DIARY FOR MARCH.

1. Fri ..Last day for delivering appeal books.
6. Wed..York changed to Toronto, 1834. Ash Wednesday.
12. Tues.County Court of the County of York begins.
15. Fri...Sittings of Court of Appeal.
23. Sat...Sir Geo. Arthur, Lieut.-Gov. U. C. 1838.
28. Thur.War declared with Russia, 1854.
29. Fri ..Russian war ended, 1856.
30. Lord Metcalfe, Gov.-Gen., 1843.

CONTENTS.

Canada Law Journal.

Toronto, March, 1878.

As will be seen by the Résumé of the proceedings of Benchers of the Law Society in Convocation, the Law School has been abolished. Several amendments were proposed, in an endeavour to save it in some modified shape, but they were voted down. We hope the Benchers have well considered this matter in the interests of the future welfare of the profession. A great step was supposed to have been gained when the school was established, and much thought and labour was expended upon it. We trust that there was no sectional feeling, or decentralizing idea in the matter, for if so much injury may result, or at least there may be a loss of much possible good.

We have received another letter from "Q. C." on the subject of Fusion. It is in continuation of his argument, and in answer to the letters that appeared taking the other side of the question. We regret that we are compelled, from want of space, to hold it over until next month.

THE REVISED STATUTES OF ONTARIO.

Since the publication of our previous article on this subject, we have had the opportunity of examining the supplementary volumes issued as appendices to the final report of the Statute Commissioners.

One of these is a collection of "Imperial Statutes affecting the Province of Ontario and consisting chiefly of such Acts as relate to the constitution of the Province and the political rights of its inhabitants;" the other is an incomplete collection which seems to have been originally intended to include such Statutes, whether passed by the Parliament of old Canada or of the Dominion, as are still in force in this Province, but are not within the legislative jurisdiction of Ontario. The only portion of this projected

work which is included in the volume before us is the First Part, embracing the following Titles :—(1) Statutes, Form and Interpretation ; (2) Territorial Divisions ; (3) Constitution and Political Rights ; (4) Executive Government and Public Officers ; and, (5) Public Departments, Revenue, and Property. As the Acts printed in this collectien relate to subjects within the legislative jurisdiction of the Dominion, consolidation was out of the question, and the aim of the Commissioners has been convenience of arrangement. To this end the Statutes relating to each particular subject, *e. g.* the Militia Acts, have been printed one after another in a series, omitting sections specifically repealed, inserting in italic notes a reference to the authority for each such omission, and indicating also the extent to which the sections which remain have been amended or otherwise affected by subsequent legislation. The work appears to have been carefully done, but there is no attempt at an index, and the system adopted by no means results in clearness and ease of reference when, as in the Act relating to the Representation of the People in Parliament, the text of the original Statute loses itself completely in the abundance of notes which "do but encumber what they would enrich."

The expediency of publishing for general distribution so small a fragment of the work entrusted to the Commissioners appears to us extremely questionable, but perhaps it is done upon the principle "*ex pede Herculem*," and we are quite willing to believe that the whole collection had it ever been completed, would have been equal to the specimen submitted in the present volume.

Of the collection of Imperial Statutes included in the second of these volumes, we cannot speak so highly. From the inscription on the title-page, we learn that it was prepared by Messrs. G. H. Watson and G. L. B. Fraser, barristers-at law, under the direction of a Committee of the Statute Commissioners.

Knowing the composition of the Commission to have been chiefly judicial, we criticise with great deference, but it occurs to us first that a much more systematic arrangement of the Statutes dealt with would have been possible. We miss altogether from this volume the helps afforded in all the others by the scheme of classification printed at the beginning not only of each volume, but of each title, and even at the head of every Act, and the only key to the somewhat heterogeneous collection is an index at the end, and a short list of Acts at the beginning. From these we learn that of the 346 pages included in the volume, 204 are taken up by the Merchant Shipping Acts, 39 by the British North America Act of 1867—which, by the way, also appears, properly enough, in Vol. I of the Revised Statutes—and some 50 pages at the end of the volume, by the Acts respecting Naturalization, Extradition and Foreign Enlistment. In these last pages the want of arrangement is painfully manifest, the B. N. A. Act, 1867, being given at pp. 246 to 284, inclusive, and the amending Acts of 1871 and 1875 inserted at p. 331 and p. 346 respectively, interspersed among several short Statutes relating to Naturalization, Extradition, and Foreign Enlistment, in "most admired disorder," and without any note or cross-reference to aid the bewildered inquirer.

But by far the most important defect is the entire omission from the work of many if not most of the very Statutes which most imperatively require republication in order to be readily accessible both to lawyers and laymen.

It is evident from the title of the collections as well as from the very small

space, scarcely one fifth of the volume, which is not filled up by the Act above referred to, that many very important Imperial Statutes must be conspicuous by their absence. No portion of the Statutes of Frauds, for example, has found a place in the collection, although it seems to us that some of the sections are at least as important as most of the Acts which have been selected for publication. The Statutes which regulate the distribution of the personal property of intestates are not introduced. These are, however, easily accessible through the medium of the *Canada Law Journal* Almanack, but might well appear in the volume before us. The Imperial Copyright Act of 1842 (5 and 6 Vict., cap. 45) though held in *Smiles* v. *Belford* to be still in force in Canada, has been omitted, while the less important amending Act of 10-11 Vict., cap. 95, is inserted at length, and even of those Imperial Acts which are incorporated by reference into our own legislation only one seems to have been printed, as will appear from the following list :—

3-4 Vict., c. 78, referred to in R. S. O., c. 28, s. 9, is omitted.

21 Hen. VIII., c. 5 ; 22-23 Car. II, c. 10, and 1 Jac. II., c. 17, referred to in R. S. O., c. 46, s. 60, are omitted.

8 Anne, c. 14, referred to in R. S. O., c. 47, s. 211, is omitted.

8-9 Wm. III., c. 11, referred to in R. S. O., c. 50, s. 332, and R. S. O., c. 53, s. 12, is omitted.

9 Anne, c. 20, referred to in R. S. O., c. 52, s. 11, is omitted.

21 Jac. I., c. 16, s. 8, referred to in R. S. O, c. 61, s. 4, and R. S. O., c. 117, ss. 1, 2, 5, 6, 7, is omitted.

13 Eliz. c. 5, ss. 1, 2 and 6, referred to in R. S. O., c. 95, s. 13, is omitted.

11 Hen. VII., c. 20, referred to in R. S. O., c. 100, s. 4 is omitted.

22-23 Car. II., c. 10, and 29 Car. II., c. 3, referred to in R. S. O., c. 105, s. 36, is omitted.

29 Car. II., c. 3, s. 17, referred to in R. S. O., c. 117, s. 11, is omitted.

32 Hen. VIII., c. 9, ss. 2, 4, 6, referred to in R. S. O., c. 180, s. 158, is omitted.

31 Geo. III., c. 31, referred to in R. S. O, c. 215, s. 3, is printed.

Some of these Statutes, indeed, are embodied in our own legislation, as for example those, or most of those, which relate to the limitation of actions. Others, as the 11 Hen. VII., c. 20, are but incidentally referred to, and one, the 13 Eliz., c. 5, in reference to fraudulent conveyances, was reprinted by Mr. Blake as the preamble to his Act of 35 Vict., c. 11, declaring the meaning of the Statute of Elizabeth. Except in these cases the Acts above referred to, which are indeed part of the Statute Law of Ontario, should, we think, have, in some way, found a place on the Statute Book, and if the present volume was not intended to include them, we trust the Government will not give up the work of consolidation until these Imperial Statutes have been placed within the reach of all those who are subject to their enactments.

The practical use of Volumes I. and II. shows the arrangement of the Index to be defective. At the end of Volume II. is an Index of the whole revision. There should be a separate Index to each volume, or better still a duplicate Index of the whole to each Volume, after the manner of the Consolidated Statutes.

In our previous remarks on the subject of this revision, we omitted to mention the name of Mr. C. R. W. Biggar as having been one of the Commissioners who prepared the Draft Revised Statutes submitted to the House last Session.

NEW TRIALS FOR IMPROPER RECEPTION OR REJECTION OF EVIDENCE.

It is necessary that evidence be pertinent to the issue or issues being tried; and, where the tribunal for the trial of the issue or issues is a jury, great care is required as to the evidence which ought to be submitted for their consideration.

It is of course the duty of the presiding judge in the first instance to decide all questions as to the admissibility of testimony. If he be wrong, either in the reception or rejection of testimony, the ordinary remedy is an application to the Court in which the cause is pending for a new trial.

But new trials are not ordered in every case of testimony wrongfully received or rejected. The practice on this head is now well understood; and it will be our object in what follows to expound as concisely and clearly as possible the practice as we understand it.

The granting of a new trial is a matter of discretion in the Court, a discretion indeed not to be exercised capriciously; but, in the absence of legislation, according to the rules and practice of the Court, gathered from decisions of the Courts. The decisions deal with the improper reception of evidence and the improper rejection of evidence as grounds for new trials, as governed in some degree by similar principles.

In *Horford* v. *Wilson*, 1 Taunt. 12, 14, Mansfield, C. J., said: "Neither will the Court set aside a verdict on account of the admission of evidence which ought not to have been received, provided there be sufficient without it to authorize the finding of the jury."

In *Doe d. Teynham* v. *Tyler*, 6 Bing. 561, 563, Tindal, C. J., said: "It has been contended, that we are to analyse the evidence by a difficult process and to discriminate the precise effect produced on the mind of the jury on each portion of the proof; but we have a much plainer course, and that is, to hear the report of the trial and to sustain the verdict, if we are satisfied that there is enough to warrant the finding of the jury independently of the evidence objected to."

But in *Baron de Rutzen* v. *Farr*, 4 A. & E. 53, the Court laid down the rule that where improper evidence is received, and a verdict given for the party adducing it, the Court will grant a new trial, although there be other evidence to the same point in favour of the same party, unless they see clearly that the improper evidence could not have weighed with the jury or that the verdict if given the other way would have been set aside as against evidence.

In *Wright* v. *Doe d. Tatham*, 7 A. & E. 313, 330, Denman, C. J., referring to the foregoing case said: "We need not repeat our reasons for holding that, wherever evidence formally objected to at Nisi Prius is received by the judge, and is afterwards thought by the Court to be inadmissible, the losing party has a right to a new trial."

Hence where improper evidence has been received, a new trial will be ordered although the jury accompanied their verdict with a distinct and positive statement that they have reached a conclusion without reference to the obnoxious evidence: *Bailey* v. *Haines*, 19 L. J. Q. B. 73, 78.

The latest decision on the subject, notwithstanding some differences of opinion among the judges, is in accordance with the more recent exposition of the practice above mentioned, see *Hodson* v. *The Midland Great Western Railway Co.*, L. R., 11 Ir. C. L. R. 109.

Two exceptions appear to be established. These are:

1. Where the fact in dispute is proved otherwise than by the obnoxious evidence: *Stindt* v. *Roberts et al.* 5 D. & L. 460; 12 Jurist 518; 17 L. J. Q. B. 166).

