does in the Act of 1868, one of the provisions for "keeping the peace and good order at elections."

It is not difficult to suggest reasons why, as a matter of policy, it may be desirable to extend the prohibition against distributing liquor on polling days beyond the ordinary dealer in liquors. We have, however, to enquire whether that has been done, and if so, whether this extension is in any way limited, or whether it reaches all persons in the municipality without regard to the place where liquor may be given, or the purpose for which it may be required.

The consequences which would follow from holding the restriction to be entirely unlimited have been well pointed out by the learned Judge below, and they are of a character so startling that it is impossible to suppose they could have been in the contemplation of the Legislature. And, besides this, the clause, so construed, would apparently be in conflict with sec. 61, which allows a candidate to entertain a meeting of electors at his own house on the polling day.

I believe we are all agreed that this unlimited effect cannot be given to the section; but his Lordship the Chief Justice, while he construes the prohibition as extending to all persons, considers that the law is only violated when the liquor is sold or given in a hotel, tavern or shop in which liquors are ordinarily sold. I have not been able to see in the clause itself or in the context anything which imposes this limitation. I cannot find room for any middle course. I think these two alternatives only are presented: Either the keeper of the house alone is aimed at —or the prohibition applies against all persons and to all places within the municipality.

The true view of the enactment in my judgment, is that it is simply a re-enactment of the former law, either without modification or with no modification that points to any more extensive operation, and I think this appears whether we closely examine the clause itself or look elsewhere, as we may do in vain, for indications of an intention to change the law.

All the other clauses in this division of the statute are verbatim re-enactments of the former statute, except that the penalties, while the old amounts are retained, are imposed in terms adopted to avoid any appearance of legislating as to criminal law.

Three changes are made in the section. The first change is the omission of the words which directed that the house should be closed on polling days "in the same manner as it should be on Sunday during divine service"—an omission apparently made because the omitted words were not applicable to any law in Ontario, but which has no bearing on the argument now in hand. The second is the insertion of the words which I quote in italics in the passage, "And no spirituous or fermented liquors or drinks shall be sold or given *to any person within the limits of such municipality* during the said period."

The clause as it stood was, in its terms, general enough to forbid the selling or giving of liquor anywhere in the municipality; but I have no idea that either the most literal or the most fanciful expounder would have so construed it. Where was the necessity for the words now inserted? To my mind the reason is plain. The whole section as it stood admittedly applied only to keepers of hotels, &c. The danger was that this part of the section might be read as forbidding only selling or giving *in their houses*, but not the dispensing of liquor outside of their four walls. That doubt is set at rest, and the present section is either simply declaratory of the law as it stood, or modifies it only so far as to make evasion of its intention more difficult, without, by force of the in-

sertion of the particular words I am now discussing, otherwise extending its effect.

The third change is in the penal part. It formerly read, "under penalty of $100 against the keeper thereof if he neglect to close it, and under a like penalty if he sells or gives any spirituous or fermented liquors or drinks aforesaid." It now reads, "under a penalty of $100 in every such case." The words themselves appear to be only a statement in a general and comprehensive form of what was before expressed in more detail. The argument, however, is because "the keeper thereof" is not now mentioned, an intention is shown not to confine the prohibition as it was before. Let us see where this argument leads to. We have to take the section either by itself, or we have to look at it in connection with and as re-enacting the other. Reading it by itself, and taking two provisions separately, we have *first* this enactment: "Every hotel, &c., shall be closed during the day appointed for polling, in the wards or municipalities in which the polls are held . . under a penalty of $100." Whose duty does this make it to close the house? I apprehend there would be a serious difficulty in enforcing the penalty for neglecting a statutory duty unless the statute made it the duty of some particular person. As far as the clause expresses it, the duty may be intended to be cast upon the owner of the house, or the holder of the license, or the actual manager of the business, or the reeve or constable of the township. The answer, of course, will be that there must be a reasonable construction adopted, and that when it is said that an establishment is to be closed, that is equivalent to saying it shall not be opened, and that the person who could otherwise open it is the person intended. It is not my present object to analyse this contention minutely. It might appear on close reasoning that an enactment that a house shall "be closed" is not equivalent to one that it shall "not be opened" or shall be "kept closed," and it might not be found so clear that if a servant opened the house in the absence of his master the master would be liable to the penalty. My object is, in combating the contention that by the omission of the words "against the keeper thereof," the Legislature have relied on a strict construction of the language instead of using an express declaration, to extend to other words an effect which they had not before, to point out that by strictly construing the section, the first part of it would be inoperative, and that if it could be made operative at all, it would be by applying to it a rule of construction depending partly on presumption, and liable to lead to a wrong conclusion.

We get rid of all the difficulty by looking first at the law as it was, where we find there was no room for doubt. We then enquire, has the law been changed?—and we find that the Province of Ontario having become separated from Quebec, and its Legislature having found it necessary or desirable to re-enact the law relating to elections, did re-enact it, making such changes as the changed constitution required; but indicating no intention to change the law except where that is done in express terms, as, *e. g.*, in adopting the law then in force in England. The passage of the Act in itself does not, under the circumstances, imply an intention to change the law, or to do more than to adapt it to the changed political circumstances of the country. No obstacle exists to prevent the section in question being regarded as meant to be and as being a re-enactment, with only such modifications as I have noticed. When we refer for explanation to the law as it was, we find no difficulty in reading the words, "under a penalty in every such case," as the same in effect as "under a penalty against the keeper thereof, if he neglects to close it, and under a like penalty if he sells or gives."

We have either to take the new section by itself, when we find that one half of it is inoperative, or if operative at all, is only so by some nicety of construction which can never be other than doubtful, or we have to take it as a re-enactment of the old law, when the whole is operative.

I do not think the word "given" as it occurs in the phrase "sold or given" adds much weight to the contention for the more extended construction, as to have prohibited selling only would have been to invite evasion by almost suggesting that the tavern-keeper should distribute the liquor on the pretence of giving it.

I have already said that while satisfied that the section cannot be read as forbidding the giving of the liquor *by any one*, without restriction as to place or purpose, I am not able to perceive any ground, satisfactory to myself, for holding that the restriction may extend to persons, other than the keeper of the house or person acting in that capacity, who give liquor in the house itself when it would not touch them if they gave it elsewhere in the municipality, as in the charges now before us, which are ordinary cases of treating, the person charged as giving did so merely by buying from the bar-keeper, and then by his own hand or the hand of the bar-keeper giving it to others.

We should have to impute to the Legislature the intention to convey by the one expression two separate mandates, one of which presupposes disobedience to the other. As far as it affects the tavern-keeper, the enactment is that he is neither to open his house nor to sell or give liquor on the polling day. If he obeys this command, no other person can possibly give, on that day, any of the tavern-keeper's liquors. He is to retain his whole stock safely in his own possession. It would seem a faulty rule of construction on which we should hold that the Legislature, in contemplation of the tavern-keeper disobeying the law by parting with liquor, meant to provide against such disobedience by the further command that if he did so disobey, the recipient of the liquor must not give it away again under a penalty, and particularly as no penalty is attached to the act of receiving it. If such an intention existed it should and doubtless would have been somewhat more clearly expressed.

The only other case in which it can be suggested that *giving* at a tavern, &c., is the act intended, is the case of persons bringing liquor from elsewhere to the tavern and giving it away. This is too remote a possibility to require more than a bare mention, and no good reason can be suggested why a giving of that nature should not be an offence wherever committed, as well as when committed in a tavern or place where liquor is ordinarily sold. In my view, therefore, the agents, Thomas, Clarke and Gibbs did not violate sec. 66 by treating at taverns on the polling day.

The same remark applies to a personal charge against the candidate for treating at Ray's tavern, which seems to have been urged below, but which was not renewed before us as one of the grounds of appeal.

It is not necessary for the disposal of the case to dispose of the other questions discussed in the judgment before us, but on two of those questions it is proper that we should express our opinion.

[His Lordship then referred to the agency of Thomas, and agreed with the later opinion of Mr. Justice Wilson, that he was an agent. He then proceeded.]

The other question relates to sec. 66 of the Act of 1868. One Clarke, an agent of the candidate, had treated one Jordan, a voter, whose polling place was in Whitby, at a tavern in Oshawa, during the hours of polling. The learned Judge held that this was not an illegal act within sec. 66, "because the liquor was not given by Clarke to Jordan within the limits of the municipality *where the poll of the town of Whitby was held.*"

I think this is a mistaken view of the section, and that the mistake has arisen from regarding the prohibition as aimed at the treating *of voters*; and with that idea, reading the words "municipalities in which the polls are held" as meaning the municipalities in which are held the polls at which *the voters who are treated* are entitled to vote. I think it is quite plain not only that the object of the enactment, viz: "To preserve peace and good order at elections," would be very inefficiently attained if open house might be kept for all who were not voters of the particular ward or municipality, but that nothing in the section points to that construction. An election is proceeding for the riding; Whitby and Oshawa are two separate municipalities in the riding, and in each a poll is held during the same hours. A tavern-keeper who sells or gives liquor in either municipality is plainly violating sec. 66, whether he gives it to voters of that municipality or to voters of the other municipality, or to persons who are not voters. The prohibition is against selling or giving within the limits of a municipality in which a poll is being held, without any regard to the persons to whom the liquor is sold or given. The decision in Clarke's case is, therefore, upheld—not upon the ground on which the learned Judge rested it—but upon the other ground which I have discussed, viz: that the corrupt act was committed, not by Clarke, but by the person who sold him the liquor.

The appeal should be dismissed with costs.

Moss, J.—[After referring to the charge in the first ground of appeal, and holding that it could not be amended, or the appeal in relation there to heard].

