DIARY FOR FEBRUARY.

1. Tues..Intermediate Examinations.
3. Thurs.Examination for admission. Candidates for call to pay fees.
4. Frid..Examination for call.
6. SUN..*5th Sunday after Epiphany.*
7. Mond. Hilary term begins. Secretary of Law Society to make out list of Bar entitled to vote for Benchers.
9. Wed..Last day for setting down rehearing in Chancery.
10. Thurs.Queen Victoria married, 1840.
11. Frid..Lord Sydenham, Governor-General, 1840. Paper Day, Q.B.
12. Sat....Paper Day, C.P.
13. SUN..*Septuagesima S.*
14. Mond..Paper Day, Q.B.
15. Tues..Paper Day, C.P. Last day to move against Municipal Elections.
17. Thurs.Rehearing term in Chancery begins.
19. Sat....Hilary term ends. Last notice for notice for call.
20. SUN..*Sexagesima S.* Tithes abolished in U. C., 1823
27. SUN..*Quinquagesima S.*
29. Tues..Shrove Tuesday.

CONTENTS.

THE

Canada Law Journal.

Toronto, February, 1876.

The first part of the Revised Statutes of Ontario has been issued by the Commissioners. It is called, "Rough draft to be distributed for the purpose of receiving suggestions before the final review of the work by the Statute Commissioners and its submission to the Legislature." We refer to this subject at length in another place.

In *Woodruff* v. *Mosely*, 19 L. C. Jur. 169: Mr. Justice Sanborn, delivering the opinion of the Court of Queen's Bench, held that the mere importer of an invention, which has been patented for many years in the United States by another person, is not entitled to a patent therefor under the Dominion Patent Act of 1869.

The Supreme Court of Pennsylvania, in *Udderzooks's case*, has lately held that in a trial for murder a photographic likeness is admissible in evidence for the purpose of identifying the person photographed, and this without any further proof of its being a correct resemblance, as is required in the case of paintings. The Court said that they could not refuse to take judicial cognizance of the process as a proper means of producing correct likenesses.

The English Master of the Rolls (Sir George Jessel) not unfrequently says shrewd things on the bench, which it is well "to make a note of." For instance, in *Jones* v. *Bygott*, 23 W. R. 944, he artistically exposes one of the absurdities that equity delights to honor, in this pleasant way: "The doctrine as regards constructive notice, by reason of the knowledge of an agent or solicitor, has

been restricted in modern times to some extent, perhaps not to so great an extent as it ought to be, but to some extent in the direction of common sense."

The *Central Law Journal* calls attention to a decision of the Court of Queen's Bench for Quebec, in *The Corporation of Montreal* v. *Doolan*, in which it was held by a majority of judges that a municipal body is liable in damages for an assault committed on a citizen by a policeman in the pretended discharge of his official duty. The case rests upon French authorities, and is opposed to the law as expounded by English and United States Courts. But the *Journal* expresses the opinion that justice and public policy demand a revision of the law in this matter, and that it is better to make the corporation responsible for the wrongful acts of its public officers, done in the course of their official relations, and under colour of their office.

There has been some discussion in the lay papers as to propriety of providing a cheaper and more expeditious mode of serving process and papers, where the person to be served lives at a long distance from the sheriff's office. It is unnecessary to put the case from the sheriffs' point of view, as they, like the registrars, are quite able and willing to take care of themselves. One sheriff that we have heard of used to send papers by mail to a process-server living at a village some thirty miles distant from the county town, for service in the former place. This person served the paper on his fellow villager, and swore that he necessarily travelled the thirty miles and back to make the service, and the sheriff meekly pocketed the fees thus ingeniously obtained. The beauty of it is, that lawyers get the credit of charging litigants with enormous bills of costs, whilst the truth is that probably one-half the amount has already been paid out to sheriffs, registrars, &c., and for law stamps.

During the present session of the Ontario Assembly, the lawyers have not been idle. Law Reform is still the order of the day; and the Jury system, that fertile subject for experiment, has not been left unassailed. Mr. Bethune the other day introduced a bill to alter the rule in civil cases, requiring the verdict of juries to be unanimous. He proposed that, after a jury has been out an hour, it should be permitted to render a verdict of eleven of their number; after an absence of two hours, a verdict of ten; and, after an absence of three hours, a verdict of nine; and that in each case such a verdict should have the full force of a unanimous verdict. A bill of the same nature was laid on the table a year or two ago, by a young gentleman who sat on the left of Mr. M. C. Cameron in opposition. So daring an innovation, attempted under such auspices, of course came to no good end. Mr. Bethune's bill met with more respect, having been thrown out on the second reading, on an equal division in a full House.

The Grand Jury did not escape without assault, any more than the Petit Jury. Mr. Currie brought in a bill to abolish grand juries altogether, much to the alarm of the House, which got rid of it with as little delay as possible. Grand juries are a terrible bugbear to law-reformers. Chief-Justice Harrison considers them an expensive nuisance, as his late address to the grand jury at the County of York Assizes, made manifest, and he cited Lords Brougham and Denman in support of his views. The destruction of grand juries was a favourite hobby of Lord-Chancellor Chelmsford, who made more than one ineffectual attempt to improve them out

of existence. If they were only to be dispensed with in the cities, where competent magistrates are intrusted with the duty of committal, the question would be a simple one; but, as the rural districts are to be considered, it becomes complicated. We reprint elsewhere an article dealing with one of the evils of the system in England, which does not as yet exist here, but will when the Bill for payment of witnesses in criminal cases becomes law,—namely, the expense it adds to the cost of the administration of justice.

In the Clements case, a point arose which is of no little importance. Mr. Kenneth Mackenzie, Q.C., did not conduct the case for the Crown, because he expected to be called as a witness. When so called, he objected to being interrogated, on the ground that it was sought to elicit from him facts and statements which had come to his knowledge in his capacity of Crown Counsel. The statements which it was desired to put in evidence were made by the prisoner himself to Mr. Mackenzie, and related to the case against Davis, then in Mr. Mackenzie's hands. These statements the prisoner (Clements) sought to give in evidence on his own behalf. It appears to us, that there should have been no hesitation on the part of Mr. Mackenzie about disclosing them. The rule that governs in these matters, was concisely laid down by Lord Chief-Justice Eyre, in *Hardy's case:* "It is perfectly right," said the Lord Chief-Justice, "that all opportunities should be afforded to discuss the truth of the evidence given against a prisoner; but there is a rule, which has universally obtained, on account of its importance to the public for the detection of crimes, that these persons who are the channel by means of which the detection is made, should not be unnecessarily disclosed." Now, it will be observed, that this rule is for the protection of the person who makes the communication. As in the case of other privileged communications, it may be waived by the person entitled to claim the protection. It seems to us, therefore, that when the person making the communication, a prisoner on trial for his life, invoked the disclosure for his own advantage, there need have been no delicacy in yielding to his desire. The Crown is surely not so wanting in tenderness for its subjects, as to insist upon such reticence on the part of its legal advisers.

PROLIXITY IN PLEADING.

Where pleadings at length are allowed, as in Chancery proceedings, some practitioners have adopted the slovenly course (to put it in the mildest way) of copying out all documents referred to *verbatim.* This is an abuse of the proceedings of the Court, and no doubt very often proceeds from a desire to make costs. We observe that the same sort of procedure (more honoured in the breach than in the observance) was recently brought under the notice of the English judges. An affidavit of inordinate length (388 folios) was filed, wherein it was alleged that a number of irrelevant letters were set out at full length. An application was made to Malins, V. C., to take it off the file for that reason; and a case was mentioned, in which the Master of the Rolls had granted a similar application, wherein the affidavit contained 1,133 folios. The Vice-Chancellor refused the application on the ground that it was impossible for him to judge of the undue length or the relevancy of the affidavit without reading it and the pleadings. But he said that the judge who heard the cause would be able to dispose of these matters, and could deal with the

question as the costs of such an affidavit. On appeal from this conclusion, it was upheld for the double reason that the matter was one resting in the discretion of the judge below, and that in substance the appeal related merely to a question of costs. In reference to the case before the Master of the Rolls, the Appellate Court observed that when the judge saw from the mere inspection of the affidavit itself, that it was a gross abuse of the proceedings of the Court, he was quite right in ordering it to be taken off the file; but otherwise, where the propriety of filing the affidavit could not be determined in that summary way: *Owen* v. *Emmens*, 20 Sol. J. 118.

The practice which has obtained in this Province is in conformity with the views expressed by the Vice-Chancellor Malins. We remember the late Chancellor Vankoughnet took much satisfaction in smiting one solicitor, who was famous for his circumlocutory and discursive style of pleading, by limiting the number of folios to be taxed for his effusions, when disposing of the cause at the hearing. It is very seldom, indeed, that a document needs be set out *in hæc verba*, —it should be the exception, and only when the peculiarity of the instrument is such, in case of fraud and the like, that *charta loquitur*. It is desirable to retain some system and some trace of art in our legal procedure, and this is one of the points to which attention should be given. It is enough generally to set out the material parts of the instrument. In all ordinary cases, where there is no doubt as to the legal effect, then only the legal effect of the instruments should be given.

It may be taken as a rule that the best pleaders at law or in equity are those whose drafts are the most concise; they are those who apprehend the real issues of the case in hand, and present these issues in the most simple and effective form. No doubt there are pleaders who pursue the policy of the cuttle-fish and envelope the controversy in an inky effusion of verbiage. But these are they, whose cause is bad to their own knowledge, or who are uncertain of their position, or who have but imperfectly mastered the weapons of their warfare. There is a tradition of a cautious old special pleader who systematically indulged in prolixity in difficult cases. Having achieved, once, an indictment for conspiracy which measured a foot or more in thickness as it lay rolled up, it was objected, "surely there must be some errors in a document like that." "No doubt," was the response, "but in these cases my plan is always to make the indictment so long that nobody can show it to be bad: either the defendant cannot find out the weak points, or he cannot be sure that there is not something somewhere else which will set them right."

The ancient Chancellors sometimes employed very ingenious methods to punish offenders of this sort. The records supply the details of a case where the counsel drew a monstrous replication of six score sheets of paper, whereas all the pertinent matter might have been contained in sixteen sheets. The Lord Keeper, Sir John Puckering, among other things ordered that the prolix pleader should be brought to Westminster Hall at ten in the morning, and that thereupon the warden of the fleet should cut a hole in the midst of the said engrossed replication, which was to be delivered unto him for that purpose, and put the said Richard's head through the said hole, and so let the said replication hang about his shoulders with the written side outward, and then, the same so hanging, should lead the said Richard bareheaded and barefaced round about Westminster Hall whilst the Courts were sitting, and should show him at the bar of the three Courts within the Hall: See Spence's Equitable Jurisdiction, vol. i. p. 376, note.