2. Where the evidence was improperly received to explain a supposed latent ambiguity in a written document which the Court must itself construe without reference to the finding of the jury: *Bruff* v. *Conybeare*, 13 C. B. N. S. 263.

The ground on which new trials are ordered on account of the rejection of evidence relative to the issue is that the Court cannot weigh the degree of relevancy, or say what effect any fact that is relevant would have had on the minds of the jury.

In *Tyrwhett* v. *Wynne*, 2 B. & Al. 554, 558, Abbott, C. J., said: "Now, even supposing that in strictness these (mineral leases) were receivable in evidence, still that alone will not be sufficient, for it must be further shewn and substantiated, that if they had been received, they would have led to a probable conclusion in favour of the defendant; but I am clearly of opinion that they would not, and that the rejection was not of any importance as to the result of the verdict. No new trial, therefore, ought to be granted on this ground."

The rejection of evidence which, if admitted, would merely prove a fact sufficiently established by other evidence is no ground for a new trial: see *Edwards* v. *Evans*, 3 East, 451; *Alexander et al.* v. *Barker*, 2 C. & J. 133; *Mortimer* v. *McCallan*, 6 M. & W. 58, 75; *Doe Welsh* v. *Langfield*, 16 M. & W. 496.

In *Crease* v. *Barrett*, 1 C. M. & R. 919, a well considered case, it was held that, where evidence has been improperly rejected, the Court will grant a new trial unless, with the addition of the rejected evidence, a verdict given for the party offering it would be clearly against the weight of evidence.

In *Hughes* v. *Hughes*, 15 M. & W. 701, 704, Alderson, B., said: "Where evidence has been improperly rejected or admitted, the Court will not grant a new trial, if with the evidence rejected a verdict given for the party offering it would be clearly against the weight of evidence, or if without the evidence received there be enough to warrant the verdict."

It is by sec. 45 of 13 & 14 Vict. cap. 36, enacted as regards Scotland, "That a bill of exceptions shall not be allowed in any cause before the Court of Session upon the ground of the undue admission of evidence if, in the opinion of the Court, the exclusion of such evidence could not have led to a different verdict than that actually pronounced, and it shall not be imperative on the Court to sustain a bill of exceptions, on the ground of the undue rejection of documentary evidence, when it shall appear from the documents themselves that they ought not to have affected the result at which the jury by their verdict have arrived."

It is now provided by rule 3 of Order 39, made under the English Supreme Court of Judicature Act, 1875, that, "A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless, in the opinion of the Court to which the application is made, some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof and direct a new trial as to the other part only."

This closely resembles s. 34 of our Administration of Justice Act, 1874, which enacts that "A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence unless, in the opin-

ion of the Court to which application is made, or of any Court of Appeal, some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appears to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to the part thereof and direct a new trial as to the other part only:" Rev. Stat. cap. 50, sec. 289.

Examples, under our Act, of refusal by the Court to order new trials notwithstanding improper reception or rejection of evidence will be found in *Smith* v. *Murphy*, 35 U. C. R.; 569, *McDermott* v. *Ireson*, 38 U. C. R., 1; *Davis* v. *The Canada Farmers' Ins. Co.*, 39 U. C. R. 452. The most recent case touching on the subject is that of *Reg.* v. *Wilkinson*, a note of which will be found *post*, *infra*, page 81.

SPECIFIC PERFORMANCE.

The remedial jurisdiction of the Court of Chancery in the specific enforcement of contracts is of such importance that we are surprised no recent treatise has been written upon the subject. Nearly twenty years have elapsed since the present Mr. Justice Fry modestly gave to the professional world his valuable work on "Specific Performance" which practically superseded all earlier books on that branch of law. Since then the statutory powers of the Court as to awarding damages and compensation and in many other respects have been largely extended, but authorship has not kept pace with the progress of the law in Parliament and in Court.

In no other region of jurisprudence do we find so many instances of that judge-made law which has gone far to nullify the Statute of Frauds. Equity Judges have been astute from the first so to deal with that famous Act as that it should not be a cover for fraud. The Chief Justice of England is credited with the opinion that the Statute of Frauds has had its day; that it is no longer a useful enactment, that it has now-a-days a great tendency to promote false swearing, and so to defeat the ends of justice. Into this matter, we do not propose to enter, but it may be well to indicate that the force of the Statute has been evaded in equity from the outset, and that successive judges have only developed the ancient doctrines of the Court to suit the exigencies of modern times. The first instance in which any equitable exception to the Statute appears is a case in the time of Lord Nottingham (5 Vin. Abr. 523, 524). There was a verbal contract for the conveyance of land and for a defeasance to be executed by the grantee; but he, having obtained the conveyance, refused to execute the defeasance and relied on the Statute; but his plea was over-ruled and he was decreed to execute according to his agreement. So in *Walker* v. *Walker*, 2 Atk. 99, Lord Hardwicke said: "Suppose a person who advances money should, after he has received the absolute conveyance, refuse to execute the defeasance, would not the Court relieve against such fraud?" In accord with these early cases, compare *Lincoln* v. *Wright*, 4 De G. & J. 16, where it is laid down that the Statute formed no defence to the performance sought, because insisting on a conveyance as absolute when it was agreed it should be defeasible was a fraud and should not be allowed to cover fraud. The same matter is put in a different way in *Jervis* v. *Berridge*, L. R. 8 Ch. 357, where Lord Selborne says: "The conveyance executed was only a piece of machinery obtained as subsi-

diary to and for the purposes of the verbal and only real agreement, under circumstances which would make the use of it for any purpose, inconsistent with that agreement, dishonest and fraudulent." Again in *Davis* v. *Otty*, 35 Beav. 208, a conveyance of land was made on the parol agreement that the defendant should reconvey if the plaintiff was not convicted of bigamy. The defendant denied the agreement and set up the Statute of Frauds, inasmuch as the alleged trust was not in writing; but the Master of the Rolls held that this was a case of fraud on the part of the defendant and, therefore, the Statute did not apply. In *McCormick* v. *Grogan*, L. R. 4 Eng. & Ir. App. 82, Lord Westbury sets in a different light the principle which influences the Court in such cases in the following words: "The jurisdiction which is invoked is founded altogether on personal fraud. It is a jurisdiction by which a Court of Equity, proceeding on the ground of fraud, converts the party who has committed it into a trustee for the party who is injured by that fraud. The Court of Equity has from a very early period decided that even an Act of Parliament should not be used as an instrument of fraud; and if, in the machinery of perpetrating a fraud, an Act of Parliament intervenes, the Court of Equity, it is true, does not set aside the Act of Parliament, but it fastens on the individual who gets a title under that Act, and imposes upon him a personal obligation, because he applies the Act as an instrument for accomplishing a fraud." It will be observed that this is merely an amplification of Lord Hardwicke's language in *Lloyd* v. *Spillett*, 2 Atk. 150, where he speaks of one class of resulting trusts which are excluded from the operation of the Statute as those which arise "in cases of fraud and where the transactions have been carried on *mala fide*," and see the same case more fully in Barnard, 384.

Likewise as to the effect of part performance in excepting a case from the Statute of Frauds. It has been fully determined, after some fluctuation of opinion, that the mere going into possession is sufficient to let in evidence of the whole contract though none of it be in writing: and this doctrine is applicable as well to corporations as to individuals, and whether it be that the vendor or the purchaser brings suit, and consequently whether it be that the purchaser relies on possession as being *taken* by him, or the vendor relies on possession as being *delivered* by him, in pursuance of the contract. To this effect is the expression of opinion of the Lords Justices in *Wilson* v. *West Hartlepool Railway Company*, 2 De G. J. & S. 475, where during argument they intimate their view that a purchaser being let into possession was sufficient part performance, whether the contract was sought to be enforced by or against him (p. 485). And at p 492, Turner, L. J., enforces the same doctrine as to corporations being bound to the same extent as individuals. Reference may also be made to *Pain* v. *Combs*, 1 De G. & J. 46, on the same point. The moment such taking of possession is shewn, the length of the continuance of that possession is not of much consequence. Indeed one Judge has stated his opinion to be that such possession, "if it be for an hour only" is enough to take the case out of the Statute: *Ungley* v. *Ungley*, L. R. 4 Ch. Div. 73.

In cases such as these the Statute of Frauds is in truth practically repealed by the Court of Chancery, under the euphemism of excepting the case from its provisions. But such judge-made law has become part and parcel of our legal system, even though it be in the shape of an excrescence. Nothing short of

direct legislation can at this day avail to work any modification in these doctrines of equity.

LAW SOCIETY.

Michaelmas Term, 1877.

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

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

Monday, November. 19.

The report of the examiners on the Intermediate examinations was received, read and approved, and ordered to be adopted.

The report of the committee on Legal Education on the primary examinations was also received and read.

The Report of the same committee on the petition of R. W. Jameson, who had been called to the bar, praying that his second intermediate examination as an articled clerk may be dispensed with, was laid before convocation and read and ordered to be considered to-morrow.

The petition of Neil Ray, stating that owing to change made in the running of railway trains, he was unable to be present on the 16th inst. for his examination for call and asking that he be admitted to a special examination was read.

Ordered that his request be not granted.

The petition of John Hodgins, asking that he may be allowed to present himself for examination as attorney next Hilary Term instead of Easter was read, and the application refused.

The petitions of various barristers and students-at-law, asking that the library be opened from 7 p.m. to 10 p.m., was read and ordered to be referred to the Library Committee for Report.

Tuesday, November 20.

Mr. C. S. Wallis, whose examination for call to the bar was passed in Trinity Term last, was ordered to be called to the bar, and on presenting himself was called accordingly.

Moved that the sum of one hundred dollars he paid to Messrs. Evans & Kingsford for their services as examiners at the Primary Examinations this Term.

Moved and resolved, that in the opinion of convocation the amounts charged for copies of short-hand writers' notes are unreasonable and a heavy tax upon suitors, and it is therefore suggested that in all cases where a single copy only of the short-hand notes is required, it shall be furnished at the rate of 5c. per folio, and that in cases where more copies than one are ordered by the same party and at the same time, they shall be charged at the rate of $2\frac{1}{2}$ cents per folio for each copy, and the Benchers respectfully submit this suggestion to the Government for consideration.

Moved and resolved, That it is desirable that the short-hand writers should report the objections taken and points raised by counsel on either side, the rulings of the judges thereon as they occur during the trial, and also the Judge's charge, and that the attention of the proper authority be respectfully requested to the subject of this resolution.

The Financial Statement or Balance Sheet for the third quarter of the present year was laid before convocation.

Saturday, November 24.

The report of the Committee on Legal Education, on the petition of G. H. Smith, was laid before convocation and

adopted. Ordered, that his name be entered on the books of the Society as a student-at-law.

The report of Committee on the Law School was laid before convocation and read.

Ordered, That the said report on the Law School be considered at the meeting of Convocation on the last Friday of Term, and that there be a call of the Bench for that day.