The learned Judge below, upon a review of the evidence and an examination of the authorities, held, although with much hesitation, that neither Thomas nor Gibbs was an agent by whose treating in taverns the respondent could be affected; but he was manifestly of opinion that if the agency had been established their conduct in giving treats, although not shown to be for the purpose of influencing votes, would have avoided the election. On further consideration he seems to have inclined to the view that agency had been established in the case of Thomas; and I must say that that appears to me to be the proper conclusion from the evidence. In the case of Clarke he decided that agency had been proved, but he thought that his treating was not a corrupt practice within

the meaning of section 66, for reasons to which I shall refer presently. But it is broadly argued by the learned counsel for the respondent that, even assuming these persons to have been agents, there was no corrupt practice, because section 66 of the Act of 1868 is only intended to deal with the keepers of hotels, taverns and shops in which spirituous or fermented liquors are ordinarily sold, and to prohibit the selling or giving of liquor by persons answering that description. If that be the true interpretation of the section, it becomes immaterial to discuss the evidence of agency. On the other hand, it is contended by the counsel for the appellant that the section is divisible; that while the first part relates to keepers of taverns, &c., alone, the second extends to and renders penal the giving of liquor by any person to any person in the electoral division during polling day; and that consequently, if given by an agent of the candidate during the polling hours, the election is avoided by force of sections 1 and 3 of the Act of 1873 (36 Vict., cap. 2).

The words used are certainly of extreme generality. Read literally they are sufficient to support the appellant's contention. But there are numerous cases in which language quite as wide and terms quite as general have been restricted by a consideration of the previous state of the law, the express object of the statute, and other circumstances which the Courts have held fitting to be regarded in arriving at the intent of the Legislature. [The learned Judge here cited and reviewed the following authorities: *Hawkins* v. *Gathercole*, 6 D. McN. & G. 1; *Lord Auckland* v. *Westminster Local Board of Works*, L. R., 7 Chy., 597; Sedgwick on Statutory and Constitutional Law, 234.]

These references are authority sufficient, not only for the proposition that we should regard the terms of the enactment for which section 66 was substituted, but that we should presume that the Legislature only intended to change the law to the extent that it has clearly and positively expressed. The 66th section of the statute of 1868 was substituted for the 81st section of the Consolidated Statutes of Canada, cap. 6. In each statute the section forms one of a group collected under the heading of "Keeping the peace and good order at elections." Some doubt has been expressed whether it is allowable to refer to this heading upon a question of the proper construction of one of the sections coming under it. It seems to me that it can be taken into account for the purpose of determining the immediate and special object which the Legislature had in view while passing these sections, and there is no doubt that the nature of this object may have an important bearing upon the interpretation to be given to language of a general character. In *Bryan* v. *Child*, 5 Ex. 368, Pollock, C.B., refers to the mode then "recently introduced in statutes, namely, by having certain clauses connected by a sort of preamble to each separate class of clauses, which preamble may really operate as part of the statute;" and he decides that such preamble must be read in order to ascertain the meaning of the Legislature. The so-called preamble was this: "And with respect to transactions with the bankrupt, &c., be it enacted." Our statute may fairly be read as if expressed thus: "For the purpose of keeping the peace and good order at elections, be it enacted," &c. In *Robinson* v. *Collingwood*, 17 C. B., N.S. 777, the word "trusts" used without any limitation in a statute was construed in the light of the preamble to mean "trusts in favour of the grantor."

It appears, then, that the object which the Legislature had in view when it passed the sections in the Consolidated Statute was the maintenance of peace and good order; and that the object was still the same when the corresponding sections of the statute of 1868 were enacted. According to the principles of construction to which I have referred, we ought not to assume that the Legislature, which, in the associate clauses was re-enacting the former statute, contemplated such a wide extension of the law, as is contended for by the appellant, unless it has used language clearly expressing that purpose. How wide that extension would be is manifest from an examination of the 81st section. There is no room for doubt as to the description of persons who were affected by its provisions. It enacts that every hotel shall be closed, and no spirituous or fermented liquors shall be sold or given during the said period, under a penalty of $100 against the keeper thereof if he neglects to close it, and under a like penalty if *he* sells or gives liquor. This language is free from all ambiguity. The persons subjected to a penalty for giving or selling liquor are the keepers of the houses directed to be kept closed. In the statute of 1868 the phraseology is—except in some particulars immaterial to the present argument—precisely the same until the part relating to the penalty is reached. The injunction to keep closed and the prohibition against such a gift are expressed in the same terms in both statutes. If, then, the later statute, passed with the same object as the earlier, and coinciding with it in the corres-

ponding sections directed to this object, is to be extended from the comparatively narrow circle of keepers of such houses to the general body of the public, it is simply because in the part of the section relating to the penalty there is no definition of the persons who are rendered liable. I entertain little doubt that the draftsmen who penned the 66th section thought that in substituting the words, "under a penalty of $100 in every such case," for the definite language of the 81st section, he was expressing the same thing in a more concise form. It may be that in aiming at a little originality by this consideration, he has fallen into obscurity; but such things have been known to occur in Acts prepared by skilful and experienced hands.

Regarding the 66th section as it stands, it is necessary to supply by construction the designation of persons whose duty it is to close the houses. The reasonable construction is that these persons are the keepers of the houses. If the words "by the keeper of such house" must be introduced into the first clause of the section it appears to me that they should equally be introduced into the second clause. For my own part, I prefer that construction to one that virtually seeks to introduce into the same clause the words, "by any person." The inconveniences of such a construction, some of which have been graphically described by the learned Judge below, are in themselves sufficient to induce the Court to pause before adopting it.

I do not repeat the other constructions which have been presented by my brothers Burton and Patterson, in confirmation of this view, but content myself with saying that if this be the correct view to take of the section, it follows that it is only violated by the giving of liquor, when the giver is a keeper of one of the houses directed to be closed; and that no agent of the candidate will, by giving liquor to any person within the prohibited hours, be guilty of a corrupt practice avoiding the election, unless he is the keeper of such a house.

I only desire to add that I entirely concur in the remarks of my brother Patterson upon Clarke's case. If his treating Jordan at Whitby, where Jordan was entitled to vote and did vote, would have avoided the election, that would have been the result of the treat he actually gave him at Oshawa. The offence does not depend upon the character of the person treated. It does not matter whether he is or is not entitled to vote at any particular place, or whether he is entitled to vote at all.

In my opinion the appeal should be dismissed with costs.

Appeal dismissed with costs.

COMMON LAW CHAMBERS.

Pettit v. Mills.

Civil right to recover expenses incurred in criminal prosecution—Pleading.

(February 10th, 1876—Mr. Dalton.)

The defendant was found guilty of robbery of a large sum of money from the plaintiff's house, who thereupon brought this action to recover the money so taken, as well as the expenses attending the criminal prosecution, and damages for the trespass. The second count of the declaration was for trespass, and the third set out the facts of the robbery, adding that the defendant had been arrested on the information of the plaintiff, and afterwards tried and convicted, that the plaintiff had expended large sums of money in so bringing the defendant to justice, whereby the latter became liable to the former in the sums so expended.

A summons was obtained to strike out either the second or third count, or for leave to plead and demur to the third count, on the ground that both counts were in trespass, that the third was a count in tort as well as assumpsit, and that expenses incurred under such circumstances were not recoverable.

Muir shewed cause, and contended that as the civil right was suspended until the criminal was brought to justice, the plaintiff necessarily had to expend the moneys he now sought to recover before he could bring the present action, and it would be for a jury to determine the amount: *Reid* v. *Kennedy*, 21 Grant, 86; *Chowne* v. *Baylis*, 31 Bea., 351, 359.

Davidson contra.

Mr. Dalton.—The count may be a good count in trespass, but not in assumpsit, and either the second or third count must be struck out. It is very doubtful whether the plaintiff can recover his expenses and outlay in this action.

The head note to *Blackman* v. *Bainton* 15 C. B. N. S. 432, is quaint: "Twenty five witnesses and a horse on one side against ten witnesses on the other. *Held* not such a preponderance of 'inconvenience' as to induce the Court to bring back the venue from the place where the cause of action (if any) arose."

NOTES OF CASES.

NOTES OF RECENT DECISIONS IN THE SUPREME COURT OF NEW BRUNSWICK.

(*From* Pugsley's Reports, Vol. 3.)

Public agent — Road master — Personal liability— Where credit given to fund and not to person.

(April, 1875.)

L. was road master and employed C. to do certain work on a public road, the agreement between them being that the work was to be paid for when L. collected the road moneys. L. went out of office before he collected the moneys.

In an action brought by C. against L. The Court held that the credit was given to the fund and not to the personal liability of the road master.—*The Queen* v. *Tapley*, p. 47.

Slander of title—Action on the case for—Necessity of alleging special damage—Injunction order—Malicious service of—Whether a ground of action.

(April, 1875.)

The service of a copy of an order of injunction, even though alleged to have been made maliciously, whereby plaintiffs were prevented from selling certain property to the party served, affords no ground for an action, unless there has been some misrepresentation of law or fact.

To maintain an action for slander of title, the words must be followed as a natural and legal consequence by a pecuniary damage to the plaintiff, which must be specially alleged and proved; and mere words of caution are not enough. There must also be an express allegation of some particular damage resulting to plaintiff from such slander.—*Gordon et al.* v. *McGibbon et al.*, p. 49.

Pleading—When words equivocal—Common Law Procedure Act, 1873— *Promissory note — Action on against endorser—Notice of dishonour—What a sufficient averment of.*

(April, 1875.)