The most modern means of ensuring

conciseness is to provide by Statute or rules of Court, short forms of pleadings for the most commonly recurring cases. This system has, in England, been carried to its utmost length by the Judicature Act; so much so that Mr. Justice Quain lately declared that brevity was the soul of pleading under the new rules. This is perhaps going to the opposite extreme, and the English legal journals are beginning to ridicule the exceeding curtness of the new system. We incline to think that the present methods of pleading in Equity in this Province are as sensible, and withal as formal, as are necessary to ensure the ends of justice. The bill, it is prescribed, is to contain a statement of the case in clear and concise language, and the answer is to consist of a clear and concise statement of such defences as the defendant desires to make. The judges of that Court have been careful to mould the procedure of the Court to suit the circumstances of the country, and have followed the advice of Lord Cottenham when he said, "I think it the duty of the Court to adapt its practice and course of proceeding to the existing state of society, and not, by too strict an adherence, to decline to administer justice": *Walworth* v. *Holt*, 4 M. & Cr. 635. It does not seem to us of much value to attempt to frame a set of forms for all sorts of pleadings and for all possible circumstances, unless the judges and law-makers have come to the conclusion that the functions of revising counsel are unnecessary, and that the system of pleading can be efficiently worked as a mere piece of machinery. Some reasonable latitude should be allowed for special or peculiar cases, and the power which the judges have, of disallowing or limiting the costs of unnecessary and verbose statements and pleadings will, as a rule, form a sufficient corrective to any abuse of the proceedings of the Court.

CONSOLIDATION OF THE STATUTES AND FORM OF THE STATUTE BOOK.

The Commisioners for the revision and consolidation of the statutes affecting this Province, have made their second report.

The necessity for a speedy revision and consolidation of our statute law appears from the allusion the Commissioners make to the peculiar nature of our statute law, "consisting, as it does, in a great measure, of enactments passed under a constitution which no longer exists, and having application within a territory of which the present Province of Ontario forms only a part." We, therefore, cannot help expressing our regret that we are not to have a consolidation this year, but at the same time we are glad that the completeness of the work is not being impaired by undue haste and too little consideration.

The difficulties attending the present revision are, no doubt, exceptionally great, but experience tells us that a consolidation, at any time, is not compiled in a day, and as the work is one which will, under our present system, in all probability never be entered upon until the necessity for its completion is actually felt, it seems to us that some scheme should be devised by which consolidations might be prepared within a short space of time, and at comparatively short intervals.

A consolidation of the statutes does not mean merely the collecting of the *disjecta membra* into which the statutes have been torn by successive repeals and amendments. It incidentally involves a much greater responsibility—the reframing of many Acts or sections, in order artistically to introduce some amendment, or to bring a particular enactment into harmony with others; and if these incidental duties in the work of reconstruction are not performed with the greatest care, the

consolidator may, by a stroke of the pen, become a legislator.

Amendments of the law are not always made by striking out certain words of an Act and substituting new ones. This style of amendment has its advantages; not much room is then left for judicial interpretation beyond the grammatical construction of sentences, and the amending Act becomes a part of the previous enactment. Most new provisions, however, cannot be introduced in this manner. When a leading principle of an Act is invaded, the amendment must generally be embodied in a substantive enactment. A new principle thus introduced may have the effect of modifying, not only the entire Act which is the immediate object of the amendment, but it may be also that provisions contained in other Acts are in effect repealed or modified. All of these provisions may not be individually present to the mind of the legislator, satisfied of the correctness of the new principle, and of the expediency of giving it universal effect; but, by the consolidator every remote application of the principle must be kept in view, and the requisite modifications of language made, in accordance with what appears to him to be the true legal effect of the amending Act. Before any consolidation takes place, however, every reader of the statutes must take the words before him in connection with what, to his mind, appears to be the legal effect of the amending Act, and notwithstanding that "*quot homines tot sententiæ*," the minds of all Her Majesty's subjects must, by a pleasant fiction of the law, be made up in the same way.

In order partially to remove this source of doubt upon the construction of the statute law, a bill was introduced in the Legislative Assembly of this Province, in 1873, by Mr. McLeod, M.P.P. for West Durham, to provide that every amending statute should re-enact the whole law upon the subject dealt with. This proposition, in the general form in which it was presented, was considered impracticable, and apparently with reason, but it seems to us that some modification of it would meet with the acceptance of the public, and greatly facilitate a knowledge of the law. For instance, all amendments to a particular Act might be required to be introduced into it by definite verbal alterations or by substantive sections, numbered as parts of the Act amended and introduced in their proper place in the original Act, wherever this course was practicable. (See 27-28 Vict., cap. 27.)

If this were done any person who, after each session, went through the process known as "booking up" his statutes, would be in possession of the Legislature's own wording of each section. It is the constant practice, however, of our Legislatures to amend an Act by passing a new one, covering much of the same ground as a previous Act, and extending or modifying without expressly referring to the previous Act. The effect of such legislation is, of course, to repeal so much of the prior Act as is inconsistent with the later one, and a clause to that effect is sometimes unnecessarily inserted; but the draftsman must have known what provisions it was intended to repeal, and an express statement of those provisions might easily have been given. This not having been done, however, a minute examination of the prior Act becomes necessary, and a decision as to what remains unrepealed is with difficulty, and seldom with certainty, arrived at. The various Acts respecting Municipal Institutions, for instance, although twice consolidated since 1859, have never been repealed, except in this uncertain manner, and portions of the consolidation of 1859, not contained in or inconsistent with the later Acts, may still be in force.

A form of repealing clause is sometimes employed, which intensifies the difficulty

by repealing so much of a prior Act as makes provision "in any matter provided for" by a later one: see for example the Patent Act, 35 Vict., cap. 26, sec. 52 (D). Here, it has to be borne in mind, that if the "matter" (an indefinite term) in respect to which provision is made by A. is provided for by B., the latter effects a repeal of A., although possibly both might well stand together.

The Act respecting certain separate rights of property of married women (Con. Stat. U. C., cap. 73), is not in any way expressly referred to in the Act to extend the rights of property of married women (35 Vict., cap. 16). The effect of the latter Act, however, is to modify in many particulars Con. Stat., cap 73, but to what extent can only be conjectured until ascertained by a judicial decision upon each of the numerous points involved. Other examples might be given: *e. g.*:—The Mechanics' Lien Acts of 1873 and 1875, 36 Vict., cap. 27, and 38 Vict., cap. 20. Years might elapse before the exact state of the law could be certainly known, but upon the consolidation of these Acts, all such questions have to be solved at once by the consolidators, upon a view merely of statute in juxtaposition with statute, with no parties before them actually interested in a decision one way or the other, without hearing the argument of counsel, and without any of the other circumstances which, in the case of a judicial decision, assist so materially in arriving at a correct conclusion by means of the thorough investigation of all sides of a question.

It is such matters as these that will make the work of the Commissioners so arduous, and their responsibility so great; but if the Legislature, when amending the law, were only to be at the pains of pointing out in the manner suggested, with some degree of exactitude, the effect which the amendment is intended to have upon the pre-existing law, the statutes would only require consolidation for the sake of convenience of form. Each Act would always be in as definite a form as any statute is capable of assuming, and the work of consolidation might be performed with little trouble or expense, and within a very short space of time, by the Law Clerk or other departmental officer.

Even if this work were not confided to the Law Clerk, it seems to us that his department might, in addition to its present duties, be required to perform others which would, by increasing the information of the House, tend to a more intelligent consideration of the measures brought before it, as well as insure more simplicity and uniformity in the style of its enactments.

The English Statute Commissioners, in their supplementary report, in 1856, gave the outlines of a scheme for a similar object, and recommended "the appointment of an officer or Board, with a sufficient staff of legal assistants, whose duty it should be to advise on the legal effect of every bill which either House of Parliament should think fit to refer to them; and, in particular, on the existing state of the law affected by the bill, its language and structure, and its operation on the existing law; and also to point out what statutes it repeals, alters, or modifies, and whether any statutes, or clauses of statutes on the same subject matter are left unrepealed or conflicting, so that the House may have at its command the materials which will enable it to deal properly with the bill." The report proceeds: "The powers of both Houses, and of all members of each House, would remain inviolate; but assistance would be provided for them, as well in advising on the effect of bills at the time of their introduction, as in watching them in their progress through Parliament, and keeping them in harmony with the whole law. The labour and anxiety

of all members of Parliament would thus be materially relieved, and the legislation of the country improved. A great saving of time would also be effected, and discussions which now arise, and amendments which it is now necessary to introduce in the various stages of the bill, would often be avoided."

Of course, it would not be proper to shift upon a person having no voice in the legislation the responsibility which the Legislature or the government of the day must assume, of seeing that the legislation is within the legislative powers of the Legislature, and does not interfere with the pre-existing law beyond what is the intention of the measure or the requirements of the public. The attempt to place a great degree of responsibility upon such a Board or officer, with regard to the supervision of bills passing through Parliament and the consequent difficulty of defining this responsibility without rendering the Legislature subordinate to such officer or Board, seem to have been the main reasons why the suggestion of the Statute Commissioners was never adopted, although it met with very general approval. With us the same reasoning would, of course, be applicable against the delegation by the Legislature of any of its functions. Still, as we have said, the usefulness of the Law Clerk's department would, it seems to us, be very much increased if it were converted into a department of easy access, to which reference might at any time be made as to the state of the statute law on any subject, so far as it appears upon the face of the statute book, or has been further ascertained by judicial decision.

The modification required in the present department would be slight. The main duties to be performed would be :—

1. To keep a record of the effect of every Act upon preceding Acts, and the law generally.

2. To keep a record of all judicial decisions or comments, placing a construction upon, and pointing out ambiguities of the statutes, or suggesting amendments of the law. By such means defective legislation, such as we referred to in our last number, and have in many previous numbers called attention to, would be at once discovered, and might be speedily remedied.

3. The duties of the department should also properly extend to the preventing the occurrence of such errors, by the revision of bills as to matters of substance, as well as of form, while they are passing through their various stages in the House.

A great champion of legal reform in England, Lord Westbury, in the course of one of his greatest speeches on the subject, in the House of Lords, said : "You have no persons to assist you who are trained or educated in the great work of legislative composition. But legislative composition is one of the most difficult things that can be conceived. When you address yourselves to a new statute without having considered the general principle of the proposed measure, the bill is subjected to the process of Committee, and there it constantly happens that things are grafted upon a statute under mis-conception and at variance altogether from the original conception of the framer. Your new Acts are patches on an old garment. You provide for the emergency, but you pay not the least regard to the question whether the piece you put into the old garment suits it or not."