The Committee on Reporting presented returns of the Reporters shewing the number of unreported cases in the Court of Appeal, Queen's Bench, and Chancery, and of Practice cases, up to the first day of Term, as follows: Appeal cases, 18; Practice cases, 23; Queen's Bench cases, 50; Common Pleas cases, 3; Chancery cases, 18; total, 112.

The Chairman reported several resolutions adopted at a meeting of the Bar held on the occasion of the death of the lato Honourable William Henry Draper, C.B., Chief Justice of the Court of Appeal.

Ordered, That the said resolutions be entered on the minutes of the proceedings of the Benchers as follows:

"Moved and seconded, That the members of the Law Society desire to record their feeling of profound regret at the death of the Honourable William Henry Draper, C.B., Chief Justice of the Court of Appeal of Ontario, the last surviving member of the former Court of Queen's Bench for Upper Canada. The members of the Bar in thus paying their humble tribute of respect to his memory are but giving feeble expression to the sentiments of the whole profession. His great public services extending over more than forty years, as Solicitor-General, Attorney-General, Puisne Judge of the Court of Queen's Bench, and Chief Justice successively, of the Court of Common Pleas, the Court of Queen's Bench, and the Court of Appeal, shew how he served his Sovereign in great capacities with ability and integrity, and in a way redounding to his own honour and the benefit of the community, and will cause his loss to be widely mourned, and not least by the members of the profession with whom he was so long and so intimately associated. He was gifted by nature with more than ordinary capacity. As an advocate he won his way to professional distinction by the force of his reasoning, the clearness and terseness of his argument, and the integrity of the true lawyer. In his statement of legal propositions he aimed to be true to the letter and spirit of the law. His learning in Common Law science was unsurpassed and few better understood the doctrines and principles of the system of Anglo-Canadian Jurisprudence established in this country. By a happy union of dignity and courtesy he inspired amongst those who practised before him that spirit of mutual regard and cordial co-operation which has enhanced the dignity of the judicial office and the respect for and confidence in the ability and integrity of the Judiciary which is now, and has been for many years, so distinguishing a characteristic in the public administration of justice in this Province."

Moved and seconded: That the Treasurer of the Law Society be requested to transmit a copy of the resolutions just adopted to Mrs. Draper.—Carried.

Moved and seconded: That the Treasurer do lay the resolutions just adopted before Convocation, and, on behalf of the meeting, request their insertion in the minutes of the proceedings of the Benchers of the Law Society.—Carried.

A letter from the Reporter in Chancery was laid before Convocation.

Ordered, That, under the exceptional circumstances of the case, the request of

the Reporter of the Court of Chancery be granted.

A letter from the Treasurer of the New York Bar Association was read.

Ordered, That the Secretary acknowledge the letter and transmit a copy of the rules of Convocation and of the Ontario Law List.

Mr. Meredith gives notice of motion to establish branch libraries in the various county towns, to be moved on the last Friday in Term.

Friday, December 7.

The Report of the Examiners of the Examination for Scholarships during the present Term was read, and ordered that the Scholarship for the fourth year be given to Mr. T. Ridout; the scholarship for the third year to Mr. H. P. Sheppard; for the second year to Mr. Nesbitt; and that for the first year to Mr. Drayton.

A letter from Mr. E. J. Senkler, dated 6th December instant, resigning his position of a Bencher, in consequence of having accepted a Judgeship of the County Court, was laid before Convocation, and read.

Ordered: That Mr. Senkler's resignation be accepted, and that his successor as a Bencher be appointed the first Tuesday of Hilary Term next.

The Report of the Committee on Legal Education in regard to certain books to be read by students for scholarships, for examination as articled clerks and final examination as students, was presented, read, and adopted, with amendments, and does not come into force until the first examination after Easter Term, 1878.

Ordered, That, at the same time, "Best on Evidence" be substituted for "Taylor on Evidence" on final examination for Students-at-law.

The consideration of the Report of the Committee on the Law School was taken up.

Moved: That the Law School be abolished, and cease from and after the last day of Easter Term next.

Moved, in amendment: That the further consideration of the Report of the Committee on the Law School be postponed until the first meeting of Convocation in Hilary Term next, and that it be referred to the said Committee, and the Committee on Legal Education, in the meantime, to confer with the authorities of the University of Toronto, with a few to the affiliation of the Law School with that University, and to consider such amendments in the system of Legal Education as may appear to be desirable, the said Committee to report to Convocation at the same meeting.—Lost.

Moved, in amendment: That for at least a month before the commencement of each of the courses of lectures, the lecturers be required to give notice in the newspapers of the books they intend to lecture upon during the course, and that, as well students who have not attended the lectures of the Law School as those who have may be at liberty to compete at any examination or examinations for a reduction in the term of service.—Lost.

Moved, in amendment: That all further consideration of the subject of the Law School be postponed until the second day of the next Term.—Lost.

The original motion was then carried.

Wednesday, December 26.

The minutes of last meeting were read and ordered to be signed by the Treasurer.

The Second Report of the Committee on Discipline, on the subject of charges made against a member of the Society, was received, and ordered to be considered on the first day of Hilary Term next.

The Report of the same Committee, received on the 7th of December, on the subject of charges against another member of the Society, was considered, and ordered to be adopted.

The Report of the Committee on Reporting was laid before Convocation, read and considered, and ordered to be adopted.

Moved and seconded: That the Report of the Committee on Legal Education, on the petition of Mr. P. H. Drayton, be adopted.

The Report of the Finance Committee on the several petitions of James Elliott, M. A. Dixon, John C. Fraser, James Glass, H. C. McKeown, C. P. Simpson, and Thomas Macnaughton, was received, read, and adopted.

The Report of the Library Committee, recommending the refusal of the petition of various barristers and students asking that the library be opened from 7 P.M. till 10 P.M., was considered and adopted.

Ordered, That the Secretary be instructed to prepare forthwith an Index of the Minutes and Proceedings of Convocation subsequent to Michaelmas Term, 38 Victoria, and that hereafter the minutes be indexed forthwith after the end of each Term, and that the Secretary be authorized to employ such assistance as may be required for that purpose.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

[Reported for the *Law Journal*, by N. D. BECK, Student at-Law.]

McMASTER v. KING.

Notice of trial—Demurrer—Re-hearing.

Held, that a notice of trial, given pending a re-hearing on the decision of a single judge upon demurrer, is irregular, and will be set aside.

[January 9.—Mr. DALTON.]

This action was brought to recover the price of goods sold to defendant. The declaration charged the defendant with fraud in obtaining the goods, with the view of having him imprisoned under sec. 136 of the Insolvent Act of 1875. The plaintiff obtained an order for leave to join issue and to demur to one of defendant's pleas; the order did not direct the issues in fact to be tried first. The demurrer was argued before a single judge, who held the plea bad; whereupon the defendant had the demurrer re-heard before the full Court in term, when judgment was reserved. While the case was standing for judgment before the full Court, the plaintiff gave notice of trial, whereupon a summons was taken out on behalf of defendant to set aside the notice.

Akers moved the summons absolute. Reg. Gen. Mich. Term, 29 Vict., directs that "the issue or issues of law shall be *determined* before the trial of the issue or issues of fact, unless otherwise expressly ordered by the Court or Judge in the rule or order permitting such issue or issues to be raised." Under this rule the issues in fact must be *finally* determined. [Mr. DALTON.—If this be the meaning of the rule, the defendant might prevent the plaintiff from having the issues in fact tried for an almost indefinite length of time by appealing again and again.] The case of re-hearing from a single judge is different from an ordinary appeal, and the Statute seems to look upon it in a different light, from the fact that if the defendant appeals he must give security, which he need not do upon a re-hearing. The case of *Goldie* v. *Date Patent Steel Company*, 7 Prac. R. 1, is a direct decision in defendant's favour. If the plaintiff be allowed to go to trial, and if he prove fraud as charged in the declaration, the Judge is bound, under the Insolvent Act, to order the defendant to be imprisoned, notwithstanding that he may not be liable even for the debt.

W. McDonald shewed cause. The demurrer has been *determined* within the meaning of the rule mentioned; if not, the result will be, that the defendant may keep the plaintiff from having the issues in fact tried for an indefinite time. The case of *Goldie* v. *Date*, is not applicable to the present case. There is a case of *Caldwell* v. *Macfarlane*, which appears in the *Legal News*, vol. 1, page 4 (Quebec), which shows that it is discretionary

with the Judge to order the defendant to be imprisoned on proof of fraud, and no judge would do so in such a case as the present.

Mr. Dalton thought the issues in law had not been *determined* within the meaning of the Rule mentioned in the argument, and therefore set aside the notice of trial, but, as the point was new, without costs.

Order accordingly.

NOTES OF CASES.

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

QUEEN'S BENCH.

IN BANCO—HILARY TERM.

February 7.

Robinson v. Fee.

Trespass—Trover—Right to Crops—License.

W. R., father of plaintiff, having made default in a mortgage on some land, the land was sold under decree of the Court of Chancery to the plaintiff. He failed to carry out the purchase, and the land was sold and conveyed to C. S., plaintiff contending that C. S. was his trustee in the purchase. Plaintiff subsequently executed a release to C. S., who sold to defendant, who, as plaintiff contended, had notice of plaintiff's claim. Some bargaining took place between plaintiff and defendant as to the purchase of the land from the latter, but it was not carried out. The plaintiff lived on the land with his father, and while this bargaining was going on harvested his crops and placed them in the barn, and shortly after a conversation with the defendant regarding the purchase he was turned out of possession and his crops seized by the sheriff under a writ of assistance issued in the Chancery suit to which he was no party. In an action of trespass *q. c. f.* and trover: *held*, under the facts more fully set out in the case, that plaintiff had a mere license to live on the land and had acquired no interest in the land or crops, and that the action would not be sustained.

Quære, had he a claim for work, services and outlay on the land while the license lasted.

J. W. Kerr, for plaintiff.

Armour, Q. C., for defendant.

Churcher v. Bates.

Tax sale—Wrong lot sold—Improvements.

Where land was assessed by the wrong number of the lot, and the sheriff, at a tax sale pointed out the identical piece of land on which the taxes were properly payable and which was in fact the land assessed though called by the wrong number, and sold that land by the wrong number: *Held* that the purchaser was entitled, on ejectment by the owner, to protection under 33 Vict., cap. 23, sec. 9, and to be repaid his purchase money and interest and subsequent taxes and improvements.

Meredith, Q. C., for plaintiff.

Glass, Q. C., for defendant.

McMaster v. King.

Demurrer—Insolvent Act 1875, sec. 63.

Declaration on several promissory notes alleging that the debt was one for the enforcing of which defendant might be imprisoned, and setting out that the notes were given for goods bought when defendant knew himself to be insolvent and that the goods were obtained by false pretences, &c.

Plea that defendant had been discharged by a duly executed and confirmed deed of composition and discharge, and that defendants had had notice of all proceedings—had proved their claim as an ordinary one—had accepted composition notes, one of which had been paid.

Replication that the plaintiffs did not assent to the discharge.

Rejoinder setting out the proceedings in insolvency and plaintiff's conduct.