In an action against the endorser of a promissory note, the declaration, which, after stating presentment, contained the averment, that the maker did not pay, "but neglected and refused to do so, of which defendant had notice," was held bad on general demurrer.

In pleading, if the words are equivocal, and two meanings present themselves, that construction shall be adopted which is most unfavourable to the party pleading.—*Bank of Nova Scotia* v. *Estabrooke et al.*, p. 71.

Policy of Insurance—Condition that all statement contained in the application will be taken to be warranties on the part of assured—Verbal agreement.

(April, 1875.

Defendants issued a policy of insurance to plaintiff, insuring his dwelling-house against fire. One of the conditions of the policy required that "all applications for insurance must be made in writing prepared by an authorized agent of the company, and signed by the applicant, or by his authority; *and all statements contained in the application, will be taken and deemed to be warranties on the part of the assured.*"

In the plaintiff's application for insurance he stated that the size of his house was 28x30 feet; that it had been built only about six years; and that it was painted inside and outside. In fact, the size of the house was 24x29 feet; it had been built about thirty years, and was only painted on the inside. The house having been burnt, and an action brought on the policy, the company pleaded these misstatements of the plaintiff as an answer to the action. The plaintiff, in reply to this, pleaded that the company's agent applied to him to insure; that he was absent from home at the time and did not know the exact size of his house, and so stated to the agent, who verbally agreed with him that the statement in the application should not be considered a warranty of the size of the house, and that if it differed from the size stated in the application it should not be considered a misstatement. There was a similar statement with regard to the length of time the house had been built, with this addition—that plaintiff stated to the agent that he believed the house had been built twenty-five or twenty-six years: and also, that he had stated to the agent that the house was painted on the inside only.

Held, on demurrer, That these were no answers to the defendants' pleas; that by the conditions of the policy the statements of the age, size, &c., of the house were expressly made warranties, and that the written contract could not be varied by a mere verbal agreement.—*Dingee* v. *The Agricultural Insurance Company of Watertown, New York*, p. 80.

Contract—When made by a number of persons—Severalty of interest—Whether contractors can be sued separately—Where contract ambiguous.

(April, 1875.)

Where the interests of a number of parties to a contract are distinct and separate, and a covenant made by them is not unmistakeably joint, but ambiguous, they must be sued separately.

Therefore, where T. contracted with A. and eight other persons to raft separately and deliver at a certain place lumber which belonged to them individually, for which the latter agreed to pay 65 cents per thousand; and it was also provided that if any of the parties failed to pay the amount owing by them when due, T. could sell sufficient of the lumber belonging to said party or parties to pay the amount due.

Held, That this was a several contract on the part of A. and the other owners of the lumber and that a joint action would not lie against them.—(*George True and Gideon Stairs* v. *Atherton et al.*, p. 90.)

Arbitration and award—Improper conduct of arbitrators—Receiving information after close of evidence—Where attorney of one party is employed to draw award—Setting aside—Answering affidavits—Hearsay.

(April, 1875.)

An application, made to set aside an award, was supported by an affidavit of M., against whom the award was made, stating that the attorney of the opposite party had been employed to draw up the award, and he did, as M. was informed and believed, search at the Record Office, after the evidence was closed, and used information obtained there to assist in making up the award, and that the award was not the independant award of the arbitrators. The arbitrators made affidavits in answer, stating that they determined on their award, informed the attorney how they wished it drawn up, and they then read it carefully over and signed it; that they knew nothing of the search of the records, and were not in any way influenced in their decision.

Held, (per Ritchie, C. J., and Allen, Weldon and Fisher, J. J., Wetmore, J., *dissenting*), that this formed a sufficient answer to the charges made, and that it was not necessary for the arbitrators to enter minutely into a specific denial of all the charges set forth in the affidavits on which the rule was granted.

Per Wetmore, J., that the Court having granted a rule calling on the opposite party to show cause why the award should not be set aside, it was incumbent on him to contradict or satisfactorily explain all the charges put forward, although they were founded on hearsay and belief.

It is not desirable to employ the attorney of one of the parties to draw up an award; but this, of itself, is not sufficient to cause it to be set aside.—*Ex parte Milner; In re Boltenhouse*, p. 96.

Bribery and Corruption and Election Petition Act, 1869—Election—Agency—Whether Parliamentary law of agency in force in this Province—Evidence—Statements of Agent—Whether admissible.

(April, 1875.)

The Common Law of Parliament, or, in other words, the Parliamentary Law of Agency, is in force in this Province, and is to be acted upon in administering the Bribery and Corruption and Election Petition Act, 1869.

A conversation with a witness, or the admission of an agent, had and made on the day of the election, immediately after the close of the polls, is admissible in evidence.—*Duffy, petitioner*, v. *Ryan and Rogers, respondents*, p. 110.

Statute—Construction of—Where acts relate to same subject matter — Whether those repealed can be looked to in construing similar words in subsequent Act—Pavement—Where meaning given to it by Legislature different from technical sense.

(June, 1875.)

Acts relating to the same subject matter, though repealed, may be referred to for the purpose of giving a construction to similar words used in the subsequent Act.

Where the Legislature by several statutes passed at different times authorized a City Council to make or repair "pavements of stone, deal or plank," and to assess the owners of property benefited thereby for the expenses thereof, and subsequently, by an Act repealing the previous enactments, gave power to make or repair any "flagging or pavement" (omitting words of description), and to make assessments, &c., it was held by the Court that the word "pavement" was not to be understood in its technical sense, but in the sense which had been applied to it by the Legislature in the previous Acts, and that it included either stone, deal or plank.—*Ex parte Lugrin et al.*, p. 125.

Attachment and abolition of Imprisonment for Debt Act, 37 Vic., c. 7, and 38 Vic., c. 4, sec. 1—Whether attachment can issue on contracts made or causes of action arising before passing of Act 37 Vic., c. 7.

(June, 1875.)

An attachment cannot be issued upon a contract made before the passing of the Attachment and Abolition of Imprisonment for Debt Act 37 Vic., c. 7, on the 8th April, 1874.

It is a general rule that a statute shall not be so construed as to operate retrospectively, unless it is expressly made applicable to past transactions, or the words can have no meaning unless such a construction is adopted.—*Smith et al.* v. *Burke*, p. 130.

Insolvent Act of 1869, section 67—Wages—Privilege—Where servant leaves employment of insolvent before assignment.

(June, 1875.)

A servant who left his master's employ three months before the assignment of the latter, under the Insolvent Act of 1869, is not entitled to be privileged under section 67 of the Act, even though he was obliged to leave the employ because he could not get his pay.—*Ex parte William Napier; In re Case*, p. 134.

Replevin—Claim of property—Whether second writ can be issued after finding of sheriff's jury in favour of claimant—Where property in custody of law—Pleading—Costs.

(June, 1875.)

Where, in a declaration of replevin, plaintiff alleged that defendant took and unjustly detained plaintiff's property, it is no answer for defendant to plead that the goods were in possession of C., and that defendant took them under an execution against him; or under an attachment issued under the Insolvent Act—such a plea neither traversing nor confessing and avoiding the plaintiff's allegation.

When defendant in replevin wishes to raise the question that the property replieved was in custody of the law and therefore not replievable, he should apply to set aside the writ, instead of pleading it as a defence.

Semble, that the finding of a jury under a writ *de prop. prob.* in favour of the claimant, is not conclusive, and plaintiff may issue second writ.

It is doubtful if a plaintiff can reply to defendant's pleas, and afterwards demur to both the pleas and rejoinders.

Where plaintiff inserted six counts in a declaration in replevin for the same property, no costs were allowed except for one count.—*Harrington* v. *Girouard*, p. 151.

ENGLISH REPORTS.

COURT OF QUEEN'S BENCH.

(Before Blackburn, Quain and Archibald, J.J.)

THE QUEEN v. PLIMSOLL.

Libel—Criminal information—The general principles as to when criminal informations for libels should be granted—Relator occupying a public position—Statements made without malice but beyond limits of fair criticism.

[The *Times*, June 16, 1873.]

In this case a *rule nisi* was obtained by Mr. Norwood, M.P., for a criminal information against Mr. Plimsoll, M.P., for a libel contained in his well-known book "Our Seamen."

Mr. Norwood was Member of Parliament for Hull and a large ship-owner. The substance of the alleged libel was contained in passages of Mr. Plimsoll's work, which charged that certain ship-owners were in the habit of dangerously overloading their vessels, and otherwise neglecting to provide for the safety of the seamen employed by them; that their fortunes were largely increased by those practices; and that having a personal interest in their continuance, they managed to get some of their number into Parliament, who, in furtherance of their own selfish aims, continually opposed the measures which might be introduced with a view of abating the evil complained of. Mr. Norwood, in his rule, asserted that several of these passages referred to him, and especially complained of statements made by Mr. Plimsoll with reference to a steamship of his (Mr. Norwood's), called the Livonia. This vessel, Mr. Plimsoll alleged, was sent to the Baltic with a cargo of railroad iron, five weeks after another ship-owner had declined to take the same cargo, on the ground that the lateness of the season rendered the trip an exceedingly dangerous one. It was further charged that the ship was loaded with nearly 1,600 tons, though she was only 872 register, and that being what is called a spar-decked vessel, in which case the main deck should have been over two feet above the water-line—it was two feet ten inches below that level. After making these statements, Mr. Plimsoll made the following comment: "And this vessel so loaded was sent off to the Baltic in November, or five weeks later than the same freight had been refused by Mr. James Hall, of Newcastle-upon-Tyne, on the ground that it was too late in the season to send a ship without imminent

peril to the lives of the seamen. Of course she was lost. . . . She was insured, of course." Particular exception was taken by Mr. Norwood to the last quoted expression, which he considered to imply that he had overloaded the ship so as to get the insurance. He also denied by affidavit the correctness of Mr. Plimsoll's statement as to the Livonia in many particulars, and in general terms asserted that he was entirely innocent of the charges made against him. The further facts of the case sufficiently appear in the judgments of Mr. Justice Blackburn and Mr. Justice Quain. The facts and arguments of counsel are very fully reported in the *Times*, but it is unnecessary to give them more at length.