Instances of this in our statutes are innumerable, but might often be avoided, if there were a department or an officer to whom committees or individual members might, while a bill is passing through the House, refer for advice and assistance, with regard not only to the substance of the bill but also to its form and phraseology.

4. The clerical correctness of the Acts in their final shape, should also be attended to by the department; as well as the preparation of an index, which would show something more than the titles of the various Acts.

The title of an Act affords, not unfrequently, very little indication as to its contents. A person unskilled in the present mode of entitling and indexing Acts would pass over "*An Act respecting the operation of the Statutes*," 38 Vict., c. 4, (O), in a search for the procedure in cases of summary convictions before Justices of the Peace, and in looking for 36 Vict., c. 50, (D), which alters the punishment annexed to the crime of rape, would probably turn last, if at all, to the word "Offences" in the index. The index to the old Consolidated Statutes is probably the worst that mortal man ever conceived; but the Secretary of the Commission, and not a departmental officer, was, we believe, responsible for that.

The prolixity of statutes is an ancient grievance. Centuries ago Edward VI expressed a wish that "the superfluous and tedious statutes might be brought into one sum together and made more plain and short to the intent that men might better understand them." Lord Coke in no less severe terms says, in the preface to part 2nd of his reports, that a large proportion of the difficult points which come before the courts arise "upon Acts of Parliament overladen with provisos and additions, and many times on a sudden, penned or corrected by men of none or very little judgment in law." And again: "If Acts of Parliament were, after the old fashion penned, and by such only as perfectly knew what the Common Law was before the making of any Act of Parliament concerning that matter, as also how far forth former Statutes had provided remedy for former mischiefs and defects discovered by experience, then should very few questions in law arise, and the learned should not so often and so much perplex their heads to make atonement and peace by construction of law between insensible and disagreeing words, sentences and provisos, as they now do." Of late years these evils have, in this country, been to a great extent removed, and men draw their acts more nearly in the language in which they write their letters; and if occasionally we light upon an Act couched in the phraseology miscalled "parliamentary shorthand" we may be sure that it is the work of an unprofessional hand, while the tersest and clearest Acts will invariably be found to have been drawn by a professional man who sees no virtue in a multitude of "whereases," "aforesaids" or "notwithstandings."

The advantage of simplicity and uniformity in the law, can not be over-estimated, and the influence of such a department as we have endeavoured to describe in the direction of formal propriety in our statute book, would be very great. Again all must concede that if a clear and compendious statement of the law were always at hand, litigation would be less frequent, decisions more speedily given, jurisdiction more readily entrusted to local and inferior tribunals, and the expense of obtaining justice diminished. A succinct body of the statute law, which we have endeavoured to show might, by some such scheme as the one suggested, be constantly published, would very materially conduce to these most desirable results, while it would form a round in the long ladder to that legal millennium, the Age of an English Code.

THE following is the report of the Commissioners, as presented to His Honour the Lieutenant-Governor:

The Commissioners appointed for the Consolidation and Revision of the Statutes affecting the

Province of Ontario have the honour to report as follows :—

We regret to have to report that it has been found impossible to complete a draft of the whole of the work entrusted to us in time to enable your Honour to submit it to the Legislative Assembly at its present Session.

Apart from the special difficulties which attend the work, and which were alluded to in our previous Report, the body of Statutes to be examined has proved larger, and the labour of arrangement and revision greater than we anticipated.

We have, however, considerable progress to report.

At the date of our previous Report we had only completed the necessary preliminary examination of the Statutes. Since that date the actual work of consolidating the Acts within the legislative authority of the Legislature of Ontario has been continuously proceeded with ; all those Acts have been digested and arranged in manuscript under appropriate titles, and are now undergoing a thorough revision while passing through the press. A copy of the printed draft, so far as completed, accompanies the present Report.

The Statutes of the late Province of Canada not within the legislative authority of the Provincial Legislature, together with the Statutes of the Dominion Parliament affecting Ontario, have been classified according to their subjects, and about a third part of these has been printed, with the addition of notes indicating, as far as possible, the effect upon each Act of subsequent legislation, and with such other annotations as appeared to conduce most to convenience of reference.

Such of the Imperial Acts affecting Ontario as it was considered advantageous to print, have been collected, and printed in chronological order, and, will be submitted to your Honour.

In the course of the revision of the Acts within the authority of the Provincial Legislature, a large number of incongruities have presented themselves. Many of these are due to the peculiar nature of the Statute law affecting this Province, consisting as it does in a great measure of enactments passed under a constitution which no longer exists, and having application within a territory of which the present Province of Ontario forms only a part.

We have considered that the scope of our authority justified us in altering the form of most of these enactments so as to bring them into harmony with the new constitution of the Province or the plain intention of the Legislature. Some of them, however, which we did not consider ourselves authorized to deal with without the assistance of legislation, are mentioned in the subjoined schedule, together with some amendments which have suggested themselves.

When the work of revision is further advanced, we may be able to suggest other amendments, and possibly of a more substantial character ; but it has been deemed inadvisable to hurry through the press a work of so much importance without weighing more carefully than we have yet done many of the numerous questions involved, and considering the direction in which amendments might be made with advantage.

One other matter appears to us to require a few remarks.

Provisions trenching upon, if not wholly within, the subject of "Criminal Law," are, of course, to be found in many of the Acts of the late Province of Canada, which are in other respects within the exclusive legislative powers of the Provincial Legislature, and therefore have reference to matters with which the Dominion Parliament could not be called upon to deal. The provisions referred to are designed to carry the particular Act into effectual execution. The natural place for such provisions would therefore be in the Act which they are to assist in carrying out, but if they were so placed, some auxiliary legislation by the Dominion would then be required.

In the present only partially completed state of the work of revision, we are not in a position to lay before your Honour a complete list of such provisions, and to furnish one or two instances would answer no useful purpose. In view, however, of the desirability of defining sharply the line between the subjects for legislation by the Dominion and the Province respectively, we would recommend, if application is made to the Dominion Parliament, that it be for such legislation as will tend to separate once for all the enactments now in force in this Province according to the distribution made by the British North America Act of the legislative powers, and to exclude from the Provincial Statute Book all provisions which would be in form enactments of the Provincial Legislature, but would owe their legal validity to a confirmatory enactment of the Dominion Parliament.

LAW SOCIETY.

Michaelmas Term, 1875.

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

Monday, 18th November.

The several gentlemen whose names appear in the usual lists were called to the Bar and received certificates of fitness.

The Secretary was directed to give notice for the last Friday of this Term of the election of two Benchers to fill the vacancies created by the elevation to the Bench of R. A. Harrison, Esq., Q.C., and of Thomas Moss, Esq., Q.C.

Tuesday, 16th November.

The abstract of balance sheet for the third quarter of 1875 was laid on the table.

The Treasurer reported that the Government had paid off four thousand dollars of Canada debentures, six per cent. held by the Society, and that the amount had been placed on special deposit at the Bank of Toronto at 5 per cent.

Ordered, that the sum placed on special deposit be increased to twenty thousand dollars.

The Report of the Examining Committee was received and adopted.

Ordered, that Mr. Rordans be paid the sum of one hundred dollars as a subscription to the new edition of his Law List, and that twelve copies be taken for the library, the subscription to be paid when the work is completed.

The Report of the Legal Education Committee was adopted.

Resolved, that the petition and bill reported by the Special Committee for the admission of barristers and attorneys, and the establishment of a benevolent fund, and the amendment of the law relating to the election of Benchers be adopted, and that the same be entrusted to Mr. Hodgins to present to the Legislature.

Ordered, that Mr. Evans be paid the usual fee of fifty dollars as Examiner for this term, and be appointed Examiner for next term.

Resolved, that Mr. Berthon be employed to paint a portrait of Chief Justice Harrison in the usual form, and also a half-length picture of Mr. Treasurer.

Saturday, 20th November.

Mr. Britton took his seat as a Bencher.

The Examining Committee for next term were appointed.

Mr. Irving was appointed a member of the Library Committee in place of Mr. Harrison.

A letter received from C. Robinson, Esq., Q.C., Editor-in-chief of the Reports, was ordered to be transmitted to J. D. Armour, Esq., Q.C., to be reported on on the last Friday of this term.

A communication received from J. J. Kingsmill, Esq., County Judge of Bruce and Chairman of the Trustees of the Local Law Library, for a gift or loan of books for the Library, was referred to the Committee.

Friday, 3rd December.

A Special Committee, consisting of Messrs. Armour, Hodgins and McCarthy, was appointed to consider the subject of the reports and reporting, the report of such Committee to be considered in Convocation on the last Tuesday in December, copies having been previously sent to each Bencher.

A communication from Mr. O'Brien, submitted by Mr. Armour, was referred to the same Committee.

Hector Cameron, Esq., Q.C., was elected a Bencher in the place of the Hon. the Chief Justice of Ontario.

F. Osler, Esq., was elected a Bencher in the place of Mr. Justice Moss.

The report of the Legal Education

Committee on the appointment of Lecturers was received and to be considered on the last Tuesday in December.

The Treasurer reported the result of the Scholarship Examination.

The Treasurer was requested to communicate with the Lecturers on the subject of their positions as Lecturers after the first of January, 1876.

The report of the Library Committee was received and adopted.

The petition of Mr. Locke was granted.

The petition of Mr. A. R. Lewis was refused.

Mr. J. C. Cooper was granted a fortnight's leave of absence and a gratuity of twenty-five dollars.

Mr. Martin gave notice, for the 28th inst., of a motion that the report of the Legal Education Committee shall apply to the Reporters as well as the Lecturers.

Resolved, that the thanks of the Convocation be given to Mr. Molloy for his presentation of autographs of distinguished statesmen to the Law Society, and for the interesting and instructive address with which he accompanied the presentation.

The petition of Mr. Mahaffy was granted.

Mr. Sinclair gave notice, for the 28th instant, of a motion on the subject of amendments of Administration of Justice Act.

Messrs. Hector Cameron and Osler were appointed to act on Committees of which Messrs. Harrison and Moss were respectively members.

Tuesday, 28th December.

The petition of Mr. J. A. Morton was granted.

The Secretary was directed to send a copy of the letter received from the Chairman of the Finance Committee on the subject of the drainage of the Hall to the Public Works Department.

The reports of the Special Committee on Reporting were presented by the Chairman, J. D. Armour, Esq., Q.C.

The report on stenographic reporting was adopted and the Special Committee reappointed to communicate with the Attorney-General on the subject, with full power to accept any arrangement proposed by the Government, with which they shall be satisfied unanimously.

The further consideration of the report of the Committee on General Reporting postponed until next term.

Resolved, that the present Examiners be continued until next Trinity Term, and that the report of the Legal Education Committee, as to advertising for applications when vacancies occur in the office of Examiner, be adopted and extended also to applications for the office of Reporter.