Held, on rehearing, by Harrison, C. J., and Armour, J., reversing the decision of Wilson, J., sitting in vacation, that the plaintiffs by their conduct as to the composition deed and accepting notes and payment under it, and by their silence respecting the nature of their debt were precluded now from saying that their debt was other than an ordinary debt which would have been discharged under the Act.

W. Macdonald, for plaintiff.

George Kerr, Jr., for defendant.

REGINA v. WILKINSON.

Criminal information—New trial—Rejection of evidence.

This case is fully reported in 40 U. C. R. 1, where a criminal information was granted as to two alleged libels in a newspaper published by the defendant on the 12th and 19th of November, 1876, and referred to in one of the 5th November. At the trial it was attempted to put in evidence the libel of the 5th November and a letter called in the report "The big push letter." The judge at the trial refused both applications. He did not consider that they were pressed upon him. *Held per* Harrison, C. J., that the rejection was right, but by Wilson, J., that they were admissible as part of the plaintiff's case, and that this was groud for a new trial if the applications had been pressed which it was said they had not been.

The learned judge told the jury that there was no evidence to support pleas of justification. Harrison, C. J., agreed and *held* that there was no misdirection. *Per* Wilson, J., that there was evidence of justification to go to the jury, and that there should be a new trial on this ground. The Court being equally divided, on the statement of the defendant's counsel that he desired to appeal, Wilson, J., withdrew his judgment *pro forma*, and the rule was discharged.

(Armour, J., was concerned in the case at the Bar and took no part in the judgment.)

Bethune, Q. C., and *Delamere* for the Crown.

Robinson, Q. C., and *McCarthy*, Q. C., and *O'Brien* for the defendants.

ESSEX v. ROCHESTER—MERSEA v. ROCHESTER —GOSFIELD v. ROCHESTER.

Municipal Act—Drainage By-law—Arbitration under.

The Township of Rochester proposing to make a drain which would benefit other municipalities than itself, made an assessment upon such municipalities under sec. 447, *et seq.* of the Municipal Act. Of such municipalities, the County of Essex and the Townships of Mersea and Gosfield, being dissatisfied, gave notice of appeal and under the provisions of sec. 489, *et seq.*, of the Municipal Act. Separate arbitrations were held and awards made. Rules were granted to set aside the awards. *Held*, that a County is a municipality within the meaning of the Act, and liable to be assessed for such drains; but *held*, also, that where more than two municipalities are interested in the works, the arbitration between them should be one joint arbitration, under sec. 281, and not separate arbitrations between the assessing municipality and each of the appealing municipalities, and on this ground the awards were set aside; but, as the point was a new one, without costs. Remarks as to the proper mode of proceeding under the Act.

Ferguson, Q. C., and *Crickmore*, for County of Essex.

Bethune, Q.C., and *H. J. Scott*, for Township of Rochester, in first case.

Robinson, Q. C.. for Township of Mersea.

Bethune, Q. C., and *W. Douglas*, for Township of Rochester, in second case.

Bethune, Q. C., and *S. White*, for Township of Gosfield.

W. Douglas and *H. J. Scott*, for Township of Rochester, in third case.

REGINA v. AMOR.

Criminal Law—Unorganized Districts—Commission to District Judge—Powers of Dominion and Province of Ontario, as to

Where, on behalf of two prisoners convicted of manslaughter and murder, it was objected that Walter McCrae, Judge of the Provisional Judicial District, before whom they had been tried, had no jurisdiction to try them under the commissions purporting to authorize him to do so, because, 1, neither the authorities of the Dominion nor of the Province of Ontario could authorize him to act as Judge of Oyer and Terminer and General Gaol Delivery, under C.S.U.C. ch. 11, as he was not one of the classes of persons named in sec. 2 of that Act, not being a County Court Judge, notwithstanding the powers conferred by C.S.U.C. ch. 128, sec. 194; and, 2, because the authorities of the Dominion could not constitute a court except by Act of Parliament, and there was none; and the authorities of Ontario could not appoint a judge; and that, therefore, the two commissions issued respectively by the Dominion and Ontario, under which the prisoners were tried, were void. The Court, on a case reserved, overruled all the objections, and gave judgment for the Crown.

Hardy, Q.C., for the Crown.

M. C. Cameron, Q.C., for the prisoners.

VACATION COURT.

Wilson, J.] [January 29.

GRAHAM v. MCKERNAN.

Demurrer—Insolvent Act of 1875—Composition and discharge—Confirmation.

Demurrer: Declaration; common counts.

Plea: That plaintiff, before action, assigned to an official assignee under the Act of 1875, and said alleged debts and causes of action are vested in the assignee.

Replication 2: That before action the official assignee, in conformity with a deed of composition and discharge duly executed, &c., by deed, duly transferred to the plaintiff all the estate vested in the assignee, by reason whereof the causes of action were duly vested in plaintiff.

Replication 3: That the causes of action were for sums of money payable by defendant to plaintiff for goods bargained and sold, &c., subsequent to the making of the assignment, and the assignee had not interfered in this action or required the defendant to pay him the moneys due in respect of said cause of action.

Rejoinder 3 to 2nd replication: That the discharge by the deed of composition was not before action confirmed by the Court or a Judge.

Held, second replication bad because it did not show the discharge was made effectual by confirmation.

Quære, was it not also bad because it did not shew that the creditors who executed the composition and discharge had proved.

Held, 3rd replication good.

Held, 3rd rejoinder also good.

H. H. Strathy for plaintiff.

McCarthy, Q.C., contra.

Gwynne, J.] [January 20.

ROEBOTTOM v. THE COUNTIES OF NORTHUMBERLAND AND DURHAM.

"Temperance Act 1864"—Assessment Rolls.

Held, that in voting on a by-law under the "Temperance Act of 1864," the assessment rolls should be used, and not the voters' lists. Where, therefore, the assessment rolls had been used and a by-law passed, a rule to quash the by-law was discharged with costs.

H. Cameron, Q.C., for the applicant.

Bethune, Q.C., and *Osler* for the counties.

Gwynne, J.] [February 5.

REGINA v. MRS. PHILIP WILLIAMS.

Sale of Liquor—Occupant—Married Woman.

The defendant, a married woman, was convicted of selling liquor without a license, in premises of which it was admitted her husband was the occupant. It appeared that the husband was in gaol for a similar offence. *Held*, that the defendant was properly convicted, though, if her husband had been at home, she could not—her act then being that of her husband, who then might be convicted for her act.

Blackstock for defendant.

Fenton for the Crown.

Gwynne, J.] [February 8.

REGINA v. GLOUCESTER AND OTTAWA ROAD CO.

Joint Stock Road Co.—Allowing road to be out of repair—Indictment.

A Road Company, incorporated under the Joint Stock Road Companies' Acts, allowed their road to get and be out of repair. *Held*, that an indictment would lie, notwithstanding the special remedy given by the Incorporating Act, 16 Vict., cap. 190, secs. 34, 35, and amending Acts, viz., as suspending the right to take tolls.

Beatty, Q. C., for the demurrer.

M. C. Cameron, Q. C. contra.

COMMON PLEAS.

IN BANCO—HILARY TERM.

FEBRUARY 4.

CHURCH v. FENTON.

Sale of land for taxes—Indian lands surrendered to the Crown—Liability to taxation—List of lands to be attached to warrant—22 Vict., cap. 36, sec. 128.

In 1854, certain Indian lands were surrendered by the Indians to the Crown. In September, 1857, the land in question, being a portion of such lands, was sold by the Crown to a purchaser, the first instalment of the purchase money was paid on the 15th February, 1858, and the last instalment on the 29th July,

1867, when the lot was paid for in full; and on the 14th June, 1869, the patent issued. In 1870, the land was sold for its taxes, assessed and unpaid for the years since 1864.

Held, that such lands were liable to taxation, and therefore properly assessed and saleable for arrears of taxes, and that sec. 9, clause 24, of the British North America Act in no way prohibited such assessment and sale.

By the 128th section of the Assessment Act, 32 Vict., ch. 36, the treasurer is required to transmit a list in duplicate of the lands to be sold for taxes to the warden, who is required to authenticate each of such lists by affixing thereto the corporate seal, and his signature; and one of such lists was to be deposited with the clerk of the County Court, and the other was to be returned to the treasurer with a warrant thereto annexed, under the hand of the Warden and seal of the County, commanding him to levy, &c.

Held, that the section was merely directory, and was sufficiently complied with by the list of lands being embodied in the warrant, instead of being annexed thereto.

M. C. Cameron, Q. C., for plaintiff.
Reeve, for defendant.

LAWRENCE v. KETCHUM.

Will—Description of properties—Parol evidence.

In 1845, Jesse Ketchum, who then resided in Toronto, went to reside at Buffalo, visiting Toronto once or twice every year. In 1862, he purchased lots 1 and 2, in the Township of Mono, in the County of Simcoe. In 1863, Orangeville was incorporated as a village and annexed to the County of Wellington, lot No. 1 being detached from Mono, and comprised within the boundaries of and made to belong to the Village of Orangeville. On March 27th, 1866, Jesse Ketchum made his will, wherein, amongst other devises, he made a devise of "all my real estate in the Township of Mono, in the County of Simcoe," &c. Ejectment was brought against defendant, claiming Lot No. 1 under the devise, and for defendant it was contended that the words as and when used by testator and understood by him covered all the lands formerly in Mono, and that the fact of Lot No. 1 being taken therefrom, and put into another municipality and County was not present to his mind, but that he described the lands by the local name they once bore, and as he always understood them to bear.

Held, that Lot No. 2, which exactly fulfilled the description of the devise alone passes under the devise, and that parol evidence was inadmissible to shew that the testator intended to include Lot No. 1.

Richards, Q. C., and *Bethune*, Q.C., for the plaintiff.

M. C. Cameron, Q. C., and *Robinson*, Q. C., for defendant.

MEAKIN v. SAMSON ET AL.

Husband and wife—Goods supplied to wife—Separate trading—Liability for husband's debts.

The plaintiff's husband had been engaged in business, and had become insolvent and failed to obtain his discharge. Certain persons who had been her husband's creditors, during his inability to carry on business on his own behalf, furnished the wife, who was not possessed of separate estate, with goods to enable her to carry on a separate business, taking her notes in payment. The business name used was that of the wife, but the business was carried on by the husband, acting under a power of attorney from the wife, which enabled him to buy and sell, and to enter into all contracts, and give all kinds of notes, &c., in the wife's name, at a salary of $10 00 per week, which was used for the support of the husband, wife and children, who were all living together, and away from the place of business, which the wife seldom visited and never for business purposes. The goods having been seized under an execution, issued by one of the husband's creditors, the wife claimed them, and an interpleader was directed to be tried.

Held, Galt, J., dissenting, that the wife was not entitled to the goods; that there was no separate trading of the wife, but that the whole thing was a device to enable the husband to carry on business in his wife's name, and so defeat his creditors.

M. C. Cameron, Q. C., for the plaintiff.
D. E. Thompson, for the defendant.

VACATION COURT.