Mr. Serjeant Parry, *Mr. Butt*, Q.C., and *Mr. Lewis*, for Mr. Plimsoll, showed cause.

The Attorney-General (*Sir John Coleridge*), *Sir John Karslake*, Q.C., *Mr. Watkin Williams*, Q.C., and *Mr. Charles Bowen* supported the rule.

The judgment of the Court was delivered on Saturday, June 14, 1873.

Blackburn, J.—I think in this case my brother Parry would have had a right to reply on the affidavits which have been put in in answer, if they affected our view of the matter; but, as they do not, it is not necessary that he should reply upon them; and therefore we must pronounce our judgment on the facts brought before us.

This is an application for a rule for a criminal information on the ground of libel, and in dealing with that this Court has always exercised a considerable extent of discretion in seeing whether the rule should be granted, and whether the circumstances are such as to justify the Court in granting the rule for a criminal information. I think there are two things principally to be considered in dealing with such an application; the first is to see whether the person who applies to conduct the prosecution—the relator or the informer—I think the common expression is the "relator"—that the person who applies for the rule has been himself free from blame, even though it would not justify the defendant making the accusation; and the other is to see whether the offence is of such a magnitude that it would be proper for the Court to interfere and grant a rule for a criminal information. Both those things have to be considered, and the Court would not make its process of any value unless they considered them and exercised a good deal of discretion, not merely in saying whether there is legal evidence of the offence having been committed, but also—exercising their discretion as men of the world, I may say—in judging whether there is reason for a criminal information or not. I think it is an old expression, generally attributed to Lord Tenterden, but I believe of much older date, that as far as the opinion of a Judge is concerned he should not have a discretion, but that there should be fixed rules for him to go by in exercising his judgment. We have no fixed rules to go by here, and we do not like it; but, nevertheless, in this case we are obliged to exercise our discretion, and to exercise it with considerable latitude, otherwise I think the system of having criminal information would produce no good at all. Now, turning to this charge, and seeing the libel here, which is produced before us, it is certain that Mr. Plimsoll has written a book, and it is equally certain that he is agitating the matter before the public, and inquiring into the way in which vessels were sent to sea, particularly as to overloading and undermanning, and also as to insuring. He is agitating with a view on his side to get an amendment of the law on the subject, he entertaining the view that it required an amendment of the law. With that view he had a perfect right to take whatever course and whatever steps he thought proper in order to bring the matter before Parliament, and in doing so he had a right to comment on the facts or supposed facts which came before him; and as long as he did it *bona fide* and fairly he is perfectly right and does not transgress the law; but the moment he goes beyond *bona fide* and fair comment, and makes attacks upon private persons for which he has no ground, then he does transgress the law, and he does become the object of proceedings being taken against him for the libel, either upon criminal information, or by action, as the case may be. Now, in the present case I think there can be no doubt Mr. Plimsoll has considerably exceeded what would be right, or what he is justified or excused in from the facts which he has brought before us against Mr. Norwood, and the question whether the magnitude or amount is enough to justify us in granting a criminal information is one with which I have had the greatest difficulty from the beginning to the end of this case; but we must see at present how much of the existing matter is correct which is made out against Mr. Norwood, and then we must see how much is left over which would justify us in granting a rule for a criminal information. Now, many matters are quite clear. The Livonia was built in 1865 by Mr. Laing from a design of his, and built, as he says, according to

what Mr. Norwood then required; that Mr. Norwood required and intended that she should carry 1,800 tons dead weight, and Mr. Laing says that he built her to carry 1,800 tons dead weight in fulfilment of Mr. Norwood's requirements. She was built, and is called a "spar-decked" vessel, but it appears that the description of a spar-decked vessel which Mr. Plimsoll had taken from the Lloyd's Rules did not exist at that time; and though the vessel was a spar-decked one, yet that the portion of her sides under the spar-deck were altogether stronger than the Lloyd's Rules required, and that the vessel was altogether a stronger vessel than was required for a spar-decked ship; and in that state of things she was sent to sea by Mr. Norwood, who seems to have loaded her at different times with nearly 1,800 tons of cargo, but not quite, and she does not seem to have met with any misfortune until the time that this disaster happened. Now, that occurring, Mr. Norwood does, in the month of September, 1869, enter into a contract or a charter-party, in which he engages this vessel to take 1,600 tons of railway iron to the Baltic; in fact, she loads a cargo of 1,600 tons, or the merest trifle within 1,600 tons, of railway iron and coals, and with that she does not leave the port of Sunderland until the 2nd of November, 1869. Therefore, she starts on a winter voyage across the German Ocean to the Baltic with that quantity of iron on board; and that, I think, is uncontroverted. She does go out, and after being seven or eight hours at sea, one of the engines breaks down or gives way—and I may say that the giving way of that engine in that way is in no way connected with the overloading—but when the engine gives way and the ship is disabled, she does fall into the trough of the sea and becomes unmanageable, and after drifting from the 2nd of November, as the Attorney-General has truly said, till the morning of the 5th. She finally, on the morning of the 5th, sinks and goes down. That is the mode in which she goes down. If the weather was blowing a hurricane, or anything of that sort, that might have accounted for her going down without her being overloaded, but if the weather was fine or moderate it is scarcely possible to conceive, if she were not overloaded, that she should become so unmanageable that they should be obliged to abandon her and that she should go down; because when steamers are despatched on a voyage the parties must contemplate the possibility that the engines may be disabled, and if that be so, she must not be so loaded that the weight will be so much that the vessel will become unmanageable in the event of any accident arising to the engines. It must be recollected that she was crossing the German Ocean and going to the Baltic. My impression is that the worst part of that voyage would be before she reached the Baltic, at all events in November, when she would be pretty sure to meet with rough weather. If her engines were disabled, and she was not able to act with her sails, and she was loaded in such a way as that in moderate weather she became unmanageable and went down, I should say she was overloaded in that state of things. Now, I must see whether she was overloaded; but before I go into that, I must go to the conclusiveness of fact that we draw, looking at the affidavits. I think I may state now that the result of the skilled evidence is this—that although, I think, it is made out that this vessel was stronger than what is commonly called a spar-decked ship, and although the rule of 1870 about spar-decked vessels was not then in force, yet I think, according to the ordinary rules by which vessels are loaded, and which are expressed in Lloyd's Rules of 1851, that "No vessel bound on any over-sea voyage should on any account be loaded beyond that point of immersion which will present a clear side out of the water when upright of three inches to every foot depth of hold amidships from the height of the deck at the side to the water." Now, treating this vessel as being stronger than an ordinary spar-decked ship, I do not think it is quite made out to my mind that she was a ship of which the upper deck was a main deck, and, consequently, that this rule should apply, and I think, according to the calculations which have been made, applying that rule which says that she ought to have three inches of clear side to every foot depth of hold, she ought to have had at least 6ft. 3in. of clear side, and I think all the witnesses go to that extent. Not only is that the rule which all the witnesses lay down, but that is the rule and practice; and not only that, but Mr. Harrington, who is the skilled witness on that subject, makes out that if a vessel, according to his calculation as to displacement, had the quantity of cargo on board that is mentioned she would draw 19ft. 9 in., I think it is, and consequently she would have 6ft. 3in. of freeboard—that is, taking it in that view, that would be the extreme that she would be drawing—19ft. 9in., which would be just on the very edge of this rule. Now, on the evidence of this part of the case I really have no doubt at all. We have evidence that the vessel, lying in the dock at Sunderland, when loaded was measured. She was lying loaded in the dock