Ordered, that the sum of thirty dollars be paid on the order of Thos. Hodgins, Esq., to the Short-hand Reporters Association.

ACTS OF THE PRESENT ONTARIO LEGISLATURE.

The following Acts of the present session will be in force shortly, and will be of interest to our readers.

An Act to amend the Law of Vendor and Purchaser, and to simplify Titles.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. In the completion of any contract of sale of land made after the passing of this Act, the rights and obligations of vendors shall be regulated by the following rules (but subject to any stipulation in such contracts to the contrary), namely:—

First. Recitals, statements, and descriptions of facts, matters and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations twenty years old at the date of the contract, shall, unless and except so far as they

shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Second. Registered memorials of discharged mortgages shall be sufficient evidence of the mortgages without the production of the mortgages themselves, unless and except so far as such memorials shall be proved to be inaccurate; and the vendor shall not be bound to produce the mortgages unless they appear to be in his possession or power.

Third. In case of registered memorials twenty years old, of other instruments, if the memorials purport to be executed by the grantor, or, in other cases, if possession has been consistent with the registered title, the memorials shall be sufficient evidence without the production of the instruments to which the memorials relate, except so far as such memorials shall be proved to be inaccurate; the vendor shall not be bound to produce the original instruments unless they appear to be in his possession or power, and the memorials shall be presumed to contain all the material contents of the instruments to which they relate.

Fourth. Where a registered deed of conveyance acknowledges payment of the consideration money, such acknowledgment shall be sufficient evidence of payment except so far as such acknowledgment shall be proved to be inaccurate.

Fifth. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title, shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

2. Trustees, who are either vendors or purchasers, may sell or buy without excluding the application of the first section of this Act.

3. A vendor or purchaser of real or leasehold estate in Ontario, or their representatives respectively, may at any time or times, and from time to time apply in a summary way to the Court of Chancery, or a judge thereof, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract); and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incidental to the application shall be borne and paid.

4. In proceedings in Chancery to quiet a title it shall not be necessary to produce any evidence which, by the first section of this Act, is dispensed with as between vendor and purchaser, nor to produce or account for the originals of any registered deeds, documents or instruments, unless where the officer or judge before whom the investigation is had shall otherwise direct.

5. Upon the death of a bare trustee of any corporeal or incorporeal hereditament, of which such trustee was seized in fee simple, such hereditaments shall vest in the legal personal representative, from time to time, of such trustee.

6. Where any freehold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a *feme sole*, and without her husband joining in the conveyance.

7. In suits at law or in equity, it shall not be necessary to produce any evidence which, by the first section of this Act, is dispensed with as between vendor and purchaser; and the evidence therein declared to be sufficient as between vendor and purchaser shall be *primâ facie* sufficient for the purposes of such suits.

An Act to amend the Law respecting the Law Society.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The Benchers of the Law Society may from time to time make all necessary rules, regulations, and by-laws, and dispense therewith from time to time, to meet the special circumstances of any special case respecting the admission of students of law, the periods and conditions of study, the call or admission of barristers to practice the law, and all other matters relating to the interior discipline and honour of the members of the Bar.

2. The said Benchers of the Law Society from time to time may also make all necessary rules, regulations, and by-laws and dispense therewith from time to time, to meet the special circumstances of any special case respecting the service of articled clerks, the period and conditions of such service, and the admission of attorneys or solicitors to practice in the Courts, and all other matters relating to the interior discipline and practice of such attorneys, solicitors, and articled clerks.

3. It shall not be necessary for any attorney or solicitor to obtain from the Clerks of the Courts of Queen's Bench, or Common Pleas, or Registrar in Chancery, certificates to practise as such attorneys or solicitors, but such certificates shall hereafter be issued by the Secretary of the Law Society, under the seal of the said Society, according to the list of names appearing in the copy of the roll of attorneys and solicitors of the respective Courts, certified to the said Secretary by the Clerks of the Crown and Pleas and Registrar in Chancery, under section fifty of chapter thirty-five of the Consolidated Statutes for Upper Canada; and the said Law Society shall determine what fees shall be payable for such certificates, and the certificates so issued shall be, and shall be construed to be, the certificates heretofore authorized by law.

4. The said Benchers of the Law Society may, by by-law, establish a fund for the benefit of the widows and orphans of barristers, attorneys, and solicitors, and of persons who have been such, to be called the Law Benevolent Fund, and may make all necessary rules and regulations for the management and investment of the said fund, and the terms of subscription and appropriation thereof, and the conditions under which the widows and orphans of such persons shall be entitled to share in the said fund.

5. The sixth section of the Act passed in the session held in the twenty-ninth and thirtieth years of the reign of Her present Majesty, chaptered forty-nine, entitled, "An Act to amend the Act respecting Attorneys-at-Law," is hereby amended by inserting, after the words "Common Pleas" in the second line of said section, the words "or in the County Courts."

6. All inconsistent enactments are here by repealed, but nothing in this Act shall interfere with the present practice of the Courts as to the admission of attorneys or solicitors, nor with their jurisdiction over them as officers of such Courts.

7. The said Benchers of the Law Society may appoint such officers and servants as may be necessary, for the management of the business of the said Law Society.

8. The Attorney-General of Canada for the time being and every person who shall have held that office, if a member of the Bar of Ontario, shall be *ex-officio* a Bencher of the said Law Society.

9. Whereas, certain petitions have been presented to the Legislature of this Province during its present session, praying for special Acts of Parliament for the admission of the petitioners to practice as barristers or attorneys and solicitors, Be it enacted that it may and shall be lawful for the said Law Society in their discretion, upon payment of the usual fees therefor, to call to the Bar as barristers, or admit to practice as attorneys and solicitors, such of the said petitioners as have so petitioned, upon proper proof of the allegations in said petitions and upon their passing the usual final examination prescribed by the rules of the said Law Society for barristers or attorneys and solicitors, provided they come within the classes of cases in which the Legislature of this Province has heretofore authorized, by special Acts of Parliament, the admission of barristers, or attorneys and solicitors.

SELECTIONS.

GRAND JURIES AND THE PLEAS OF CRIMINALS.

The cost of prosecuting and punishing those idle and dissolute members of the community who make up the criminal classes is a large item in our national expenditure; and the loss and inconvenience which they inflict upon individuals who are called upon to give evidence in prosecutions against them are considerable. Anything, therefore, which is capable of diminishing one or more of the evils in

question is well worthy of attention. And, since we are satisfied that the administration of our criminal law at Assizes and Sessions can be made less expensive to the State, more convenient to witnesses and others engaged in prosecutions, and more effective for the conviction of criminals, by means of certain simple changes of procedure, we do not hesitate to submit our ideas on the subject for the consideration of our readers. Some of them are doubtless well acquainted with the administration of our criminal law in all its details; while others have only that general information on the subject which can be picked up by serving on juries, giving evidence in trials, or watching proceedings in the courts. It is probable, however, that the attention of few of them has been directed to the various steps by which criminals are brought to justice, with special reference to their bearing upon the convenience of persons concerned as witnesses, and upon the amount of this branch of our national expenditure. We shall, therefore, describe such of them as directly affect the question before us; and, in doing so, we shall restrict ourselves to a description of what takes place generally, and shall not trouble our readers with an account of criminal law procedure in exceptional cases.

When a man is accused of a crime, he is taken before a magistrate, who hears the evidence against him, and then, according to circumstances, either dismisses the case, deals witn it himself, or commits the prisoner for trial at some assizes or sessions which will shortly be held in the neighbourhood. When a prisoner is so committed, the evidence against him is taken down in writing; the written reports of their evidence are read over to the witnesses, and the papers are duly signed by them and by the committing magistrate, and are sent to the assizes or sessions at which the trial is to take place. These written reports of the evidence given on the committals of prisoners are called "depositions," and we shall have occasion to refer to them again. When the day has arrived on which the trials of prisoners at the Assizes or Sessions are to begin, the Grand Jury appear in Court and receive their charge, in which any cases likely to present difficulties are usually mentioned, and in which information and advice are given as to the proper method of dealing with them. At assizes the charge is given by the judge who presides in the Crown Court; at county sessions, it is given by the chairman of the magistrates; and at city or borough sessions, by the Recorder. When the Grand Jury have been charged, they retire to the room set apart for their use, and begin to consider the Bills preferred against the prisoners who have been committed for trial at the assizes or sessions at which they are acting. It is their duty to examine the Bill against each prisoner, and to determine whether there is a *prima facie* case against him, which he should be called upon to answer. To enable them to do this, they have power to call and to examine the witnesses who are in readiness to give evidence in support of the charge.

The prisoners cannot be called upon to plead, until true Bills have been found against them; and the court is, therefore, obliged to wait until some Bills have been found before it can proceed with the trials. When a batch of true Bills has been brought into court by the Grand Jury, the prisoners against whom they have been found are arraigned; the charges against them are read over, and they are called upon to plead.

Those of them who plead guilty are, if they are old offenders, then called upon to plead to counts of the indictments which charge previous convictions. And if a prisoner, against whom this charge is made, deny that he has been previously convicted as alleged, the jury are sworn to try the question; the necessary documentary evidence of the conviction is produced, and a warder from the prison where he was confined pursuant to it, usually gives evidence of his identity, which is considered conclusive by them. When the pleas have been taken, those prisoners who have pleaded guilty are brought forward and sentenced; and the witnesses, who have held themselves in readiness to give evidence against them, are paid, and allowed to go to their homes.

The prisoners who have pleaded not guilty to the principal charges are then tried in their proper order; and those of them who are convicted, and against whom previous convictions are charged in the indictments, are then called upon to plead to the counts containing the charges in question. If any of them deny that

they have been previously convicted, the question is tried, as in the case of those who took the same course after pleading guilty to the principal charges. As each prisoner is convicted, he is sentenced,and the witnesses against him are paid and allowed to go away.

We have now given a short account of the procedure in our Criminal Courts, which will be sufficient to enable our readers to understand the suggestions for its amendment which we wish to submit to them. It will be observed that the Grand Jury begin their deliberations on the first day of the Assizes or Sessions at which the prisoners, against whom they find true Bills, are to be tried; and that they have power to call and to examine witnesses.