Gwynne, J.] [February 11.

BOYCE ET AL. v. O'LOANE.

Action on judgment—Statute of Limitations—38 Vic. cap. 16, sec. 11, O.

To an action on a judgment, the defendant

pleaded that the alleged cause of action did not accrue within ten years before this suit.

Held, by Gwynne, J., a good defence, under the Act 38 Vict., ch. 16, sec. 11, O.

J. E. Rose, for the plaintiff.

Osler, for the defendant.

CHANCERY.

Spragge, C.] [January 16.

Worswick v. The Canada Fire and Marine Insurance Co.

Fire insurance—Condition—Warranty.

The plaintiff who resided at a distance and held a mechanic's lien on a mill, applied to the agent of the defendants to effect an insurance thereon to the amount of $3,000. One of the questions put to the applicant was if a watchman was kept on the premises during the night? His answer thereto was, "The building is never left alone, there being always a watchman left in the building when not running." In the policy issued thereon special reference was made to the application of the assured as "which is his warranty and part hereof." When the application was made there was a watchman kept on the premises and continued to be so kept until a month after the issue of the policy when, without the knowledge of the plaintiff, such watch was discontinued; and in about five weeks thereafter the premises were destroyed by fire. *Held*, that the answer of the plaintiff did not amount to a warranty but only a representation which he could not be held bound to make good; the terms of the policy being that the parties had agreed that alterations to avoid the policy must be within the control or with the knowledge of the assured: of which control or knowledge in this case there was not any evidence.

Proudfoot, V. C.] [January 16.

Laidlaw v. Jackes.

Will, construction of—Dower—Election by widow.

Held, that a bequest by a testator to his widow of the annual income from the real and personal estate during her widowhood and until the eldest son attained his majority for the support of herself and the maintenance, education and support of all the children during their minority; and after the eldest attained 21, and as each reached that age the income to be paid to them proportionally after making ample provision for the support of the widow during her widowhood, did not indicate an intention on the part of the testator to give her this in lieu of dower.

Although a widow is bound to bring her action for dower within 20 years from the death of her husband, the statute limiting that time does not apply where the widow is brought unwillingly before the Court and she only seeks to reduce the amount of rents charged against her by setting off what she is entitled to as dowress.

The testator gave his sons the option of purchasing the shares of his daughters in the real estate after marriage or death of the widow for the sum of £500 each.

Held that the fact of the sons having, during the life time of the widow, joined in leases naming all the children, sons as well as paughters, as lessors—some of the sons being then infants—was not such an act as deprived the sons of afterwards exercising the right or option of purchasing the interests of the daughters.

Rees v. Fraser.

Will, construction of—Heirs at law and next of kin.

A testator by the residuary clause in his will gave and bequeathed "all the remainder of my real and personal estate whatsoever of which I may die possessed or be in any way entitled to, to my dear wife Ann, and on her decease the same to go [to] my heirs and next of kin."

Held, that the son of a deceased daughter, who had predeceased the testator was entitled to a share in such residue (personal as well as real), and that, notwithstanding the fact that under the will such grandson was entitled to a legacy of $4,000.

Dunnett v. Forneri.

Jurisdiction of Court—Communion—Costs.

An attendant at an Episcopal Church filed a bill against the incumbent thereof praying amongst other things that the defendant might be restrained from refusing to allow the plaintiff to partake of the Lord's Supper and from suspending or excommunicating the plaintiff as a member of that congregation or church:

Held that, although the facts were as alleged by the bill—though denied by the answer—this Court has not any jurisdiction to enforce the claim of the plaintiff; but the Court being of opinion that all the grounds of defence, other than that of want of jurisdiction, had signally failed, in dismissing the bill, refused the defendant his costs.

Allen v. The Edinburgh Life Assurance Co.

Dower, sale of, under fi. fa.

Since the passing of the Statute 40 Vict., cap. 8, (O.) the right of a woman to dower, as well during the life of her husband as after his death, is such an interest in lands as can be sold under a *fi. fa.* at law.

Spragge, C.] [January 18.

Bryson v. Huntingdon.

Mortgage—Lands in Ontario and Quebec—Practice.

Where in a suit on a mortgage covering lands in the Province of Ontario, and also in Quebec, the defendant (the mortgagor) waived his right to claim a sale of the property and elected to have a decree of foreclosure pronounced, the Court on further directions ordered, in the event of default being made in payment, that the defendant should execute to the plaintiff such a conveyance as would vest in him all the estate or interest of the defendant in the lands in Quebec.

Proudfoot, V. C.] [January 18.

Coy v. Coy.

Trust deed—Trustee and cestui que trust- Discretion of Trustee.

John Coy the Elder, by deed of 30th of January, 1862, conveyed the lands in question in the cause to his daughter, S. C.: "In trust from and after the death of the grantor until the youngest child of John Coy shall arrive at the age of 21 years, the proceeds arising from the use of the land shall be applied for the use and benefit of the said John Coy and his family, so far and in such a way as to the said Sarah Coy, her heirs or executors, shall seem right and proper; and after the said youngest child shall so arrive at the age of 21 years, it shall be the duty of the said Sarah Coy, her heirs or executors, to either divide the land between the said John Coy and his children or sell and dispose of the same, and the proceeds of such sale to apply for the benefit of them the said John Coy and his children, in such way or manner as to her or them shall seem right and proper."

Held, that, under the deed, S. C. was a trustee to apply the proceeds of the land till the youngest child of John Coy, living at the death of the grantor, attained twenty-one, for the use and benefit of John Coy and his family, to the extent and in the manner S. C. might deem right and proper, the amount and mode of application being left entirely in her discretion; and after such child attained twenty-one either to divide the land amongst John Coy and his family, or to sell the same and apply the proceeds for the benefit of John Coy and his children, in such manner as to her should seem right and proper; but she was not at liberty to select one child and give the whole proceeds to such one; the discretion vested in the trustee being as to the amount and mode of application—not as to the persons to be benefited; and this discretion within these limits the Court would not control.

Proudfoot, V.C.] [January 23.

McCormack v. Bullivant.

Mechanic's Lien—Demurrer.

Held, that a sub-contractor, though entitled to a lien upon property for the construction of which he has furnished material to an original contractor or another sub-contractor, must, under the provisions of the Act of 1874, in order to enforce such lien, institute proceedings for that purpose within thirty days after the material furnished and the work completed by him; the lien in such case arising from the doing of the work, not from registration as under the Act of 1873.

Re Robertson;—Robertson v. Robertson.

Dower, value of.

Held, on appeal from the report of the Master, that a woman is entitled to dower in lands on which she and her deceased husband had joined in creating a mortgage to secure a debt of the husband; and that in valuing such dower the value of the whole estate is the basis of computation—not the amount of surplus after discharging the claim of the mortgagee.

Spragge, C.] [January 24.

Robson v. Argue.

Mortgages—Lis pendens.

L. created a second mortgage after a bill had been filed to foreclose a prior incumbrance on the same land.

Held, that the mortgagee in such second mortgage took subject to the *lis pendens*, even though service of the bill had then not been effected; and a bill filed by him to redeem the prior incumbrancer, after a final foreclosure in such suit, was dismissed with costs.

Craig v. Milne.

Sureties for Assignee in Insolvency—Injunction—Practice.

This Court will not interfere by injunction to restrain proceedings instituted against the sureties of a defaulting assignee in insolvency; notwithstanding several actions may have been brought against them, and the aggregate amount sought to be recovered greatly exceeds the amounts for which they had become security. The proper mode of proceeding in such circumstances is as pointed out in *Sinclair* v. *Baby*, 2 Prac. R. 117.

Spragge, C.] [February 1.

Miller v. Miller.

Will, construction of—Interest on legacies—Lunacy of testator.

A testator by his will dated 30th June, 1863, gave one half of his farm to his widow during her widowhood for the maintenance of herself and children, "and with regard to the stock on the said lot at the time of the decease of my said wife, with any other personal effects or property in her possession, she is hereby empowered to make such distribution as to her shall seem best." In July of the following year the testator became insane, a committee of his person and estate was appointed who, under an order in lunacy, leased the lands and sold the farm stock and implements:

Held, that the order in lunacy and sale thereunder operated as an ademption of the legacy to the wife, so far as the farming stock and implements were concerned: but that under the power of distribution given by the will she was empowered to make such distribution of the personal effects bequeathed to her as to her should seem best: not only as to the amounts to be distributed but also as to the objects of the distribution.

The testator devised a lot of land to his son John, his heirs and assigns for ever.

Held, notwithstanding the subsequent lunacy of the testator, the devisee was not entitled to the rents of the estate prior to the decease of the testator.

The testator devised to another son another portion of his farm with a direction that the rents thereof should be set apart from the date of the will until the son attained 21 to enable him to erect suitable buildings thereon. The Court, in order to carry out the manifest intention of the testator, clearly expressed in his will, directed an allowance to be made to the son, out of the surplus handed over by the committee to the executors, of a sum equal to the amount of such rents from the date of the will until the son attained twenty-one; and directed a reference, if necessary, to ascertain the amount.

The testator gave legacies of $1,000 each to two of his daughters, payable in seven years from the date of the will:

Held, that they were not entitled to interest from the expiration of such seven years, but only interest as in an ordinary case.

He also gave a legacy to another daughter in these words, "I give and bequeath to my daughter E. M. the sum of $1,200, such sum to be invested by my executors seven years from the date hereof until the said E. M. attains the age of twenty-one years, which said sum of $1,200 and the interest accrued thereon shall be paid over for her benefit when she attains the age of twenty-one years as aforesaid."

Held that she was entitled to interest from the death of the testator only.

Spragge, C.] [February 5.

Leeming v. Smith.

Pleading—Demurrer—Surety—Parties.

The bill alleged the purchase by the plaintiff of certain land which at the time was subject to a mortgage not then due, and which the vendor agreed to pay off; and having conveyed the land to the plaintiff by a deed containing covenants for quiet enjoyment and freedom from incumbrances, he, with a surety, executed a bond to the plaintiff "conditioned to indemnify and save her harmless from the said mortgage;" that the mortgage had since become due and payable, and the plaintiff prayed that the defendants (the vendor and his surety) might be ordered to pay it off. The bill, however, did not contain any allegation that the plaintiff had been disturbed in her pos-

session or hindered in the enjoyment of the premises, neither did it allege any demand of payment by the mortgagees.

A demurrer by the surety for want of equity was allowed with costs.

SMITH v. SMITH.

Administration—Injunction.

J. W. S. was killed by a railway disaster in the State of Ohio, and the defendant, his widow, while residing in the State of New York, took out administration to his estate there, and instituted proceedings in the Courts of the State of New York against the railway company, which was incorporated in both those States, to recover damages. This action was compromised by the company paying to the widow in New York $4,000. Part of that money she brought to this country, a portion of which, it was alleged, she invested in business, another portion being deposited in a bank. Under these circumstances, J. W. S. having died childless, the father of the deceased claimed to be entitled to one-half of the sum received from the railway company, and filed a bill seeking to restrain the withdrawal of the money from the bank, and the further carrying on of the business, which, however, the widow denied was hers. The evidence of experts—lawyers practising in the States of Ohio and New York respectively—as to what was the proper distribution of the fund was contradictory, as was also the evidence as to the ownership of the business.