at Sunderland, ready to go out. Lying there in that state, the draught which she had fore and aft would be such that everybody could measure it to the tenth of an inch—certainly to an inch. The log, in the handwriting of the mate, who is since dead, as far as regarded that, has been found and produced, and it appears there that the mate wrote down that the depth she drew when loaded was, aft, 21ft. 3in., and forward, 19ft. 6in. That is the statement that the mate makes, and which one can see no reason to doubt he could make accurately; and there is no reason to doubt he did make accurately. The dock master, when applied to as to what time it was safe for the vessel to go out, told us in his affidavit that, being informed her draught was 21ft. 3in., and it being considered what amount of draught it would be safe to take her out with, "being informed of that, then looked to see what was her draught of water for going out, and found that she was 21ft. 3in. for her going out." It is agreed by all the witnesses, that, to enable her to go over the bar, a quantity of coal and iron had been taken out with a view, not of lowering her forward, but with a view of raising her aft, so as to enable her to go over the bar; and, that being so, the pilot is paid for 21ft of water, which was what the hinder part was reduced to. But we have it in addition to that, that when the affidavits were made before the Receiver of Wrecks, when the captain and mate came home, both of them said she went out drawing 21ft. on an even heel; and taking all that mass of evidence together, we must take it as established that the vessel had so much coal and iron on board that she did go out of Sunderland Dock drawing 21ft. of water on an even keel; and, consequently, according to Mr. Harrington's own view, she was 1ft. 3 in. deeper than she should have been; and every one seems to agree that that was too heavy a load to send in the vessel on any voyage, and therefore too heavy a load to send in the vessel on such a voyage as this across the German Ocean. Now, as to the protest, I do not dwell on that; it certainly looks suspicious in the absence of the log, when there was time to take the log out of the ship. It is true, it is to be assumed in their favour that, being out only three days in this state, and being all very much engaged—and I think it is agreed that the captain and mate had not been in bed during this time—it is true that the log may not have been written up; but it is contrary to the custom that when they had time to take the log out of the ship they did not do so. But I do not think we should rely too much upon that. On the part of Mr. Norwood, it is said the reason of the loss was the breaking down of the engine, which is certainly a very sensible reason in the absence of anything else, and if the weather was severe as is represented. But the question is whether the loss was to be attributed solely to the breaking down of the engine. I think the state of the weather, as contrasted with the other evidence, was rather exaggerated. The short note which was made by the engineer of the state of the weather, does not represent the true state of the weather. It is not till the 3rd that it approaches anything like heavy weather. On the 3rd the weather again became moderated; and on the 4th he says the weather did blow a hurricane. No doubt that is a very strong phrase, but the other evidence as to the weather leads me to think that was an exaggeration. Now, the mate, in his deposition, does not use the word "hurricane" at all; he uses the expression, "wind blowing heavily and strongly"—a stiff breeze. She went out at four o'clock, and had run six or seven hours, and she might have been fifty or sixty miles from Newcastle-on-Tyne at that time. Now, we find incidentally that it was blowing a fresh breeze when she started from the Sunderland docks, and towards midnight it had risen towards a strong gale—nothing approaching a hurricane at all. At the Spurn Light, which is some way further south, where the account of the weather is registered, there is no weather which would amount at all in any way to a hurricane, and though it is quite possible there might be at the place where the engines were disabled, from which the vessel had drifted down to near Spurn Head—she was about 20 miles from the Spurn Head at the time she was actually lost—though it is quite possible there might have been heavier weather there than at the Spurn Head, it is not likely there would be anything like a hurricane, or anything of that sort; and the result, I think, looking at the whole thing, looking at the note of the engineer of the state of the weather, is that that exaggerates the state of the weather; and, even if it did not, if the vessel at the moment of the engines breaking down, became unmanageable and went into the trough of the sea, that leads me very strongly to think, as a matter of fact, that the vessel must have been loaded to such an extent as to make her unsafe to meet with such weather in the German Ocean; and, taking it that she was overloaded, that she had much less freeboard than she ought to have had. Now, I do not agree with what Mr. Williams has said, that this is no part of

what Mr. Norwood comes to complain of; on the contrary, I think it is a serious charge against Mr. Norwood that he should have done that —that he should have sent out a ship loaded in that way; and I think that Mr. Norwood properly resented it, and did complain of that, for I think the 13th and 14th paragraphs of his affidavit distinctly show that that was a very great part of the charge which he complained of—not the whole, but a great part of it. Now, I come to the conclusions which lead me, as a matter of fact, to say that she was overloaded, and that the loss was partly owing to the overloading. It is fair to state that when it had been rumoured that she had been overloaded there had been an investigation by the Board of Trade; and then, after Mr. Stephenson's letter to the Board of Trade Secretary, calling their attention to it, they made a further investigation. They did not take *viva voce* evidence, but they did look at the protest and the scantlings of the ship, and they did look at many of the papers which we have got. Still, they did not get the whole evidence which we have before us, nor did they hear anybody on the other side; still, notwithstanding that, I think that is not lightly to be passed by. I think the investigation made by the men of skill of the Board of Trade (two of whom are dead) is not to be passed by; yet, notwithstanding the conclusion they arrived at from the investigations which they made, I come to the conclusion that they were mistaken, and that there was overloading. I think it is quite true—and it is a fair remark to be made, and Mr. Norwood is entitled to make the remark—that he believed Mr. Laing built the vessel to carry 1,800 tons, and that he might properly be entitled to think that she would carry 1,800 tons; and I have no doubt he will probably continue to think he did not send out the vessel overloaded and unable to carry the 1,800 tons. I think it is probable he will continue to think so, and I think he will be entitled to say, "Here are underwriters who examined into the matter, and here is the evidence of nautical men and experts, who say that this vessel was not overloaded; that if it had been a point of law we should have been the best judges of that, but as to a point of seamanship, or a point relating to the capacity of a vessel of a certain build, the persons who built the vessel and nautical men would be better able to judge of that;" and he will also probably continue to say that the Board of Trade were right and that we are wrong. It is a fair thing to say. We have given that its due weight; but, notwithstanding that, it is our duty to act upon the opinion we have formed; and that opinion is—at all events, it is my own, and I think both my learned brothers agree with me—that the vessel was overloaded, and that this was partly the cause of the loss. I think that is the greater portion of the charge made against Mr. Norwood, and that it is substantially true what Mr. Plimsoll has said as far as that is concerned. But then Mr. Norwood asserts, and he with great truth asserts, that Mr. Plimsoll has greatly libelled him—he has gone beyond that, and very considerably and very wrongly beyond what he ought to have done. Now, let us see how that is. Mr. Plimsoll, in his general remarks, makes a strong statement, but, notwithstanding, there is truth in it. An underwriter who has insured a vessel gets his premium and trusts to the good faith of those who are insuring with him, and that they will send out the vessel properly loaded and found; but if the vessel is lost, and there are suspicious circumstances attaching to her loss, he will probably say, "I do not intend to throw any suspicion on it, or to litigate it," as it is always very uphill work to do so; but when an underwriter insures a vessel, and the vessel is lost, and he does not say that the vessel has been overloaded, but pays the amount that he has insured, it is by no means to be taken as a proof that she has not been overloaded. It only goes to the extent that he may be afraid to put that forward, and thinks it is hopeless to go on and refuse to pay on that ground. When Mr. Plimsoll has used the argument, "When, therefore, the owner of a lost ship pleads in defence to a charge of overloading, or of any other nature that his claim for insurance has not been disputed by the underwriters, the plea itself is tantamount to a full admission of guilt—when it is stated in that way it is obviously illogical, and it shows what was in Mr. Plimsoll's mind. At page 2 he makes an allusion to this Livonia as being one of the particular vessels said to have been sent to sea overloaded. He says, "I make this appeal to the Right Hon. G. J. Goschen, First Lord of the Admiralty, as to whether I have not correctly stated the position of underwriters in this matter to Sir James Elphinstone, M.P. for Portsmouth, as to what he thinks of sending a spar-decked ship so loaded with iron that her main deck was 2ft. 10in. under water, into the extreme east of the Baltic in November." There can be no doubt he was making an assertion that she was a vessel with her main deck 2ft. 10in. under water, which, if she was a spar-decked vessel, in

the sense in which Mr. Plimsoll is using the word, would show that she was very much overloaded; whereas, if she was not a spar-decked vessel, I think it would also show she was rather overloaded, but not so much overloaded as if she was a spar-decked ship. Then it seems Mr. Plimsoll did go down and inquire about the matters, and I think he saw at Newcastle-on-Tyne and Sunderland this Mr. James Hall, and I think there is very little doubt on the affidavits, that Mr. James Hall in speaking to him made some rash statements which he cannot now verify. It appears that Mr. Hall refuses to make an affidavit, and also that Mr. Hall, when one comes to look at it, had, in fact, a charter offered to him at the time for a steamer, and the steamer he is talking about is a steamer of 1,200 tons, and not a steamer of 1,800 tons; but he had a conversation with Mr. Plimsoll, and Mr. Plimsoll's saying that to send vessels to the Baltic at this time of year, when lights are withdrawn, is unsafe, is not the gravamen of the charge, but it is whether she was overloaded, when there would be some risk from that. Then he proceeds to say:—

"Mr. James Hall, of Newcastle-on-Tyne, had a large ship (1,500 tons) waiting for freight in the Jarrow Dock, and he was offered 30s. per ton to carry a cargo of railroad iron into the east of the Baltic. It was the middle of September, the rate was high, the ship was empty. It was, as he said, very tempting; so he sent for the captain of the ship, and asked him if he durst venture into the Baltic then. The captain said to him, 'For God's sake don't send us into the Baltic at this time of the year, sir. You might as well send us all to the bottom of the sea at once.' Well, Mr. Hall discarded the offer, but five weeks later the offer was accepted by another ship-owner, and he proceeded to load one of his ships."