It will also be observed, that when they have brought in a true Bill against any prisoner, he may be called to plead, and may be put upon his trial at once. As a general rule, Grand Juries only call some of the witnesses in support of each Bill before them; and, in cases in which true Bills are found, and the prisoners plead guilty to the charges against them, none of the witnesses are called; unless special circumstances make the presiding judge, recorder, or magistrate, desire to question them before passing sentence. Our present procedure, however, compels the persons in charge of prosecutions to bring all the witnesses, against each of the prisoners in the calendar, to the town at which the assizes or sessions are held, on the earliest day on which the Bills in support of which they may be called upon to appear can be taken up by the Grand Jury. It also obliges them to keep them there, and to have them in readiness to give evidence, from that time, till the cases in which they are concerned are finally disposed of. All these witnesses are paid so much a day during the time they are in attendance; and their travelling expenses, if any, are also repaid to them. The money thus disbursed is, in the first instance, paid by the county treasurers, in respect of witnesses appearing at assizes and county sessions; and by the city or borough treasurers, in respect of witnesses appearing at city and borough sessions. It is, however, ultimately repaid to these local treasurers by the Treasury, out of the Consolidated Fund.

It is clear that the procedure which we have described is both extravagantly wasteful of public money, and unnecessarily inconvenient to individuals who have the misfortune to be summoned as witnesses in criminal cases. Private citizens are brought away from their ordinary occupations, and are kept in forced idleness about our criminal courts, and, after being subjected to great inconvenience and loss, are frequently told they are at liberty to go home, as their evidence will not be required, the prisoners against whom they were ready to appear having pleaded guilty. Warders of prisoners are often brought from distant parts of the country to be in readiness to give evidence as to previous convictions, which all persons, who are acquainted with proceedings in our criminal courts know perfectly well are generally admitted, almost as a matter of course, by the prisoners against whom they are charged. These public servants are brought to the towns where our assizes and sessions are held at great expense to the State. The indirect loss occasioned by our present procedure is also considerable; for the warders in question are withdrawn from the discharge of their regular duties, and are sometimes kept loitering about our courts for two or three days. The mere fact that our present procedure compels persons in charge of prosecutions to bring witnesses against prisoners who plead *guilty*, as well as against those who plead *not guilty*, and are consequently tried, should be sufficient to cause us to review the administration of our Criminal Law, in order to see whether it may not be made more convenient to individuals, and less expensive to the State.

We shall now enter into the details of a proposed procedure under which the attendance of witnesses in the cases in which prisoners pleaded *guilty* would be, generally, unnecessary; while the efficiency of the administration of our Criminal Law would,at the same time, be increased. The power of Grand Juries to call and to examine witnesses in support of the Bills before them, and our practice of taking the pleas of criminals, *after* the commencement of the assizes or sessions at which they are to be tried, are the joint causes of the expenditure of public money which we consider unnecessary and wasteful, and of the other evils which we dssire to remedy. These, therefore, are the points

to which we must direct our attention; and it is evident that if we would effect the saving contemplated, and remedy the evils in question, we must alter our practice with respect to Grand Juries and with respect to the time of taking pleas.

We must either abolish Grand Juries, or deprive them of the power of calling and examining witnesses.

And we must call upon our criminals to plead a day or two before the commencement of the assizes or sessions at which they are to be tried; and we must then summon those witnesses only whose attendance is absolutely necessary, namely, the witnesses against those prisoners who plead *not guilty*, and who consequently have to be tried. Can we make the changes indicated, without being unduly harsh to our criminals, and without weakening the efficiency of the administration of our Criminal Law? We think we can, and we think the necessary changes of procedure can be made easily.

We will first consider the change which should be made with respect to Grand Juries. The Grand Jury is a very ancient institution. Its primitive constitution is described in the laws of King Ethelred II.* (A.D. 978-1016); and, we believe, English gentlemen have periodically met together as Grand Jurymen from that time to the present. We will not hesitate to confess that we are in favour of the abolition of Grand Juries. We think it prudent, however, to make their abolition an alternative proposition; for we know that some people have great veneration for them, and consider them bulwarks of our liberties.

In days when our judges were creatures of the Crown, and jurymen were ignorant, and, in cases in which it was a party, were liable to be punished if they gave honest verdicts, Grand Juries were, no doubt, great safe guards to the people. There was some chance that the collective wisdom and independence of the gentlemen who were summoned on them, would protect the liberty of the subject, and prevent the strong from opressing the weak.

Grand Juries have, no doubt, done good service in the past, and we will not venture to say that they are absolutely useless now. We think, however, that they have ceased to be necessary; that they sometimes cause a failure of justice; and that they may be abolished without danger to the liberties of the people.

Our judges, recorders and chairmen of magistrates at Quarter Sessions, are no longer under the influence of the Crown; and though our judges still, nominally, sit as its representatives, in reality they sit as representatives of the Nation, to preside over the administration of justice on behalf of the people at large.

They carefully consider the evidence against each of the prisoners tried before them, and, if any case is not made out by the prosecution, they declare that there is no evidence to go to the jury, and direct an acquittal. If, therefore, Grand Juries were abolished, all the protection which is fairly due to prisoners who are innocent of the charges made against them, would be given by the judges, recorders, and chairmen of magistrates who preside at Assizes and Sessions. In such cases, they would direct acquittals, and since they would do this after all the evidence had been given in open court, we think justice would be less likely to fail than it is at present, when bills are thrown out by grand jurymen, who have not generally had any legal training, and who have not the same facilities for sifting the evidence adduced.

It is also worthy of consideration, that common jurymen are now better educated than grand jurymen were a few centuries ago; and that our free and vigilant press, and our parliamentary government, make oppression, under cover of criminal proceedings, almost an impossibility. We think, therefore, that the services of Grand Juries might safely be dispensed with, and that their abolition would be advantageous to the State. If, however, the people will not submit to their abolition, we can retain them, and still effect the objects we have in view.

We have seen that the only duty which

* "This is the ordinance which King Ethelred and his Witan ordained as 'frith-bot' for the whole nation, at Woodstock, in the land of the Mercians, according to the law of the English." III. cap. 3. . . . "And that a gemôt be held in every wapontake; and the xii. senior thegns go out, and the reeve with them, and swear on the relic which is given them in hand, that they will accuse no innocent man, nor conceal any guilty one."—*Thorpe's Ancient Laws and Institutes of the Anglo-Saxons.*

they have to perform, with respect to prisoners, is to ascertain whether there are *primâ facie* cases against them, which they should be called upon to answer. It is clear, that all the information which is necessary to enable them to do this can generally be obtained by reading the depositions. Sometimes, however, additional evidence turns up after a prisoner has been committed for trial. In such cases, the additional evidence in question might be taken by a magistrate in the presence of the prisoner, and might be committed to writing, duly signed by the witness and by the magistrate who took it, and attached to the depositions. If this were done Grand Juries would, in all cases, be able to obtain the information which they required, by reading the depositions and the additional evidence, if any, attached to them, together with any documents referred to. We are aware that depositions are not always taken as carefully as they ought to be. There is no reason, however, why they should not be carefully and accurately taken in all cases. We know that it is the duty of the officials concerned to do so, and we cannot admit the fact that a few of them discharge the duty in question in a careless and slovenly manner, as an argument of any weight against the change of procedure which we propose.

Moreover, short-hand writing has now been brought to such perfection, that any possible objection, based upon the inaccuracy of depositions, can easily be surmounted by providing that they shall contain verbatim reports of the evidence given on the committals of prisoners. This would necessitate some simple changes of procedure before the committing magistrates, into the details of which we shall not enter here. It would also cause some extra expense. We do not, however, think this method of taking depositions would be at all necessary; but even if it were, we have no doubt that, after paying the extra expense in question, the State would still be a considerable gainer by changes which we recommend.

We think, therefore, if Grand Juries are not abolished, they should be deprived of the power of calling and examining witnesses, and should be restricted to the consideration of the depositions and other documents, if any, which we have mentioned. In addition to the saving of public money which we contemplate, we think the change of procedure proposed would, in some cases, prevent a failure of justice. The depositions are taken when the facts sworn to by the witnesses are fresh in their memories, and before the friends of the prisoners have had time to tamper with them. Witnesses who have been tampered with sometimes try to twist their evidence in favour of prisoners, even when it is given in open Court, and is bronght out by the questions of counsel whose intellects have been specially trained for the work. Such witnesses are much more likely to attempt to twist their evidence, and to succeed in giving false impressions, when they are examined in grand jury rooms, and have only the untrained intellects of grand jurymen to contend with.

Now, if we either abolish grand juries or restrict them to the consideration of the written evidence bearing upon the cases before them, we can easily avoid the necessity, which now exists, for summoning the witnesses against prisoners who plead *guilty*. In order to do this, we must appoint Commissioners, to receive the pleas of prisoners a day or two before the commencement of the Assizes or Sessions at which they are to be tried. If we abolish Grand Juries, the indictments must be made by virtue of the committals. And if the pleas of prisoners to be tried at Assizes be taken on the Commission Day, there will be time enough to summon the witnesses whose attendance is required. If we retain them, they will have to be charged, and, we think, the Commissioners in question might either be allowed to give the charges themselves, or might read charges which had been written, after reviewing the depositions by the judges, recorders, or chairmen of magistrates, who would preside at the trials. These Commissioners should sit in open Court, and should cause the prisoners to be brought forward and called upon to plead to the principal charges. They should then sit with closed doors to take the pleas to the counts charging previous convictions. They should have power to advise prisoners to plead not guilty, and even to enter pleas of not guilty for them in cases seeming to be involved in doubt or difficulty; and in such cases they should record what they had done. All the pleas should be duly recorded, and the prisoners

should be removed to await the day fixed for the trials. Prisoners appearing to be lunatic, or standing mute of malice when called upon to plead, should be remitted to be dealt with as they are at present. The witnesses against those prisoners who pleaded not guilty, or who did not plead before the Commissioners, for the reasons which we have mentioned, should receive notice to attend and give evidence at the trials of the prisoners, against whom they were required to appear. The witnesses against those prisoners who pleaded guilty should have no notice sent to them, unless the presiding judge, recorder, or magistrate desired to question them before passing sentence, when they should be summoned to appear at a particular time; and the fact of receiving no such notice or summons should discharge them from their obligation to be in readiness to give evidence.

At the commencement of the Assizes or Sessions to which they have been committed for trial, those prisoners who had pleaded guilty should be sentenced. Those who had not pleaded before the Commissioners should also be dealt with; and those of them found to have stood mute of malice should be punished for their contumacy. The trials of the prisoners who had pleaded not guilty should then be proceeded with in regular order.