Under these circumstances, the Court refused to restrain the carrying on of the business, but directed the defendants to keep an account of the dealings thereof, and continued an interim injunction obtained *ex parte*, restraining the withdrawal of the money from the bank.

JOHNSON v. HOGG.

Administration suit—Liability of executors for negligence—Costs.

Quære, whether the Act of Ontario (cap. 37 of 1869) alters the law, as to the liability of executors for assets of an estate lost by their negligence: but the fact of merely allowing a debt to remain outstanding is not *per se* negligence: Therefore where in an administration suit it was shewn that stock in a gravel road company amounting to $260 and promissory notes to the amount of $748 had been left outstanding and unrealized by the executor, and there was no suggestion that there was any danger to the fund caused thereby, and the matter in respect of which the executor was called in question was small, except the claim of the plaintiff as a creditor, in respect of which he had failed, the Court, on further directions, refused relief to the plaintiff, and dismissed his bill with costs, but without prejudice to his right to institute another suit in the event of any future maladministration of the estate.

TOWNSHIP OF HAMILTON v. STEVENSON.

Foreclosure—Immediate Sale—Incumbrancers.

This was a suit to foreclose a mortgage. The defendant by his answer admitted facts which entitled the plaintiff to a decree, but asked a sale instead of foreclosure, as prayed by the bill.

On the cause coming on by way of motion for decree,

Boyd, Q. C., for the plaintiffs, asked that a decree for immediate sale of the mortgage premises might be made.

Moss, for the defendant consented. It was stated by counsel that the solicitor for the plaintiffs had instructed him that there were subsequent incumbrances, and that Vice-Chancellor Blake had, under similar circumstances, held that there could not be a decree for immediate sale in the absence of a consent from the subsequent encumbrancers, but that as no such case had been reported, the probability was that the decision was only that in a suit to foreclose an immediate decree, for that relief, would not be granted in the absence of such consent. In case of a sale the subsequent encumbrancers have no right to redeem—only to be paid out of any surplus—and therefore are in no wise injured by an immediate sale being granted.

Spragge, C. thought the decree might go as asked.

Spragge, C.] [February 13.

LING v. SMITH.

Will, construction of—Bequest to a class—Inaccurate description of legatees.

A testator, after making sundry dispositions of his estate, devised a portion of it to executors to sell, and the proceeds, after payment of debts, "to divide equally between my said son C. W. S. and my daughters by my first marriage." The testator had been thrice married. Of the first marriage there was no issue, male or female, living at the date of the will—several years after the death of his first wife; by the second marriage he had issue, one son, C. W. S. and four daughters, all surviving; by his third wife, who survived him, he had issue, one son, J. S. and four daughters.

Held, that the daughters by the second marriage sufficiently answered the description in the will, who, with their brother (C. W. S.), were entitled *per capita*; not that C. W. S. was entitled to one moiety, and the daughters, as a class, to the other moiety; that so far as the suit was

rendered necessary,—by the ambiguity arising out of the inaccurate description of the class the testator intended to benefit,—the costs of all parties should be borne out by the estate; but that C. W. S. must bear the costs incurred by him in asserting his claim adversely to his sisters.

Spragge, C.] [February 15.

Re Charteris.

Lunacy.

Funds were bequeathed to trustees; and one of the *cestuis que trust*, it was stated, had been declared lunatic in Scotland, and a *curator de bonis* of the estate of the lunatic was appointed. The lunatic was not absolutely entitled to the fund, and the trustees applied to the Court for liberty or instructions to remit the fund to the Curator.

The Court under the circumstances refused to make such direction and directed a reference "to the Master to enquire and report (1) whether M. A. C. in the petition mentioned has been found and adjudged a lunatic according to the law of Scotland; (2) whether A. S., in the petition named, has been appointed *curator de bonis* of the estate of the said M. A. C., and if so, whether he has given security for the proper application of any moneys of the said M. A. C., and the nature and amount of such security."

Proudfoot, V. C.] [February 19.

Douglas v. Chamberlain.

Mechanic's lien against a mortgagee—Pleading.

The Revised Statutes of Ontario (cap. 120, sec. 7) gives a contractor a lien for work done and materials furnished upon land subject to a mortgage, in priority to the mortgagee, on the amount by which the selling value of the property has been increased by the work and materials of the party furnishing the same, but a bill filed for the purpose of enforcing such a claim must state distinctly the dates of the encumbrances having been created.

Proudfoot, V. C. in disposing of a bill filed for this purpose, observed: "I think that in the absence of any distinct allegation that the mortgages were on the land before the commencing of the work or placing of the materials, the plaintiffs are not entitled to the priority they claim against the mortgagees in virtue of this statute. The dates are not stated positively. . . . Upon the record as at present framed the plaintiffs are not entitled to the priority sought, and the mortgagees would seem to be unnecessary parties. The plaintiffs may, if they choose, take a decree affecting the equity of redemption only, or they may amend their bill as they may be advised."

Broughton v. Smallpiece.

Mechanics' Lien Act—Increase of value of land.

Where buildings or other improvements are placed upon land subject to a mortgage, by reason of which the value of the land is increased, the contractor is only entitled to a lien on the property to the extent of such increase in the value of the land, irrespective of the buildings or other improvements, or of the amount expended in their construction. Therefore, where property was sold under a decree of this Court for $1,000, and the Master certified the value without the improvements to be $600, a contractor who held a lien under the Act was restricted to his proportionate share (with other lien holders) of the $400 increase in value, and that although it was shewn that the contract price for the buildings had been $1,950.

Blake, V. C.] [February 19.

Re Campbell.

Bar of Dower—Husband and wife—Notice of motion.

This Court will not, acting under the Revised Statutes of Ontario, cap. 126, sec. 10, order a conveyance free from the dower of a wife living apart from her husband, unless it is shewn that the party moving is unable to serve notice of the intended application upon the wife, or that she has left her husband and has expressed her determination never to return to reside with him.

This was an application by Mr. A. G. McMillan (Whitby), upon the petition of R. E. Campbell, setting forth that the wife of the petitioner was, and had been for two years, living apart from him under such circumstances as, in the words of the statute, disentitled her to dower of certain lands which he had contracted to sell and was desirous of selling, and praying for an order to "dispense with the concurrence of the wife for the purpose of barring her dower therein." It appeared that no notice had been served upon the wife; that she was resident in the same locality as the husband, and that no difficulty existed in effecting service of a notice upon her. Counsel submitted that it was discretionary with the judge before whom the application is made to grant the order *ex parte*; and that the facts appearing here were such as to warrant such an order being made in this matter.

Blake, V. C.—The course pursued by the Courts of England, acting under a similar provision, is in all cases to require notice of the application to be given, unless indeed it be shewn that unreasonable difficulties are thrown in the way of effecting service on the wife, or that she has left her husband's roof, and expresses a determination never to return to reside with him. I am clearly of opinion that you must give notice.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR FEBRUARY, MARCH AND APRIL, 1877.

(*Continued from p. 66,*)

FRAUDULENT PREFERENCE.

The Stock-Exchange rules provided that a member unable to meet his engagements on the Exchange should be declared a defaulter, cease to be a member, and not be eligible for re-admission without paying one-third of his Stock-Exchange debts. The committee of the Exchange were to collect the defaulter's assets, and pay them out *pro rata* to his Stock-Exchange creditors. Outside creditors were not to be recognised. C., a member, had been declared a defaulter, and had given a check for £5,000 to the committee for his Stock-Exchange creditors. He afterwards went into bankruptcy. *Held*, that the £5,000 must be given up to the trustees in bankruptcy for the general creditors.—*Ex parte Saffery. In re Cooke*, 4 Ch. D. 555.

FUND IN COURT.—See COLLISION, 3.

GIFT TO CLASS.—See CLASS.

HUSBAND AND WIFE.—See BANKRUPTCY; CUSTODY OF CHILD; DIVORCE; MARRIAGE SETTLEMENT, 2; TRUSTEE.

IMPLIED WARRANTY.—See WARRANTY.

INDICTMENT.—See CONSPIRACY.

INFANT.

Plaintiff loaned the defendant, a minor, and his mother £150, part of which was expended for necessaries for the minor. As security for the repayment of said sum, the mother undertook to convey her life interest, and the minor his reversionary interest, in some property to plaintiff. On the minor attaining twenty-one, plaintiff brought an action against him for an account of moneys spent for necessaries; and asked that the amount so found might be declared a lien on the defendant's reversion. The account, with an order for repayment, was allowed, but the deed was declared not binding on the defendant.—*Martin* v. *Gale*, 4 Ch. D. 428.

INFRINGEMENT.—See COPYRIGHT.

INNKEEPER.

Defendant R. kept a hotel, and under the same roof a refreshment bar and counter, where passers could obtain drink. Prosecutor was a neighbour, and had a way of coming to the bar with his dogs, to the annoyance of the guests, who complained. The proprietor requested him to keep his dogs away. Subsequently he came into the bar with a big dog, and asked for refreshments, which were refused him. He had the innkeeper indicted for refusing to furnish refreshments. *Held*, that the indictment could not be maintained, as the bar was not an inn, and the prosecutor was not a traveller; and, moreover, that his conduct in annoying the guests with his dogs was sufficient ground for the defendant to refuse to entertain him.—*The Queen* v. *Rymer*, 2 Q. B. D. 136.

INSURANCE.

The question was, whether, in a valued policy on freight, the freight meant was the whole freight, or the balance after deducting certain advances that had been made. *Held*, that the rule, that in a valued policy the question of the valuation cannot be gone into, did not preclude an inquiry into the above question. Rule that a marine policy may be ratified after notice of loss, affirmed.—*Williams et al.* v. *The North China Insurance Co.*, 1 C. P. D. 757.

INTENTION.—See CLASS; EMBEZZLEMENT, 1.

JOINT TENANT—See APPOINTMENT.

LACHES.—See MORTGAGOR AND MORTGAGEE, 1.

LANDLORD AND TENANT.

W. made an agreement in writing, not under seal, with B., by which W. undertook to demise to B. a certain messuage as tenant from year to year, so long as B. paid the rent, and W. had power to let the premises. The rent was below the market rate. B. paid his rent quarterly. *Held*, in a suit by W. against B. for possession, that the instrument was not a lease, on the ground of uncertainty, and as not conforming to the Statute of Frauds, and the 8 & 9 Vict. c. 106. The defendant had only a tenancy from year to year.—*Wood* v. *Beard*, 2 Ex. D. 30.

LATENT DEFECT.—SEE WARRANTY.

LEASE.

In the *habendum* of a lease executed in 1874, the term mentioned was 94¼ years, in the *reddendum* 91¼. In the counterpart of the lease executed by the lessee both the *habendum* and the *reddendum* had 91¼. *Held*, overruling the common pleas that there was a plain clerical error,—that the "94" must be rejected, and the lease be construed as for 91¼ years.—*Burchell* v. *Clark*, 2 C. P. D. 88; s. c. 1 C. P. D. 602.