Now, I think it appears clear that Mr. Hall did make some statements to him. It may possibly be that Mr. Plimsoll has attached too much weight to the statements he made to him, and I think Mr. Plimsoll is very much to blame to take the loose statements of a person in conversation, and, without making any further inquiry, to start with those statements and make an imputation on the character of Mr. Norwood. I think it is fair to Mr. Norwood to say, as far as this appears, there was no ground for saying that the freight had been hawked about, and that he took it at last. When 30s. was offered in September, it would be incredible that it should be ultimately taken for 22s. 6d., which I believe is the amount stated. It is right to Mr. Norwood to state that it is clear that sensational bit of writing of Mr. Plimsoll's is utterly unfounded. Then he goes on to state what he considers to be a spar-decked ship, and how he considers that when iron is packed solid five cubic feet weighing a ton, that that is not a proper cargo. It all goes to the point of how she was loaded. Then, as to the main deck, he says: "Instead of her main deck being above the water-line 2ft. 3½in., it was actually 2ft. 10in. below the level of the water-line, and her spar deck was only 2in. above the water-line." Now, I think when it is stated she went out on an even keel of 21ft. 6in., that is not exactly correct, still it is substantially correct, but it is an exaggeration to say it was more. Then it goes on to say, "And this vessel so loaded was sent off to the Baltic in November, or five weeks later than the same freight had been refused by Mr. James Hall, of Newcastle-on-Tyne, on the ground that it was too late in the season to send a ship without imminent peril to the lives of the seamen." That, I think, was a rash statement, which, without sufficient inquiry, he ought not to have made. "Of course she was lost, foundered about 18 miles from the English coast, but fortunately her crew were saved by a fishing-boat. She was insured of course." Now on that I think there can be no doubt that what was intended to be conveyed, and what was conveyed, was that the owner of that ship, Mr. Norwood, who is plainly referred to, at that time was insured himself, and that he had the sole risk in the vessel. I think it cannot be doubted, and I think from what follows afterwards, it is clear that Mr. Plimsoll, at the time he wrote this, believed that Mr. Norwood was the sole owner of the vessel, and believed he was insured. The fact was that Mr. Norwood was only owner of 12-64th parts of the vessel, and as far as the hull was insured, he was not insured. The others were insured, and I cannot but feel that is a very great part of the imputation. It is not simply that Mr. Norwood sent her out, having loaded her so that it was dangerous to send her out, taking the risk, when it might be a matter of rashness to do so. That is not what Mr. Plimsoll goes on to say; but he goes on to say this—I do not think he means to convey that she was overinsured so that he would make a profit on the ship in the event of her loss, but he conveys the imputation that she was fully insured, and consequently he was reckless (his money being safe) about everything else. I think that is a very great aggravation of the libel, and a material and important part of it; and as to that, I certainly

think it would have been very much better if Mr. Plimsoll, when he found out how that was, had frankly stated it. I agree with what has been strongly urged by the counsel for Mr. Norwood, that neither Mr. Plimsoll in his affidavits nor his counsel have ever said, "It is true I have accused Mr. Norwood of having fully insured his vessel and of being the sole owner, but I find that is not so, and I am sorry that I made the statement." Neither he nor his counsel have ever said or intimated, "I am sorry for that," and it is a very great aggravation that having made that statement he does not now apologize for it. Then Mr. Plimsoll goes on, and from what appears in the libel, he was dwelling principally on the shipowners who were Members of Parliament, and he was dwelling upon Mr. Norwood and upon the others who brought actions, and more particularly upon the case of the Livonia—and he goes on to say that two or three of "what they call in the North the greatest sinners in the trade have got into the House, and that it is from them that opposition to reform is to be expected." Then he proceeds to state he will give an instance of it; and then he relates that he had a conversation with the other members, which is not material, and then he states a conversation with Mr. Norwood, although he does not give his name, yet he is the person referred to. He says: "After turning away from the members I have referred to, I encountered another, and told him I thought he would do well to stay, because it was probable I should refer to a case of a spar-decked ship being sent to Cronstadt in November, with a cargo of iron nearly twice as many tons as her registered tonnage, with her main deck between 2ft and 3ft. under the water-line. He threatened me with an action for libel if I did, but the voters of Derby had made me strong enough to defy him;" and so it goes on. It is quite plain, I conceive, when he avers that—indeed, it is pretty well clear that when he makes that statement he had the object in view of deterring two members of Parliament from speaking in the House of Commons, and of making their statements of very much less weight. I think that was a very improper thing, and that I think was an interference with the conduct of the members in Parliament, which, to my mind, was very wrong indeed. But to my mind the House of Commons is quite strong enough to protect itself, and the House has been appealed to on this very matter, and the House has taken action to protect what it considers its privileges and rights, and this part has been left out in the other books. Now, taking that view of the matter, there comes the question which I have felt throughout; I feel where there is an imputation made in a libel upon a person, and part, and a really serious part of the charge which has been made, is really true, and while a large part is left besides, which is not excused or justified, but is stated to be true when it is not, it becomes a question of whether, more or less, there should be a criminal information allowed by the Crown to punish the party for that part which is certainly unexcused and unjustified. I think I have stated several times that we have hesitated as to whether we ought not to let the rule go. But it seems to me in the view I hold, as I pointed out, that in my opinion—and I believe my brothers on either side of me agree in that opinion—clearly the statement that Mr. Norwood was insured is incorrect, and that the amount of overloading, or rather the nature of the ship, which would make that ship overloaded, is greatly exaggerated. So far as the overloading goes, it is clear Mr. Plimsoll is right; yet, although it is clear that a substantial part of the libel, as to the vessel being overloaded, is made out to our satisfaction, I think we ought not to refuse the rule for a criminal information without expressing our opinion that Mr. Plimsoll is deserving of some censure, in the only way in which we can mark it, and that is by saying, that though the rule nisi must be discharged, yet that it should be discharged without costs.

Quain, J.—I am of the same opinion. I think, although we have found (which I have arrived at with great difficulty) that this vessel was lost because she was overloaded, yet we cannot consistently proceed to make this rule absolute. The rule is well laid down in the expression my brother Blackburn has quoted, in the 4th volume of Blackstone, that the Court will not permit this information to go,—

"Except in serious cases, as for gross and notorious misdemeanors, riots, batteries, libels, and other immoralities of an atrocious kind, not peculiarly tending to disturb the Government, for those are left to the care of the Attorney General, but which, on account of their magnitude and pernicious example, deserve the most public animadversion, and moreover the Court always consider an application for a criminal information as a summary extraordinary remedy, depending entirely upon their discretion, and therefore not only must the evidence itself be of a serious nature, but the prosecutor must appeal promptly or must satisfactorily account for any apparent delay. He must also come into court

with clean hands and be free from blame with reference to the transaction complained of; he must prove his entire innocence of everything imputed to him, and must produce to the Court such legal evidence of the offence having been committed by the defendant as would warrant a grand jury in finding a true bill against the defendants."

Now, having come to the conclusion that the loss of this ship was in consequence of her being overladen, I think we cannot, consistently with these rules, make this rule absolute. I have come to that conclusion, I must say very candidly, with diffidence, because I have had nothing but mere individual evidence before me, and conflicting evidence, and I know how difficult it is to come to a conclusion on that subject; but we have had to do it as well as we can, and upon these affidavits as they stand, upon the evidence which has been given, coupled with the admitted behaviour of the ship after her engines had broken down, I cannot satisfactorily to my own mind account for the loss of that ship within a few miles of the port of departure, and within a few days after she had sailed—I cannot come to any satisfactory conclusion in my own mind other than that the ship was overloaded, and so was unable to compete with what was not extraordinary weather at all by reason of her carrying too much cargo. I cannot leave out of my mind that which strongly enters it,—that the two stevedores, Anderson and Campbell, whose character has not been attacked that I can see, who loaded this vessel, and who are experienced both in seamanship and in loading ships, also say, "In our opinion, for the time of the year, the ship was very much and dangerously overloaded, and I would not have sailed three miles in the ship if I had to receive the whole ship and cargo as a present at the end of that distance." Now that is very strong, and therefore, having to come to the conclusion that this ship was so lost by overloading, I think we cannot, consistently with the rules of the Court, put the criminal law in motion against Mr. Plimsoll. Still, I must say, in conclusion, in justice to Mr. Norwood, that while we dismiss this information, I think there are expressions in this book greatly to be regretted. I think, even though we come to the conclusion that the Livonia was overloaded, it was very easy for Mr. Plimsoll to have ascertained that Mr. Norwood was away when that was done; it was very easy for him to ascertain that he bought the ship some years before, stipulating that she should carry 1,800 tons; and I must say myself that, looking at that fact as proved, I think it no justification at all to Mr. Plimsoll for the expressions which he used. I think he has no right to draw an inference that Mr. Norwood is one of the "greatest sinners" in the trade, and that he does habitually send ships to sea overloaded, with a reckless disregard for the safety of the crew, knowing that in the event of loss of ship, he will not be out of pocket, because he is fully insured. Tha its a frightful charge, and as far as the evidence is before us, I must say wholly without justification. I think Mr. Plimsoll ought to remember, and I beg him to remember, that the best of causes may be injured by bad advocacy, and that these observations he has made are calculated to injure the cause he has at heart, which I am far from saying is not a good one. These gross charges which have been made appear, from the evidence which has been put before us, to have no ground for justification at all; and therefore I say I entirely concur in the judgment of my brother Blackburn; and to mark the sense of the Court I think we should make Mr. Plimsoll pay his own costs, and therefore the rule will be discharged without costs.

Archibald, J., delivered a judgment concurring with these.

REVIEWS.

The Prairie Province, with maps and illustrations. By J. C. Hamilton, M.A., LL.B. Belford Bros. Carswell & Co.: Toronto, 1876.

Since Manitoba became a part of the Dominion the want has often been expressed of a handbook for the emigrant and tourist to that region.

All who read the book now before us will, we think, admit that this has been supplied by Mr. Hamilton. A member of one of our oldest Toronto law firms, he turns his annual vacation trip to account, leaves "cap and gown and store of learned pelf," and makes his way by the Toronto, Grey and Bruce Railway, the north shore of Lake Superior, the Northern Pacific Railway and the winding Red River of the North to Winnipeg. Thence he makes excursions from that river through the famous Selkirk settlement to Lake

Winnipeg and to various other places over the Prairie Province.

The author evidently made good use of his time, and came home with note books well filled and much valuable material, drawn from a great variety of sources, all which have been well digested and arranged in this neat octavo. Full particulars as to the route and modes of travel are given. Lithographic maps accompany the volume, and show the various settlements, the region surrounding Manitoba, and the Dawson route. One of the fourteen chapters of the book gives an interesting description of Winnipeg, said to contain about 6,000 souls. Another gives a full account of the grasshoppers, the terrible Rocky Mountain locusts—*Coloptenus spretus*—which occasionally come from the dry and arid plains of the western United States territory, to pay the Manitobans an unwelcome visit. The sixth chapter contains a varied sketch of the Indians and half-breeds, and of Indian treaties. The history of the old fur companies and the great Hudson's Bay Company is also clearly drawn. The eighth chapter, devoted to climate, productions and prospects of the country, exhibits, in the most convincing manner, the fertility and importance of the great Fertile Belt, and its superiority to the lands of the United States west and south of our Red River.