We have now laid before our readers our plan for cheapening the administration of our Criminal Law. We cannot tell them the sum which the nation would be likely to save by adopting it. The kindness of the gentlemen in charge of the records at Bolton and at the Salford Hundred Prison has, however, enabled us to collect some information bearing upon the subject. During ten years, ending July 29th, 1870, the total number of prisoners called upon to plead at sessions for the borough of Bolton was 1,183. Of these, 459 pleaded guilty to the charges made against them; 492 pleaded not guilty, and were tried and convicted; and 232 pleaded not guilty, and were tried and acquitted. Our information respecting the pleas of prisoners at county sessions and at assizes is limited. We are able to state, however, how the prisoners pleaded at twelve sessions for the Hundred of Salford, held in the years 1869 and 1870, and also at six Manchester assizes, held during the same years. We can also tell our readers the number of prisoners, who either pleaded guilty or were convicted at these assizes and sessions, after having been previously convicted. At the twelve sessions in question the total number of prisoners called upon to plead was 718. Of these, 245 pleaded guilty to the charges made against them; 362 pleaded not guilty, and were tried and convicted; and 111 pleaded not guilty, and were tried and acquitted. Of those who either pleaded guilty or were convicted, 253 had been previously convicted, and they all pleaded guilty to the counts charging the previous convictions. At the six Manchester assizes which we have mentioned, the total number of prisoners called upon to plead was 382. Of these, 79 pleaded guilty to the charges made against them; 217 pleaded not guilty, and were tried and convicted, and 86 pleaded not guilty, and were tried and acquitted.

Of those who either pleaded guilty or were convicted, 82 were charged with having been previously convicted; 79 of these pleaded guilty to the counts charging the previous convictions, and 3 pleaded not guilty to them, but were found by the juries who tried them to have been previously convicted as alleged. If complete statistics were collected, respecting the pleas of criminals to counts charging previous convictions, it would be found that such charges are almost invariably admitted by them.

We believe our judges, recorders, and chairmen of magistrates, will agree with us, that the prisoners who plead not guilty to these counts do not reach one per cent. of the total number of prisoners against whom previous convictions are charged.

The statistics which we are able to put before our readers are not very recent. We merely use them, however, to show the average number of prisoners who plead guilty to the charges made against them at assizes and sessions; and, since there is no reason to suppose that the average practice of prisoners as to their pleas is variable, they are as valuable for the purpose for which alone we use them as they would have been if they had included the pleas of the last batch of prisoners arraigned.

Our readers are now in a position to form some estimate of the loss to the public, and of the inconvenience and loss

to private individuals, occasioned by our present method of administering this branch of our Criminal Law. They see, that a large proportion of the prisoners called upon to plead at Assizes and Sessions plead guilty to the principal charges against them; and that almost all of them plead guilty to the counts charging previous convictions.

And since we have shown how the attendance of witnesses against prisoners who take this course can be easily rendered unnecessary, we think we have made out a case for the amendment of our criminal law procedure which we have proposed. If it were so amended, both the State and individuals concerned as witnesses in criminal cases would be largely benefited, without occasioning any public inconvenience, or any injury to persons accused of crimes; who would merely be required to make up their minds as to their pleas a day or two earlier than they are called upon to do under our present procedure.—*Law Magazine.*

THE LATE SIR GEORGE ESSEX HONYMAN.

Great lawyers offer in their lives little to interest the general public, unless, like an Eldon or a Romilly, they make a prominent figure in politics, or leave their mark in Parliamentary history. It was not surprising, therefore, to find, last September, that when the newspapers had to record the death of Sir George Honyman, they had nothing more to say of him than that he was the son of one baronet, the nephew of a second, the brother of a third, with such other details as peerages and baronetages supply. But in the eyes of the profession which he long adorned, his memory calls for something more than this. The high position which he long occupied in its ranks gives his life an interest to the legal profession; and it should not be consigned to oblivion, even if he were held in less affectionate remembrance on account of his personal qualities.

The grandson of two Scotch judges (the Lord Justice Clerk, Lord Braxfield, and Sir William Honyman, Lord Armadale,) Sir George, from early boyhood, dreamed of following that thorny road which leads to the woolsack. Indeed, there is a family tradition that at the early age of ten or twelve he was already giving expression to these aspirations in verse. Nature had endowed him with some of the most solid, if not the most brilliant, gifts for a legal career. He was not a great orator, but he had a clear head, a keen, quick intellect, a memory of rare power and tenacity, and, above all, those habits of patient industry, of conscientious thoroughness and accuracy in all that he did, which are more precious than genius itself. On coming to London in 1838, at the age of nineteen, to enter upon the study of the law, he was introduced to the head of the well-known firm of Martineau, Malton and Trollope, and was received in that house as a pupil. Mr. Martineau was not long in discovering that he had in his office a man of no ordinary capacity, and offered to take him as an articled clerk without premium; but his pupil was ambitious, and the kind offer was not accepted. On leaving those eminent solicitors, at the end of two years, Mr. Honyman passed successively into the chambers of Sir Fitzroy Kelly, then a star of the first magnitude, and of Mr. Gibbons, the special pleader; and in 1832 he started in practice as a pleader.

It has been often and justly remarked, to the honour of the profession of the Bar, that its highest prizes are as accessible to men of the humblest origin as they are to those of the highest birth; but in this boast the fact is often overlooked, that the former have, in the *res angusta domi*, one very decided advantage over aristocratic competitors. The son of a ploughman or miner, of the artizan or tradesman, who attracts notice by remarkable talents, makes friends, in his upward progress through the social strata, among men who are in a position to push him forward, and who have a certain pride in their patronage. But the son of a peer or squire, of a bishop or general, is less likely to find among his comrades or his father's friends those important allies whose help is indispensable to his steps at the Bar. So it was with Mr. Honyman. His father, Sir Ord, was a soldier and a guardsman; his mother, the daughter of an admiral and country gentleman. He had no connection in the law or in

commerce. The only legal firm to whom he was known, great in chancery and conveyancying, had little or no common law business to give him. Notwithstanding his abilities and his learning then, the odds in the great game on which he had ventured long worked against him. For seven years it remained doubtful whether the world would ever discover how profound a lawyer was eating his head off in obscurity and neglect, in a small room in Pump Court. But the time was not wasted. It was devoted to reading; chiefly the Reports, old and new. What he read, he read slowly and carefully; and as time went on a great mass of legal learning was accumulated, digested, and engraved in his extraordinary memory. As an accomplished pleader, he was early master of all that astounding lore which was resuscitated by the "New Rules" of Hilary Term, 1834, and which now, happily, lies dead as well as buried in the volumes of Meeson and Welsby; but his favourite study was that branch which was eventually to raise him to distinction—commercial law.

At the end of seven years, however, he had made but little way as a pleader, and he determined to try his fortune at the Bar. It was a wise step; it was the turning point of his career. He was called in 1849, and on joining the Home Circuit at once attracted the attention both of the leaders of the Bar and of the Bench. It was impossible to converse with him on any legal topic without discovering, not only that he was deeply imbued with the general principles of law, and ready in their application, but that he possessed an acute and subtle intellect, and had at his command, to reinforce his reasoning, an overwhelming amount of book learning and knowledge of cases. It was soon felt that a man of unusual power had joined the circuit, and this impression spread from the Bar to the other branch of the profession. The result soon followed. The Home Circuit counted, at that time, in the crowd of its members, Sir Barnes Peacock, Mr. Baron Bramwell, the late Mr. Justice Willes, Mr. Justice Lush, and the late Chief Justice Bovill. Promotion soon removed the first three; some years later, the two others; and much of the business thus cast adrift found its way into Mr. Honyman's chambers. In 1853 he was one of the most rising men of the day; and thenceforth his career was marked with signal success. He soon became known as one of the first commercial lawyers of the Bar; and after he was appointed a Queen's Counsel in 1867, his reputation and his business in commercial law continued to increase year by year until his promotion to the Bench. When, in 1873, Lord Selborne offered Sir George (as he had become, in 1863, on the death of his father), a vacant seat in the Common Pleas, the choice was not only ratified, it had been anticipated, by the general voice of the profession, Indeed, it was not the first time that he had been designated by that voice for the Bench.

At the age of 54 he seemed to have a long career of distinction and usefulness before him; but, alas! such hopes were soon doomed to sad disappointment. Though he was apparently a strong man, the seeds of a fatal disease appear to have already taken root in his constitution. Hardly had he entered upon the second year of his judicial life, when he was struck down by paralysis as he was summing up a heavy cause at Camarthen. The stroke was slight, and it was thought for some time that, after a brief period of repose, he would be able to resume the duties of his office. But, after some months, it became but too evident that his health was shattered beyond all hope. Last February he sent in his resignation, and in a few months more death mercifully closed a life which could no longer be but one of suffering.

Sir George Honyman never had a seat in Parliament. It was not that he was indifferent to politics; on the contrary, he entered fully into the great constitutional and economical questions which divided parties in his time. But he viewed them, as he viewed other questions, without passion or partizanship; and he shrank from those professions of faith which the practical politician who hopes to represent a constituency must submit to make. He shrank still more from contact with "the man in the moon," and other irregularities which have not yet been quite rooted out of our electoral usages and customs; and he used to shrug his shoulders at the thought of all the hand-shaking before

the fight, and all the badgering after it, which the candidate undergoes in a popular constituency.

The late judge was a man of singularly attractive character. He was, in truth, a gentleman in all the senses of the word; in birth and education, in manner, and, above all, in heart; he was a genial companion; simple as a child, courteous and unaffected with all; how warm-hearted, how generous and sympathetic, how chivalrous and unselfish, can be known only to those who were most intimate with him. And he had one of those admirable tempers which throws a charm over all who come within its influence; calm to bear all the rubs of life with equanimity, though not cold enough to stifle the indignation of an honest nature at the sight of fraud or villainy, or to conceal disdain for brass when passing in triumphant circulation for a more precious metal. Such qualities won him no ordinary degree of affection.

In his family, and in the inner circle of his most intimate friends he was loved with well deserved devotion. Few men have enjoyed so wide a popularity at the Bar; among the young, for whom he always had a kindly word, as well as among his own contemporaries; and he had many touching marks during his illness of the esteem and regard in which he was held on the Bench. By his death the country lost an eminent lawyer, and the profession a conspicuous ornament; and both in the profession and out of it many a tear has fallen in secret on that grave which closed, not two months since, over one of the best and most loveable of human beings.—*Law Magazine.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

Metropolitan Building and Savings Society v. Rodden.

Ejectment—Defence for time—Striking out.

Ejectment on mortgage. Defendant appeared; but on examination under A. J. Act, 1873, he admitted the execution of the mortgage, and that the defence was merely for time. *Held*, that the appearance and defence could not be struck out on the authority of *McMaster* v. *Beattie*, 10 C. L. J. 103, as defendant was entitled to possession until plaintiff should prove his case.

[January 8, 1876—Mr. Dalton.]

In this case, title was claimed by the plaintiff by virtue of a mortgage, in the proviso for redemption of which default had been made. The defendant appeared, and defended for the whole of the lands claimed. He was subsequently examined under the Administration of Justice Act, when he admitted his execution of the mortgage and default in payment, and stated that he had no *bonâ fide* defence against the plaintiffs, and had only defended the action in order to gain time, and to enable certain other parties to realize their claims on the lands.