See LANDLORD AND TENANT; SPECIFIC PERFORMANCE.

LIBEL AND SLANDER.

1. The medical officer of a workhouse in a small country district is not a person of sufficient consequence to the whole country to constitute the publication by a *Man-*

chester daily paper of certain proceedings of the guardians of said workhouse, reflecting upon said medical officer, privileged. Neither is the workhouse of sufficient importance to the country at large to render such an article privileged.—*Purcell* v. *Sowler et al.*, 1 C. P. D. 781.

3. The defendant was an expert in handwriting, and gave evidence in a will case, to the effect that the signature was a forgery. In another case, where defendant was on the stand, allusion was made by counsel to some remarks of the judge disparaging to the witness in the will case, and the defendant, though forbidden by the judge to allude further to the will case, insisted on saying, "I believe that will to be a rank forgery," &c. *Held*, that the privilege of a witness extended to cover this case, as the remark was made by witness in defence of his own credit as an expert.—*Seaman* v. *Netherclift*, 2 C. P. D. 53; s. c. 1 C. P. D. 540.

Lien.

A solicitor in a suit in bankruptcy employed by the trustee is entitled to retain papers on which he has expended labour or his own money, as security for his fees.—*Ex parte Yalden. In re Austin*, 4 Ch. D. 129.

See Vendor and Purchaser.

Limitation of Liability.—See Common Carrier.

Limitations, Statute of.—See Statute of Limitations.

Marine Insurance.—See Insurance.

Market Value.—See Damages.

Marriage—See Will, 2.

Marriage Settlement.

1. J., on occasion of his second marriage, made a settlement of a piece of land upon trust for himself and his second wife, during their joint lives, and the life of the survivor, remainder to his son by a former marriage, T., absolutely. The wife's property was at the same time settled to her separate use, with power of appointment, and in default of appointment to her children born or to be born. J. sold the land to the plaintiff. *Held*, that, in the marriage settlement, the provision for the son was a purely voluntary one, and not valid against a purchaser of the property for consideration.—*Price* v. *Jenkins*, 4 Ch. D. 483.

2. S. and wife had a power of appointment over real estate in favour of their children. They had six children; and, on the eve of marriage of one daughter, an agreement was made between S. and his wife, and the daughter and the intended husband, by which the parents agreed to appoint a portion of the property to the daughter in consideration of the marriage; and the intended husband agreed that he would "settle such share as" his wife should receive, to her use, with power of appointment, remainder to himself, and ultimate remainder to the children of the marriage. S. survived his wife, released his power of appointment, and gave a portion of the interest in the property after his death to said daughter. The daughter died, leaving two infant children, and before her husband had taken any steps to carry out the "settlement" proposed in the agreement made at the time of the marriage. The question was whether the marriage agreement was binding on the wife, and consequently on the oldest child, her heir at law. *Held*, that although the husband, by that agreement, engaged to settle what was not his, but his wife's, yet the the wife would be bound by it, on the ground that she had assented to her father's arrangement, and hence it was also binding on her heir, and must be carried out.—*Lee* v. *Lee*, 4 Ch. D. 175.

Master and Servant.—See Embezzlement, 2.

Measure of Damages.—See Damages, 1, 2.

Misdescription.—See Deed.

Mistake.—See Sale.

Mortgagor and Mortgagee.

1. S. H., tenant for life in leasehold property under a will, began proceedings for administration in 1859. In 1859 and 1860 she mortgaged her life interest. The same year the mortgagee entered under an order, received the rents for the interest, and paid the balance to the tenant for life. March 25, 1866, S. H. left her home, and was never heard of again. In 1875, the remaindermen under the will petitioned to have the leasehold sold, and the proceeds paid to them. For the purposes of that petition it was decided that S. H. must be considered to have died soon after June, 1866. On a petition by the remaindermen for arrears of rent from the mortgagee, *held*, that they were entitled to only six years' rent to the date of the petition, as there was no relation of trust between the mortgagee and them, and that there was no laches on their part in not filing the petition before the expiration of seven years from the disappearance of S. H.—*Hickman* v. *Upsall*, 4 Ch. D. 144.

2. E., a trader, made a mortgage conveyance to one P. of all his stock of upholstery goods in his shop in D. street, and in the same deed of all his household furniture in his house in S. street. There was a power in the deed for the mortgagee at any time to take and retain possession of

the property. At 9.25 A. M. on June 28, 1876, P took possession of the shop and contents. At 10 A. M. of the same day E. filed his petition fot liquidation, but without notice to P.—On the afternoon of the same day, and after he had notice of the petition, P. took possession of the furniture in S. street. *Held*, that P. was entitled to the furniture as well as the stock in trade, as against the liquidator.—*In re Eslick. Ex parte Phillips. Ex parte Alexander*, 4 Ch. D. 496.

3. W. deposited with C. certain bonds to secure a loan. C. filed a bill for foreclosure or sale. *Held*, that the doctrine of equitable mortgage of real estate by deposit of title deeds cannot be extended to authorize a pledge of personal property to foreclose. He can only have an order of sale.—*Carter* v. *Wake*, 4 Ch. D. 605.

See DOWER; FIXTURES.

MORTMAIN.

Commissioners under the Act to supply the town of A. with pure water were authorized to purchase land, construct gas and water works, and to levy rates upon occupiers, and recover by distress; and the works as well as the soil were vested in them. They were also authorized to borrow money, and they made mortgages of the "works, rents, and rates" as security for the sums borrowed. P. left £400 in these securities by will to a charity. *Held* that the form of the mortgage conferred on the holder an interest in land, and hence that the securities came within the statute of mortmain.—*Chandler* v. *Howell*, 4 Ch. D. 651.

NECESSARIES.—See INFANT.

PARTNERSHIP.

H., a banker, took in K. as a member of the firm, the latter furnishing no capital, and having nothing to do with the conduct of the business. H. engaged secretly in speculations, drew money from the bank fraudulently, and manipulated the books to conceal his performances, lost in his ventures, and finally committed suicide. K. left all his supposed profits in the bank, and on H.'s death he had to go into bankruptcy. In the administration proceedings on H.'s estate the trustees in bankruptcy of K. presented a claim for H.'s fraudulent overdrafts. *Held*, that the claim should be allowed.—*Lacey* v. *Hill*, 4 Ch. D. 537.

PATENT.

Case of insufficiency of specification in the matter of a lamp-burner. Description and accompanying figures did not agree.—*Hinks* v. *Safety Lightning Company*, 4 Ch. D. 607.

(To be continued.)

LAW STUDENTS' DEPARTMENT.

EXAMINATIONS, HILARY TERM.

As students are always anxious to know what marks they have obtained at an examination, and as those who do well should have due credit, we have obtained and now publish the result of the several examinations which have lately been held.

STUDENTS-AT-LAW.

Graduates.

Alex. Dawson, B.A., University of Toronto.
T. D. Cumberland, B.A., Queen's College.
W. B. Carroll, B.A., Trinity College.

Undergraduates.

Francis Badgley, University of Toronto.
William Molson, "
Gilbert Lilly, "
J. A. C. Reynolds, Victoria College.

Primary Examination.

Maximum, 1,600.

H. A. McLean, 1,388; William Burgess, 1,357; L. F. Heyd, 1,281; J. F. Canniff, 1,274; J. D. Gansby, 1,221; G. Corry, 1,203; E. W. Nugent, 1,183; C. P. Wilson, 1,138; D. McArdle, 1,074; Thos. Hislop, 1,050; W. A. McLean, 1,049; A. J. Williams, 1,032; J. J. Panton, 998; W. M. Shoebottom, 936; J. G. Wallace, 923; G. Morehead, 919; W. G. Shaw, 873; R. Patterson, 862; H. H. Robertson, 856; J. A. Shettle, 834; G. F. Ruttan, 833; M. McFadden, 830; A. Ford, 806; G. H. C. Brooke, 804.

Thirty-eight presented themselves for this examination.

ARTICLED CLERKS.

Maximum, 800.

H. White, 577.

Four presented themselves for this examination.

INTERMEDIATE EXAMINATION.

Maximum, 300.
Minimum, 150.
Minimum, to pass without oral, 225.

FIRST.

E. V. Bodwell, 286; F. E. Hodgins, 279; J. M. Glenn, 276; E. Cahill, 268; R. Cas-

sidy, 256; W. Nesbitt, 256; M. A. McHugh, 254; C. R. Radcliffe, 253; S. J. Weir, 249; J. A. Allen, 244; A. Crysler, 241; G. A. Somerville, 231; J. B. McKillop, 227; W. White, 225—(without oral).

Harley, 224; D. E. Shepperd, 207; J. R. Lavell, 204; James Riddell, 190; W. Proudfoot, 169; H. J. Duncan, 166; F. Rogers, 160.

SECOND.

W. J. Gorman, 283; J. J. Scott, 268; Geo. Claxton, 257; J. Cowan, 239; J. B. McLarren, 234; W. R. Hickey, 225—(without oral).

W. M. Reade, 215; E. G. Carey, 207; P. A. McDonald, 205; J. R. McColl, 205; T. W. Crothers, 204; W. J. Lavery, 197; Thos. Ede, 193; J. B. Rankin, 186; C. M. Foley, 183; W. Fletcher, 181; A. W. Brown, 176; C. S. Rankin, 174; G. F. Jelfs, 171; A. H. Leith, 169; C. W. Mortimer, 156.

Certificates of Fitness.

Maximum, 600.
Minimum 30.
Minimum without oral, 450.

R. Dingwall, 531; D. M. Christie, 478; C. G. Snider (Barrister), 421 (without oral); J. Stone, 446; J. Nicholls, 424; R. Strachan, 397; J. A. Worrell, 397; V. A. W. G Robertson, 388; H. A. L. White, 366; J. G. Carrell, 364; D. R. Springer, 357; F. W. Gearing, 353; W. J. Hales, 338; G. A. Skinner, 303.

Call.

Maximum, 600.
Minimum 300.
Minimum without oral, 450.

C. F. Shepley, 504; W. J. Clarke, 500; E. G. Ponton, 399; W. E. Hodgins, 398; J. Ketchum, 387; Robt. Shaw, 371; H. P. O'Connor, 350; W. C. Moscrip, 333; J. J. Roberston, 329.

The first two passed without oral by their marks, the rest because they were attorneys.

EXAMINATION QUESTIONS.

We have received a letter from a law student urgently requesting us to obtain and publish some of the questions for the Intermediate Examinations. We accede to his request and hope he and his brethren will profit by them. The following are the questions at the Examination for last Term:

FIRST INTERMEDIATE.

Equity.

1. Distinguish between money payable by way of penalty and as "liquidated damages."

2. Why cannot all trusts regarding lands be proved by parol?

3. What is an equitable mortgage?

4. Define "accident."

5. Explain the doctrine of specific performance.

6. What must the assignee of a chose in action do in order to prevent the assignment to him being defeated by a subsequent assignment of the same debt to another?