As a lawyer, Mr. Hamilton is well qualified to tell us of the courts and civil institutions now on trial in the North Land. The late constitutional change, which abolished the upper house of the local legislature, is described. We quote as follows:—

"The appearance of this little Legislature, especially in its first session, was such as tended to amuse spectators accustomed to more august gatherings of the people's representatives. Ancient English forms and precedents were followed as far as circumstances permitted; but there were, among the members of mixed blood, some more accustomed to the chase of the bison than to following orators through labyrinths of argument. The favourite dress of one, of taste akin to Garibaldi, was a red flannel shirt and moccasins. When Mr. Archibald first appeared in glorious array, to take his gubernatorial seat in the Legislative Council Chamber, an astonished legislator ejaculated: "*Tiens! Ce n'est pas un homme; c'est un faisan doré.*" We find the spirit of Ontario in the statute book and judicature, as well as in the forms of the Legislature. This is the more apparent since Lieutenant-Governor Archibald left the Province and the present Chief Justice was appointed.

The Ontario lawyer finds himself at home in the Courts of Manitoba. English law, as to civil rights, has been introduced by local enactment as it stood in 1870. The law as to criminal offences is that of the Dominion. The Court of Queen's Bench—Chief Justice Hon. E. B. Wood, Justices McKeagney and Betournay, who, as other Canadian Judges, hold office by appointment of the Governor-General in Council, and during good behaviour—holds its sessions thrice a year in Winnipeg, having legal and equitable, civil and criminal jurisdiction in all matters. In regard to costs, civil cases are divided into a higher and lower scale. Through the over-ruling influence of the Chief Justice, the code to which he was in practice accustomed, as set out in the Ontario Common Law Procedure Act and the General Orders of the Ontario Court of Chancery, has been adopted. Mr. Cary, a cultivated gentleman, is at once Prothonotary, Master in Chancery, Clerk of Records, and Interpreter of the Court. The judges sit separately, exercising original jurisdiction, and *in banco* together on appeals, &c. The Province is divided into several judicial districts, in which county courts are held by the judges named, as occasion arises. The Chief Justice practically acts as Chancellor. He complains that he has not enough work to occupy his time. The bar has some able representatives."

In another part of the volume a report is given of the *causes celebres* tried at York and Quebec in 1818, and which arose out of the troubles between the contending fur companies. The author has, with the aid of the late Colonel Gugy, traced the DeReinhard case to its conclusion in the pardon of that cruel murderer by order of King George IV. As important legal points were raised at this trial, and will be again opened at the

arbitration concerning the North West boundary of Ontario, professional readers will note the importance of the subject here treated.

We regret that space will not permit of our transcribing some of the stanzas on "The Red River of the North," and the very interesting description of that and of the Rosseau river, found in the third chapter; nor the amusing description of the Mennonites, and verses on "The Mannon Bold," in the thirteenth chapter.

We can only refer our readers to the volume with the assurance that they will find it in style and substance to reflect credit on author and publishers, and well worth the having. Besides the maps there are various woodcuts, which add to the value of the book.

The New Zealand Jurist (New series), February and April, 1876, Dunedin, N.Z.

If the teeming millions of the great Anglo-Norman race are not the "lost ten tribes," it is not because they do not inhabit the "isles of the sea." It is natural to see a multitude of legal periodicals issuing from the presses of Great Britain, nor are we surprised to read the legal news of Australia in their legal journals, but seeing the *New Zealand Jurist* brings forcibly to our mind the extent of that empire, part of which, at least, now owns an Empress. It might also remind us of Macaulay's New Zealander on London Bridge, if we did not know that the heart of the Empire is still sound.

The numbers of the *Jurist* that we have before us are well on in the first volume of the new series. It is edited by a barrister of the Middle Temple, and if the contents of the numbers before us are any index, we should say that neither he nor his reporters have lost vigour or learning by being transplanted to the antipodes. Their law-list shews two hundred and twenty practising barristers and solicitors. The Courts are thus formed: A Court of Appeal; the Supreme Court, presided over by a Chief Justice and four Judges, and seven District Court Judges. Our brethren seem, also, to have their little difficulties as to their Appellate Court, and many of the observations in the article copied below are not inapplicable in this country. They certainly coincide with our own view, that the Judges of a Court of Appeal should not only be men of great learning, but should also have had a long judicial training, and a successful career on the Bench, both of which are necessary to inspire the fullest confidence in their decisions:

"It has been stated in the newspapers that the retired Judges, Mr. Chapman and Mr. Gresson, are to be called to the Legislative Council. We have nothing to say on that subject, although we might say that the presence of experienced lawyers in the Council is very much needed; but we take the opportunity of suggesting that, whether they are called to the Legislative Council or not, their services should be promptly secured, if possible, as members of the Court of Appeal. In that capacity it would be in their power to render higher service to their country than in any other; and we think we are justified in saying that they would not, if called upon, be unwilling to act. It is obvious that the Court of Appeal, as it is now constituted, is not so strong as it might be. Four of our ablest and most experienced Judges have been absent from its sittings during the past year,—three by reason of retirement from the Bench, and one by leave of absence from the Colony. The Judges who have taken their places are new to judicial work, and for that reason they cannot be expected to fill the very visible gap left in the constitution of the Court. Of the four Judges who composed it during its last sitting, one only possessed more than a twelvemonths' experience as a Judge. Its strength will, undoubtedly, be increased when Mr. Richmond resumes his duties; but why should it not be still further increased by the experience and learning of Mr. Chapman and Mr. Gresson? Under any circumstances it is highly desirable that it should be strengthened as much as possible. Although termed a Court of Appeal, and supposed to be a tribunal of the last resort in

the Colony, it is practically nothing more than the Supreme Court under another name; and a referencee to the reports will show that, while its nominal strength is five, its actual strength for field service is often four, and sometimes three. While the administration of justice is carried on under the "one-horse" system which exists at present, appellants from the Supreme Court are surely entitled to expect something more for their money than a mere ride in a merry-go-round. It is a singular fact, and one "not generally known," that the costs of an appeal from the Supreme Court at Dunedin to the Court of Appeal at Wellington are actually greater than the costs of an appeal to the Privy Council. For instance, the costs of the proceedings, including the two appeals to the Court of Appeal, in *Burns* v. *The Otago and Southland Investment Company*, exceeded £1,500; while the costs of appeal to the Privy Council. *Maclean* v. *Macandrew*, did not exceed £350, Under such circumstances, we can only express our unfeigned surprise that the Court of Appeal is ever appealed to at all, except in Wellington causes; and there is at least some ground for supposing that, unless the Court is materially strengthened by the appointment of additional Judges, the tendency will be in future to send appeals direct to the Privy Council, instead of sending them to Wellington."

CORRESPONDENCE.

Issue Books.

To the Editor of the Law Journal.

Sir,—By a rule of Court of Hilary Term (7th February, 1876) rule 33 as to issue books is rescinded. By sec. 17 of 32 Vict., cap. 6 (the Law Reform Act), it is provided that all issues of fact, &c., in Supreme Courts may be tried, &c., in County Court, and *vice versa*, "in which case an entry *shall* be made in the *issue* and subsequent proceedings," &c., in the form given. What is the meaning of "issue" in that section, and is it proper still to deliver issue books in such cases, or will the notice of trial alone be sufficient?

Yours, &c., E. M.

[The effect of the rule of last Hilary Term is, we think, to render the issue-book no longer necessary; and in sec. 17 of the Law Reform Act, the "issue" must now be taken to mean the Record. The object of the issue-book is to ensure a correct transcript of the proceedings. This object was formerly attained, as it is now, by having the record "passed," *i.e.*, examined by the officer of the court; but when, by 19 Vict., cap. 43, sec. 154, it was enacted that records should not be sealed or passed, it became necessary to introduce the practice of serving an issue book, which was accordingly done by rule 33 of Trinity Term, 1856. It was subsequently enacted by C. S. U. C., cap. 22, sec. 203, that records need not be sealed, but should be passed; the reason for the delivery of issue books, therefore, ceased, but rule 33 remained unrepealed, and reference to the issue books was made in other parts of the Consolidated Statutes. Now, however, the Rule of Court has been expressly repealed, and as the issue-book was introduced in the first instance by the authority of the judges, there can be no question of the competence of the same authority to do away with it, although references to its use were necessarily introduced into the statute book when the former practice was in force.—Eds. L. J.]

Increase in Fees for Certificates.

To the Editor of the Law Journal.

Sir,—In the summary of the proceedings of the Benchers in Hilary Term, last published in the *Law Journal* of the month of May, it appears to have been resolved that the fees in future to be paid for certificates by attorneys, including term fees, shall be $30 per annum, in order to provide for a proper and efficient system of reporting the judgments of the courts.

Now, this will be a large and heavy increase in the taxation of professional men, and the announcement has caused a good deal of interest and excitement in those who are called country practitioners. And the increase is felt the more especially as the statement of the receipts and expenditure would show that the society had a large surplus, its revenues being over $36,000 and its expenditure only $32,300, independently of the out-

standing assets, amounting to $42,108. This surely establishes that there is no necessity for the increase in the fees.