Application was thereupon made in Chambers to strike out the defendant's appearance and notice of defence, on the ground that this was a case in which the same principle would apply as in *McMaster* v. *Beattie*, 10 C. L. J. 103, and subsequent cases, where pleas pleaded merely for time, and admitted in a proceeding in the cause to be false in fact, were struck out, and leave given to enter final judgment.

Mr. Dalton.—I do not think I have power to grant anything which would assist the plaintiffs in the present case. It is true that similar applications have been granted occasionally, and probably no injustice has as yet been done in this way, but my opinion is that I have no jurisdiction in this matter. An equitable defence in ejectment might be struck out if proved to be false or embarrassing, but a defendant who appears has a right to remain in possession until the plaintiff proves his title, and his admissions under examination do not deprive him of this right.

Meehan v. Walsh.

Notice of trial—Amendment—A. J. Act, 1873.

Notice of trial was given by mistake for the 11th January instead of 10th January. The defendant did not appear to have been misled. *Held*, That the plaintiff might amend under the A. J. Act, 1873.

[January 10, 1876.—Mr. Dalton.]

Notice of trial had been served on January 3rd for the 11th instead of the 10th of the same month. A summons was obtained calling on the defendant to show cause why the notice should not be amended by changing the date to the 10th.

Murphy showed cause. This is not a case in which amendment should be allowed. A defendant would be justified in paying no attention to such a notice, and he should not therefore be forced to go to trial when he might not have made preparation, relying on his opponent's irregularity.

Mr. Keefer (Hodgins & Black), contra. It is shown that the plaintiff's attorney had made inquiry, and was under a *bona fide* belief that the Commission day was the 11th January. It was well known among the profession that the Assizes would commence about that time, and the defendant could not have been misled. The motion to amend had been made as soon as the plaintiff became aware of the mistake: *Graham* v. *Brennan*, 11 Irish L. R. App., p. 17.

Mr. Dalton remarked that in granting this and other applications of the same kind, which had been made lately, a new practice might seem to be instituted, but he thought this was a case in which the powers of amendment granted by the Administration of Justice Act might properly be exercised. Before the passing of that Act, no such application could have been granted. Now, however, it is enacted that no proceeding at law shall be defeated by any formal objection, and he, therefore, thought that he was justified in making this summons absolute. The proper county was named in the notice, it was correct in every respect except the date, and it was scarcely possible that it could have misled the defendant. Summons made absolute on payment by the plaintiff of the costs of the application.

IN THE FIRST DIVISION COURT OF THE COUNTY OF SIMCOE.

Bennett v. Vickers.

Express Company—Agents' powers and liabilities—"Collect on delivery"—Notice to consignor—Collection beyond Company's limits.

A parcel was left with an express company's agent, c.o.d. The consignee lived beyond the express company's limits. The parcel was received by the agent without objection and forwarded by him, and delivered to consignee without the sum due being collected: *Held*, that the company were liable.

The extent of the authority of an agent of an express company, and the liability of the latter under the circumstances set out in this case, discussed.

[Barrie, November 23, 1875.—Ardagh, J. J.]

The plaintiff claimed to recover from the defendant, a carrier of goods by express, the value of a parcel delivered to him to be carried to Bracebridge.

The plaintiff's case was as follows: About the 1st of February last, having received an order from one Gow, living at Bracebridge, for some goods, the plaintiff made up a parcel containing same, addressed to Gow, and marked C.O.D. With the parcel, and inserted underneath the string fastening the parcel, he sent a bill of the goods in an envelope, not closed up, also addressed to Gow. At the trial the plaintiff called his son (a grown-up lad), who detailed how he had on the day in question taken this parcel to the express office in Barrie, and, after some little delay—owing to the clerk whose duty it was to receive such parcels being otherwise engaged—delivered it to one Charles Edwards, a clerk in the office of Mr. Edwards, the defendant's agent. He called his (Edwards') attention to the bill accompanying it, and told him it was C.O.D.

For the defence, Charles Edwards, the clerk above named, was called, and admitted that he could not swear that the envelope alluded to was not there, and that though plaintiff's son, when delivering the parcel, may have said C.O.D., yet he did not point to the bill. He stated that the limits of defendant's delivery did not extend beyond Severn Bridge, where the line of the Northern Railway Company ended; that any parcels for delivery beyond that were handed by the defendant's agent there to the stage-driver, who carried them on to their destination. One Johnson was also called by the defendant. He stated that he had charge of the express business in the absence of the defendant's agent at Barrie; that they invariably refused to collect

sums payable on parcels marked C.O.D. beyond their limits, and that if the bill mentioned as sent with this parcel had been seen by him, he would have refused to collect it; that they had no agent at Bracebridge. Looking at the entry of the receipt, &c., in the proper book, made by him, and not seeing C.O.D. placed against it, he would say there had been no bill sent with the parcel; that though the parcel might have been marked C.O.D., yet if no bill had accompanied it, he would pay no attention to this direction, as unpaid parcels were often sent so marked without bills accompanying them. In that case, the letters C.O.D. would be supposed to be and be taken to mean a direction by the consignor to the defendant to collect his charges thereon for carriage; that Mr. Edwards had authority to make contracts for delivery within defendant's limits, but not beyond.

Ardagh, J. J.—I have no hesitation in saying, and it is not argued by defendant to the contrary, that if a contract were made with plaintiff to carry this parcel to Bracebridge, that is, beyond defendant's limits, defendant would be liable, unless he had given express notice to the plaintiff that he would not be liable after the goods had passed into the hands of another carrier. Companies acting as common carriers do constantly limit their liability in this way. The point, however, on which the defendant does rely is this, that Mr. Edwards, as agent for defendant, had only a limited authority, that is, authority to receive goods for delivery and collect moneys due on same within certain limits, and not beyond; that if he (Mr. Edwards) did make a contract to deliver or collect beyond the limits, it was in excess of his authority, and defendant is not liable.

No doubt the general rule is that a party dealing with an agent, and knowing him to be such, must make himself acquainted with the nature and extent of that agent's authority. There must be, however, some limit to this rule, and some reason in it. A person held out to be an agent must be presumed to have all needful powers to carry out the object of his agency; but if he goes out of his way, and does acts not so necessary, his principal will be exonerated. Now, here Mr. Edwards had authority of contract with third parties for the carriage and delivery of goods for reward, this being the chief object of defendant's business. The announcement of this business being "Vickers' Northern Express," and its headquarters being in Toronto, it might reasonably be supposed that the business has to be to the north of that city. Suppose a person at Toronto were to enter defendant's office there, and deliver a parcel for England to some clerk, who, in ignorance, received it, and on the discovery of this by some one in authority, or who knew better, this parcel was delivered over to some other company or carrier, who, in the course of their business, undertook the carriage of goods to England, it could not be argued that defendant would be liable in such a case after loss of this parcel by the second company, even though it was received by him in the manner mentioned, there being nothing in his advertised business to warrant any one assuming that he carried goods to England. In the present case, however, it may fairly be argued that plaintiff might reasonably presume that Bracebridge was within defendant's limits of carriage, and nothing is shown to have come to his knowledge whereby he had notice of the fact that it was not; and it is a fact that for the greater part of the distance between Barrie and Bracebridge the defendant does receive goods C.O.D., and does deliver them. It would then be only reasonable to expect that defendant's agent here, when required to book parcels beyond the limits, should, if he had no authority to do so, state the fact. It was something almost peculiarly within his own knowledge. His receiving a parcel to book for a certain point is something which, in itself, does not suggest to the consignor any inquiry as to the extent of the agent's authority, for he (the agent) is there for the very purpose of receiving and booking parcels, and it would be most natural for the sender to presume that the agent had such authority if the parcel was received without demur. The agent's receiving the parcel to deliver at Bracebridge without objection was tantamount to his answering in the affirmative the question: "Will you receive this parcel and deliver it at Bracebridge?" I observe that while Johnson states that Edwards had no authority to receive parcels to deliver beyond Severn Bridge, yet he did receive it for that purpose, but says that, had he known it to be C.O.D., he would not have received it, and that they invariably refuse to receive parcels, so marked, for delivery beyond their limits, thus leaving it to be inferred that they do receive them in such cases when not marked C.O.D.

While, then, I would be inclined to hold that if the agent had entered into a contract involving conditions unusual, or such as would not usually be supposed to form part of such a contract, the principal would not be liable, yet in this case I cannot see that the condition—for the breach of which the plaintiff now sues—was unusual or extraordinary. Receiving parcels to

transmit and deliver C.O.D. was part of the agent's authority. The difficulty in this case arises from the fact of the agent, as he swears, never having seen the bill accompanying the parcel. Had he done so, he would, he says, have refused to receive it. As, however, I must upon the evidence find that this bill was delivered at the agent's office, along with the parcel, and that this parcel was marked C.O.D., and that the clerk's attention was called to the fact that it was C.O.D., upon these facts, I must also find that the plaintiff has done all that he was called upon to do. The loss arises from some default or neglect on defendant's part. This being so, and the defendant's agent (as I find) having made the contract with plaintiff, can I allow the defendant now to evade the loss resulting directly from his act, and set up the plea that his agent has gone beyond his authority?

The defendant's objection, put in other words, is, that his agent had authority to make special contracts (for he admits receiving parcels to go beyond limits, but not C.O.D.); that on this occasion he did not make one of these; leaving the inference to be drawn that the agent, having chosen to make another contract, different from the special one he was authorized to make, the defendant was not liable. This I felt at the trial to be a grave objection, but still one to which I did not feel inclined to give effect. Had the plaintiff been in the habit of receiving from defendant's agent receipts in the shape of contracts whenever he deposited goods for transmission, it might be urged that he had notice of the extent of the agent's authority (assuming, for the sake of argument, that these contracts did show the extent of the authority). The plaintiff, however, swears, that he never did receive one of these contracts, consequently no notice to him is proved. But even if it was the custom of the agency to give these receipts, the plaintiff might fairly infer that, as the agent agreed to forward this parcel, he would have no objection to make out a written document embodying the contract, or to alter one of his printed ones to suit the changed terms. No evidence, however, was given at the trial to show that, even if one of these printed contracts ad been given to plaintiff, it contained any notice of the extent of the agent's authority.

The case of *Muschamp* v. *Lancaster and Preston Junction Railway*, 8 M. & W. 421, is the case constantly quoted where the liability of a railway company, which has connecting lines, for losses beyond their own lines, is the subject of dispute. Rolfe, B., there stated the law to the jury in this way: "That where a common carrier takes into his care a parcel directed to a particular place, and does not by his *positive agreement* limit his responsibility to a part only of the distance, that is *prima facie* evidence of an undertaking on his part to carry the parcel to the place to which it is directed, and the same rule applied although that place were beyond the limits within which he in general professed to carry on his trade as a carrier." If, then, it were a simple matter of liability by the defendant (apart from a question of agency altogether), I should, under the authority of this case, have to find for the plaintiff. The defendant has not protected himself by any positive agreement, as no written contract seems to have been entered into at all with the plaintiff, who had no notice of any such limitations or conditions (whatever they may be) as the printed receipt may show.

As to the question of the agent's authority, I think it was quite natural for the plaintiff to infer that it was within the scope of the agent's powers to receive the parcel for Bracebridge C.O.D., and that the defendant should be bound by his act and the loss arising therefrom.

Judgment for plaintiff.

QUEBEC REPORTS.

NOTES OF RECENT DECISIONS.

(*From the L. C. Jurist, Vol.* 19.)

INSOLVENCY.

Held—1. Although it be not proved that a party has traded for over three years, yet such party will be still considered a trader if her debts are unpaid, and will be liable to the provisions of the Insolvent Act of 1869. —*Buchanan* v. *McCormick*, 29.

2. A creditor of a debt of a non-commercial nature, can demand an assignment from a trader, under the Insolvent Act of 1869.—*Ib.*

3. The fact of the debt upon which a creditor bases his demand for an assignment being in litigation and disputed in the Superior Court, does not prevent that creditor from taking proceedings in Insolvency against his debtor founded upon the disputed debt.—*Ib.*

4. A judgment being appealed from, and then the defendant having declared that he did not object to execution going against him, and having given security for costs only in appeal, the creditor may base his demand for assignment upon such judgment.—*Ib.*

An assignee to an insolvent estate is not a judge within the meaning of article 176 of the Code of Civil Procedure, and therefore cannot be recused in the mode prescribed by the Code for the recusation of a judge. Proceedings to disqualify an assignee under the Insolvent Act of 1869, must be taken in the mode prescribed by sect. 137 of the Act. —*Mechanics Bank* v. *Brown*, 295.

Patents of Invention.

Held—That the mere importer of an invention, which has been patented for many years in the United States, by some other party, is not the inventor or discoverer thereof, within the meaning of "The Patent Act of 1869;" and a patent obtained by him under the said Act on the ground that he was the inventor or discoverer, is null and void. —*Woodruff* v. *Moseley*, 169.

Insurance—Warehouse Receipt.

Held—1. That goods held under a duly endorsed warehouse receipt, as collateral security for advances, may be properly and legally insured as being the property of the holder of such receipt, being the party who made the advances.—*Wilson* v. *Citizens' Insurance Company*, 175.

2. That, in an action for the recovery of the insurance of said goods, it is sufficient to establish that goods of the character and brand and of the quantity claimed were actually in the building where the goods were stored at the time of the insurance, and at the time the building and its contents were wholly burnt, without proving the actual identification of the goods described in the warehouse receipt.—*Ib.*

Election for Dominion—Place of Trial.

Held—That, where the order of the Judge fixing a trial under "The Dominion Controverted Election Act, 1874," omitted to specify the place of trial, no trial could be had, though notice of time and place under sec. 13 had been given to respondent, and he was present in Court.—*Ryan et al.* v. *Devlin*, 194.

Ships—Collision.

A steamship, after colliding with a sailing vessel, continued her course, and struck another sailing ship. *Held*, that the steamship, which had disregarded the rules of navigation before the first collision, could not plead the fault of the vessel first struck to a suit brought against her for the second collision.—*The Princess Alexandra*, 195.

Legislative Assembly—Jurisdiction as to Arrest.

Held—1. That the Legislative Assembly of the Province of Quebec has power to compel the attendance of witnesses before it, and may order a witness to be taken into custody by the sergeant-at-arms if he refuses to attend when summoned.—*Ex parte Dansereau*, 210.

2. The omission to state, in the Speaker's warrant of arrest, the grounds and reasons therefor, is not a fatal defect.—*Ib.*

3. The Quebec Statute, 33 Vict., cap. 5, is within the powers of the Local Legislature. —*Ib.*

Habeas Corpus — Discharge — Second Arrest.

Held—That a person who has been discharged from custody upon a writ of *habeas corpus*, cannot be arrested a second time for the same cause, or where no new or other cause of arrest is disclosed. And this principle was held to apply, though it appeared that the warrant was quashed on the first occasion by a Judge in Chambers, on grounds which, in a case precisely similar, were subsequently held by the Court to be insufficient. —*Ex parte Duvernay* and *Ex parte Cotté*, 248.

Common Carriers.

Held—That common carriers are responsible for damage caused by fire breaking out upon board of a steamboat, unless such fire was not attributable to their negligence; and the *onus probandi* is upon the carriers to account for the fire and prove that it did not arise from their fault.—*Canadian Navigation Company* v. *Hayes*, 269.

Stream—Floating Logs.

Held—That the public have a right of servitude over all streams, whether navigable or not, or floatable or not; and, therefore, a party erecting a dam across a river in such a manner as to obstruct a free passage of floating logs, is liable to such damage as the owner of the logs may suffer by such obstruction.—*McBean* v. *Carlisle*, 276.

CORRESPONDENCE.

Barristers and Attorneys by Act of Parliament.

To the Editor of The Canada Law Journal.

Sir,—The Bill introduced in the Local Parliament, entituled "An Act to enable the Law Society of Ontario to admit Emmanuel Thomas Essery as a barrister-at-law," shows the extent to which special legislation is invoked. All persons ought to undergo the necessary educational training, and incur the expense to prepare them for examination as to their possessing the necessary scholastic attainments, to pass the Law Society. Some of them afterwards attend lectures, keep terms, pass examinations, etc., but the applicant in this case comes forward with a petition setting up that special legislation should be restored to—not because he has ever

passed a matriculation examination, or that he has the necessary scholastic attainments, which it is considered barristers ought in some measure to possess—but that in Hilary Term, 1869—six years ago—he passed the examination prescribed for an attorney, and was then admitted to practice as an attorney and solicitor, and has ever since been actively and continuously engaged in the practice of his profession.

If these reasons are sufficient, there is only one step further which the public at large will soon find out and take, *i. e.*, open the profession to all comers on their complying with that which this gentleman asks to have done in his case, *i.e.*, "*passing the usual final examination* prescribed by the rules of the Law Society," without compliance with any requirements or provisions of law or other "rules and regulations in that behalf." If the legal educational test is the only one which is to be imposed on this gentleman, why may not all other persons be admitted on the same terms? What is the use of the matriculation of students and intermediate examinations? and why should they be subjected to the trouble and expense of attending at Toronto, if other persons, by an Act of Parliament, are allowed to stride over them all, and do, by a little importunity, that which it costs others much study and money to reach.

Yours truly,

Union.

[There is much in what our correspondent says; but he will see by reference to the Law Society Act of this session (*infra*, p. 41), that the case will now be dealt with by the Society.—*Eds. Law Journal.*]

REGULÆ GENERALES.

Michaelmas Term, 39 Vict.

1. Every rule nisi to rescind the order of a Judge or Clerk of the Court sitting in Chambers shall be set down to be heard on a Paper Day in Term, or on such other day as the Court may specially order.

2. It shall not hereafter be necessary to enlarge from one Term to another, any rule, demurrer or special case entered by the Master on the general list.

Osgoode Hall, Wednesday, Dec. 1st, 1875.

Michaelmas Term, 39 Vict.

It is ordered as follows:—

1. In all causes where the record is only entered for trial at the Court of Assize and Nisi Prius, it shall be deemed to be entered and to remain on the list of causes for trial until it is tried or otherwise disposed of either at the Court at or for which it is entered, or at a subsequent Court.

2. If any record entered for trial be not tried or disposed of at any particular Court of Assize and Nisi Prius, they shall, unless the Court otherwise order, be made remanets, and as such stand at the head of the list of causes for trial at the next ensuing Court, and so from Court to Court till tried or otherwise disposed of.

3. In the case of remanets no notice of trial or assessment shall be given or necessary.

4. The party entering the record for trial or assessment may countermand his notice of trial or assessment after the close of the first or any subsequent Court by giving a written notice of countermand to the opposite party and to the Clerk of the Court of Assize and Nisi Prius at least ten days before the ensuing Court.

5. A list of causes entered for trial shall on the first day of each Court of Assize and Nisi Prius, be posted up by the Clerk of the Court in some conspicuous place in or near the Court Room, there to remain during the whole time of each Court of Assize and Nisi Prius.

6. It shall be the duty of the Clerk of the Court, from time to time, as each cause on the list is tried or otherwise disposed of, to strike the same from the list or make other necessary entry as to the same.

Osgoode Hall, Dec. 4th, 1875.

BOOKS RECEIVED.

The Principles of Contract, at Law, and in Equity, by Frederick Pollock. London: Stevens & Sons, 1876.

The Law of Literature, by James Appleton Morgan. New York: James Cockroft & Co., 1876. R. Carswell, Toronto.

History of Trial by Jury, by William Forsyth, M. A., T. C., Cambridge. New edition, by James Appleton Morgan. New York: James Cockroft & Co., 1876. R. Carswell, Toronto.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Michaelmas Term, 39th Victoria.

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

No. 1342—Kenneth Goodman.
Thomas Horace McGuire.
George A. Radenhurst.
Edwin Hamilton Dickson.
Alexander Ferguson.
Dennis Ambrose O'Sullivan.

The above gentlemen were called in the order in which they entered the Society, and not in the order of merit.

The following gentlemen received Certificates of Fitness :

Thomas C. W. Haslett.
Angus John McColl.
Dennis Ambrose O'Sullivan.
Daniel Webster Clendenan.
George Whitfield Grote.
Charles M. Garvey.
Albert Romaine Lewis.

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

Graduates.

No. 2585—Goodwin Gibson, M.A.
John G. Gordon, B.A.
Walter W. Rutherford, B.A.
William A. Donald, B.A.
Thomas W. Crothers, B.A.
John B. Dow, B.A.
James A. M. Aikins, B.A.
William M. Reade, B.A.
Edmund L. Dickinson, B.A.
Charles W. Mortimer, B.A.

Junior Class.

Robert Hill Myers.
William Spencer Spotton.
William James T. Dickson.
William Elliott Macara.
James Alexander Allan.
Walter Alexander Wilkes.
William Andrew Orr.
Alfred Duncan Perry.
James Hartey.
Herbert Bolster.
John Patrick Eugene O'Meara.
Charles Augustus Myers.
Charles Crosbie Going.
David Havelock Cooper.
Emerson Coatsworth, Jr.
William Pascal Deroche.
Frederich Wm. Kittermaster.

Articled Clerk.

John Harrison.

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 Vic. c. 16, Statutes of Canada, 29 Vic. 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 :—

1*st year*.—Stephen's Blackstone, Vol. 1., 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.

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

3*rd 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.

4*th 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.