I presume it would be in the nature of an improper enquiry to ask why the sum of $7,810 should be expended on the Hall and grounds. The sum formerly allowed to the committee was $800, and this was found usually sufficient for keeping the grounds in order, which comprise about five acres. Then, again, the sum of $3,127 appears to have been expended upon the library, a large sum to be applied, in my view, for keeping up the reports, the new editions of standard works, and other books of a valuable kind. This last sum is also very considerably larger than under the old *regime*. Again, one would wish to be informed what "petty expenses" could amount to $425.

As I am living at a distance from Osgoode Hall, and never see the grounds nor enter the library, I derive no benefit or advantage from them. I should not have minded the outlay if the fees had remained at $18, in place of $30.

A Pocket Attorney.

RULES OF COURT.

QUEEN'S BENCH AND COMMON PLEAS.

The following rules were promulgated last Easter Term in the Courts of Queen's Bench and Common Pleas:

1. One of the Judges of one of the Superior Courts of Common Law shall sit in open Court each week in Osgoode Hall, pursuant to the Administration of Justice Act, 1874, for the hearing and disposing of such matters, and the transaction of such business as may be heard, disposed of, and transacted by a single Judge.

2. There shall be no such sitting at any time between the 1st day of July and the 21st day of August, both days inclusive, or between the 24th of December and the 6th day of January, both days inclusive.

3. The Judge shall sit on Tuesdays and Fridays, at the hour of twelve o'clock noon, or on such other day or days, and at such other hour or hours as the Judge for the time being shall appoint.

4. It shall be in the power of the Judge, if he see fit, to sit only on one day in each week, if the same be at any time found sufficient for the disposal of business.

5. The Judge may adjourn the sitting of the Court from one day to another, and so from day to day if found necessary for the disposal of business.

6. The Judge sitting as aforesaid shall either before, during, or after such sitting, as the Judge may appoint, dispose of all such business in Chambers as cannot be disposed of by the Clerk of the Crown and Pleas of the Court of Queen's Bench.

7. All rules for the purpose of the said sittings shall be four day rules, and shall, unless otherwise ordered by the Judge, be set down to be heard at the first sitting next after the same is returnable.

8. All demurrers, special cases, appeals from the decision of the Clerk of the Crown and Pleas of the Court of Queen's Bench in Chambers, shall be left with the Clerk of the Court for the time being, on a day not later than two clear days before the day on which the same are to be heard—that is to say, not later than Tuesday for Friday, and not later than Saturday for Tuesday.

9. All rules, demurrers, special cases, appeals or other matters intended to be argued before the Judge, shall, previous to the sitting of the Judge on the particular day for the hearing or disposal thereof, be entered by the Clerk of the Court on a list, one copy of which shall be delivered by the Clerk to the Judge, and another posted up outside of the court-room.

10. All rules, demurrers, special cases, appeals, and other matters entered on the said list, shall be called on and disposed of in the order in which the same are entered on the list, unless the Judge otherwise order.

11. The first business at each sitting shall be motions of course, and motions for rules *nisi*, and the next, the cases on the list in the order in which they are entered, unless otherwise ordered by the Judge.

12. Any party desiring the rules, order, or decision of the Judge to be reviewed and reheard by the full Court in which the cause or matter is pending, shall give notice in writing to that effect to the opposite party, within two weeks next after the day on which the rule, order, or decision shall have been granted, made or pronounced.

13. Unless such notice as last aforesaid be given, the party in default shall, in the discretion of the full Court, be liable to pay the costs of the review and rehearing.

14. Except the full Court in the particular case otherwise order, there shall be no review or rehearing allowed by the full Court, unless the same be had within the Term of the Court next

following the granting, making or pronouncing of the rule, order or decision, with which the party is dissatisfied.

15. If the review or rehearing be proceeded with within the period of two weeks next after the day of the granting, making or pronouncing of the rule, order or decision with which the party is dissatisfied, no notice in writing, such as required by rule twelve, shall be required to be given, but if given, may be allowed for on taxation.

16. The cause or matter to be renewed or reheard shall be set down to be heard on one of the "Paper Days" during term, or on such other day during term as the full Court may appoint for the purpose; and shall be set down to be reviewed and reheard at least two clear days before the day on which the same is to be argued.

17. The party setting down a cause or matter for review or rehearing shall deliver to the Clerk of the full Court, three copies of the written decision, if any, delivered by the Judge, certified to be correct by the reporter of the Court; and in the case of a demurrer or special case, shall also deliver to the said Clerk three copies of such demurrer or special case.

18. Notice in writing of the intended review and rehearing shall forthwith, after the cause or matter is set down to be reviewed and reheard, be delivered by the party setting the same down to the opposite party.

19. No petition, rule or order shall be necessary for the purpose of review or rehearing in either of the Superior Courts of Common Law.

20. On a review or rehearing, the party setting down the cause or matter for review or rehearing, shall have the right to begin or reply, unless otherwise ordered by the Court.

21. Nothing in the foregoing rules contained shall be held or taken in any manner to deprive any party of the right to have a cause or matter reviewed or reheard, where the right is conferred by statute, but only to speed the course of proceeding with a view to such review and rehearing.

22. Nothing in the said rules contained shall be held or taken in any manner to interfere with the power of the Court or Judge in their or his discretion for good cause, as regards any particular case, to dispense with all or any of the said rules.

23. The Rules of Trinity Term, 38th Victoria, promulgated on 5th September, 1874, shall be rescinded on, from, and after the day these rules shall take effect.

24. These rules shall take effect on the second Monday of the present Term of Easter.

Osgoode Hall,
Monday, May 15th, 1876.

It is ordered that the Marshal and Clerk of Assize for the County of York, do forthwith, after the close of each Assize, or earlier if required, return to the Clerks of the respective Courts of Queen's Bench and Common Pleas and the Registrar in Chancery, all records in the said Courts respectively, together with all exhibits and other documents appertaining thereto.

(Signed) JOHN H. HAGARTY,
ROBT. A. HARRISON,
JOS. C. MORRISON,
JOHN W. GWYNNE,
THOMAS GALT.

May 16, 1876.

QUEEN'S BENCH.

The following rules were also promulgated in the Queen's Bench:

1. That the business to be transacted in the Court of Queen's Bench for the Province of Ontario during Trinity Term next shall be the same in all respects as business transacted during the other Terms of said Court, although such business may have arisen prior to or during the present Term of Easter, notwithstanding anything to the contrary contained in section 2 of Statute 38 Vict, Ont.

2. That the said business shall during Trinity Term aforesaid be conducted in like manner in all respects as the ordinary business during the ordinary Terms of the said Court.

3. That eight cases in the order of their priority on the general list shall be set down by the Master on the peremptory list for argument on each of the first four days of the said Term, in the same manner and with the like effect as other days of the said Term.

4. That the first Friday and the second Monday of the said Term shall be Paper Days, as provided by the general rules of Michaelmas Term, 39th Victoria, but unless there be at least four cases set down for argument on each of the said days, six cases in the order of their priority on the general list shall be set down on the peremptory list for argument on each of the last mentioned days, or one of them, as the case may be, in the same manner and with the like effect as on other days of the said Term.

(Signed) ROBT. A. HARRISON, C.J.,
JOS. C. MORRISON, J.,
ADAM WILSON, J.

Osgoode Hall, Easter Term, 39th Victoria.
Saturday, June 3rd, 1876.

LAW SOCIETY OF UPPER CANADA.

OSGOODE HALL, HILARY TERM, 39TH VICTORIA

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law :

The names are given in the order in which the candidates entered the Society, and not in the order of merit.

No. 1350.—JOHN WILLIAM FROST.
HERBERT CHARLES GWYN.
JOSIAS RICHEY METCALF.
ARTHUR GODFREY MOLSON SPRAGGE.
ROBERT GREGORY COX.
EDWARD DOUGLAS ARMOUR.
No. 1356.—ALBERT ROMAINE LEWIS.

And the following gentlemen received Certificates of Fitness :

E. GEORGE PATTERSON.
ROBERT PEARSON.
JAMES LEITCH.
ROBERT GREGORY COX.
THOMAS COOKE JOHNSTONE.
EDWIN PERRY CLEMENTS.
WILLIAM MYDDLETON HALL.
EDWARD DOUGLAS ARMOUR.
ALBERT ERNEST SMYTHE.
HEBER ARCHIBALD.
JAMES CARRUTHERS HEGLER.
GEORGE ATWELL COOKE.
DAVID LENNOX.

And the following gentlemen were admitted into the Society as Students-at-Law :

Graduates.

WILLIAM EGERTON PERDUE.
JOHN MORROW.

Junior Class.

SAMUEL JOHN WEIR.
FRANK EGERTON HODGINS.
WILLIAM WHITE.
DANIEL ERASTUS SHEPPARD.
WALLACE NESBITT.
JAMES B. MCKILLOP,
JAMES MORRISON GLENN.
J. STANLEY HUFF.
MICHAEL A. MCHUGH.
ERNEST V. D. BODWELL.
HUGH D. SINCLAIR.
JAMES WILLIAM ELLIOTT.
ROBERT CASSIDY.
DUNCAN CHARLES PLUMB.
WILLIAM AVERY BISHOP.
FRANCIS ARTHUR EDDIS.
JAMES GARBUTT.
JOHN CHARLES COFFEE.
JAMES RIDDELL.
HOWARD JENNINGS DUNCAN.

Articled Clerk.

JOHN A. STEWART.

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

That a graduate in the Faculty of Arts in any University in Her Majesty's 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.

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

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

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

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

That the books for the final examination for Students-at-Law shall be as follows :—

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

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

That the subjects for the final examination of Articled Clerks shall be as follows :—Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

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

1st year.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. 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 Vol. II., chaps. 10, 11 and 12.

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

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

J. HILLYARD CAMERON,
Treasurer.