7. Explain the maxim "Equity follows the law."

SECOND INTERMEDIATE.

Leith's Blackstone—Greenwood on Conveyancing.

1. How may guardians of infants be appointed?

2. Who is entitled to possession of land after execution of a mortgage of it?

3. Distinguish between custom and prescription.

4. What are requisites of an exchange?

5. In what ways can a parol lease be surrendered?

6. A mortgagor wishing to pay off his mortgage finds that more than the usual expense will be incurred in obtaining a reconveyance by reason of the death of the mortgagee, or his having made a settlement of the mortgage money. By whom must the extra expense be borne?

7. By whom are the costs connected with the preparation and execution of a lease to be borne, in absence of any special agreement?

CERTIFICATE OF FITNESS.

Equity.

1. A, believing himself the owner of a parcel of land, erects buildings thereon with the knowledge of the owner, who fails to

inform A of his mistake. What, if any, remedy has A ?

2. What is meant by argumentativeness in pleading, and what by multifariousness ?

3. What different courses are open to a cestui que trust whose property has been wrongfully converted by his trustee ?

4. In what summary way, without the institution of a suit, may a trustee obtain an order of the Court of Chancery fixing the amount of the trustee's commission in respect of his dealings with the trust moneys ?

5. Distinguish between actual and constructive notice.

6. Under what circumstances may an unregistered instrument, prior in point of time, prevail as against a registered instrument ?

7. Two persons buy an estate and cause the conveyance to be made to them as tenants in common. One pays the whole purchase money. Has he any lien on the other party's share ? Explain.

8. What is the rule as to the validity or otherwise of a mortgage given by a client to a solicitor *(a)* to secure costs aleardy incurred ; *(b)* to secure future costs.

9. How may a vendor's lien for unpaid purchase money be defeated ?

10. Enumerate the different circumstances under which a bill of complaint may be dismissed for want of prosecution.

Leake on Contracts—Statutes.

1. To what Court does an appeal lie from the judgment of a judge of the County Court ? Sketch briefly the practice in bringing the case on by way of such appeal.

2. Goods are sold upon a contract to pay for them by the purchaser's promissory note, payable at a future day, default is made in giving the note : what is the vendor entitled to recover in an action for the breach of the contract ?

3. Distinguish between a warranty and a representation.

4. What is the general rule as to the effect of the death of the grantor of a power of attorney upon the power of attorney ? What statutory exception is there to the rule ?

5. What is a patent ambiguity, and what is a latent ambiguity ? What is the rule in each case as to the admissibility of evidence to explain such ambiguity ?

6. What is the effect on a written contract of its alteration by one of the parties without the consent of the other ?

7. Define nominal damage. What is meant by special damage ?

8. What contracts of hiring require to be in writing ? Why ?

9. State some circumstances under which a person may be held liable on a contract entered into in his name by a third person for him without his authority.

10. Where both the proposal for the sale of goods and the acceptance is by letter sent through the post, when is the contract complete ?

We have received, but too late for insertion, a note of the proceedings of the Osgoode Literary and Debating Society, on 16th and 23rd February last. It will appear next month.

SPRING ASSIZES.

EASTERN CIRCUIT.

Hon. Mr. Justice Galt.

1. Cornwall	Tuesday		19th March.
2. Perth	Wednesday		27th March.
3. Ottawa	Tuesday		2nd April.
4. Pembroke	"		30th April.
5. L'Orignal	"		7th May.

MIDLAND CIRCUIT.

Hon. Mr. Justice Morrison.

1. Belleville	Tuesday		2nd April.
2. Napanee	"		16th April.
3. Kingston	"		23rd April.
4. Brockville	"		7th May.
5. Picton	"		14th May.

VICTORIA CIRCUIT.

Hon. Chief Justice of Ontario.

1. Whitby	Tuesday		19th March.
2. Cobourg	"		26th "
3. Brampton	"		9th April.
4. Lindsay	"		16th "
5. Peterborough	"		23rd "

BROCK CIRCUIT.

Hon. Mr. Justice Burton.

1. Woodstock	Tuesday		2nd April.
2. Owen Sound	Monday		8th "
3. Walkerton	Tuesday		16th "
4. Stratford	"		23rd "
5. Goderich	Monday		6th May.

NIAGARA CIRCUIT.

Hon. Mr. Justice Gwynne.

1. Cayuga	Tuesday	19th March.
2. Welland	Tuesday	26th "
3. St. Catharines,	Monday	8th April.
4. Hamilton	Tuesday	23rd April.
6. Milton	"	7th May.

WATERLOO CIRCUIT.

Hon. Mr. Justice Patterson.

1. Barrie	Monday	1st April.
2. Simcoe	"	15th "
3. Berlin	"	22nd "
4. Brantford	"	29th "
5. Guelph	"	6th May.

WESTERN CIRCUIT.

Hon. Mr. Justice Wilson.

1. London	Tuesday	19th March.
2. St. Thomas.	"	2nd April.
3. Sandwich	"	9th "
4. Sarnia	"	16th "
5. Chatham	Monday	22nd "

HOME CIRCUIT.

Hon. Mr. Justice Armour.

Toronto (Assize and Nisi Prius.)	Tuesday	19th March.
Toronto (Oyer and Terminer.)	Tuesday	16th April.

At every *nisi prius* there shall be a jury and a non-jury list, the latter not to be taken up till the jury is dismissed. The Chief Justice of the Common Pleas will remain in Toronto to hold the Vacation Court, etc.

In the Court of Queen's Bench the sitting of Trinity Term last was extended for one week pursuant to the powers given by Rev. Stat. cap. 39, sec. 11.

CHANCERY SPRING SITTINGS.

Hon. V. C. Proudfoot, Toronto.

Toronto.....Monday.....March 11

WESTERN CIRCUIT.

Hon. The Chancellor.

Woodstock	Thursday	April 25
Chatham	Wednesday	May 1
Sandwich	Tuesday	" 7
Sarnia	Saturday	May 11
Stratford	Wednesday	" 15
Goderich	Tuesday	" 21
Walkerton	Tuesday	" 28
Barrie	Friday	" 31

EASTERN CIRCUIT.

Hon. V. C. Blake.

Lindsay	Monday	April 1
Peterborough	Thursday	" 4
Cobourg	Monday	" 8
Belleville	Monday	" 15
Ottawa	Tuesday	May 21
Brockville	Monday	" 27
Cornwall	Thursday	" 30
Kingston	Monday	June 3

HOME CIRCUIT.

Hon. V. C. Proudfoot.

St. Catharines	Tuesday	April 2
Hamilton	Friday	" 5
Brantford	Tuesday	" 16
Simcoe	Tuesday	" 23
Guelph	Friday	" 26
Owen Sound	Friday	May 3
Whitby	Tuesday	" 7
London	Monday	" 13

FLOTSAM AND JETSAM.

A somewhat startling and rather curious judgment was recently delivered by a sessions judge in one of the Bengal districts. Four persons were brought before him on a charge of murder, and were duly convicted; but in passing sentence the judge apparently found himself in a difficulty. "There is no doubt," said he, "that all four are guilty of murder, and are therefore liable to be hanged; but I do not think it is necessary for four lives to be taken for one, but that one case of capital punishment will be enough for example!" Although, in addition to this, he said further on that "all four seem to have been equally active," yet he concluded by sentencing the apparently oldest and strongest of the prisoners to death, and the other three to imprisonment for life. It is needless to say that on an appeal to the High Court the sentence was not confirmed. Yet such is the reading of the law by some of the Indian judges. —*Albany Law Journal.*

LAW SOCIETY, HILARY TERM.

Law Society of Upper Canada.

OSGOODE HALL,
MICHAELMAS TERM, 41ST VICTORIA.

During this Term, the following gentlemen were called to the Bar, viz.:—

TALBOT MACBETH.
JOHN LANYON WHITING.
KENNETH DINGWALL.
RALPH WINNINGTON KEEFER.
ALEXANDER DUNCAN CAMERON.
WALTER BARWICK.
JOHN FRANKLIN MONCK.
WILLIAM BEAIRSTO.
JOHN WINCHESTER.
THOMAS DALZIEL COWPER.
GEORGE JOSEPH O'DOHERTY.
SILAS CORBET LOCKE.
FRANK MADILL.

The following gentlemen were called to the Bar under 39 Vict. chap. 31. : –

JAMES SMITH FEAD.
WILLIAM ROBERT WHITE.

The following gentlemen received Certificates of Fitness :—

TALBOT MACBETH.
RALPH WINNINGTON KEEFER.
FREDERICK PIMLOTT BETTS.
ROBERT WILLIAM EVANS.
THOMAS TREVOR BAINES.
CHESTER GLASS.
EDWARD GEORGE PONTON.
WILLIAM EGERTON HODGINS.
ALLAN BRISTOL AYLESWORTH.
EDWARD SYDNEY SMITH.
WILLIAM BEAIRSTO.
JOHN INKERMAN MCCRACKEN.
CHRISTOPHER CONWAY ROBINSON.
FRANK MADILL.

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

Graduates.

THOMAS C. L. ARMSTRONG, M.A., Toronto University.
HECTOR M. STROMBERG, B.A., Dalhousie College.
CHARLES JOHN LOGAN, B.A., Trinity College.
JOHN REEVE LAVELL, B.A., Queen's College.
JOHN STRANGE, B.A., Queen's College.
JOHN DOHERTY, B.A., University of Toronto.
GEORGE HENRY SMITH, B.A., University of Toronto.
ALEXANDER INNES, B.A., University of Toronto.
JOHN A. HOUSTON, B.A., Trinity College.

Matriculants.

ALFRED E. H. CRESWICK, University of Toronto.
A. DE BLAQUIERE FARMER, University of Toronto.
FREDERICK W. DAVIS, Albert College.

Junior Class.

ELVIN W. ROSS.
HARRY DALLAS HELMCKEN.
JOHN WILLIAM BINKLEY.
FREDERICK EYRE SULLIVAN.
FRANCIS A. CAMPBELL.
ALEXANDER MCKENZIE.
H. DANIEL COUGHLIN.
JAMES ALBERT KEYES.
RICHARD M. C. TOOTHE.
JOSEPH PRIESTLEY FISHER.
JAMES PITT MABEE.
DENNIS J. DONOHUE.
ALFRED HENRY CLARK.
W. R. CAVELL.
WILLIAM WARDROPE.
WALTER CAMPBELL.
WILLIAM AGUTTER TAYLOR.
RODERICK MCLEAN.
THOMAS P. COFFEE.
LEWIS HENRY DICKSON.

Articled Clerk.

FRANK E. HART.

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

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

All other Candidates for Admission as Students-at-Law shall give six weeks' notice, pay the prescribed Fees, and pass a satisfactory Examination in the following subjects :—

CLASSICS.

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

MATHEMATICS.

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

ENGLISH.

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

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:

French.

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

Or German.

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

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

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

A Student of any University in this Province who shall present a Certificate of having passed, within four years of his Application, an Examination in the subjects above prescribed, shall be entitled to Admission as a Student-at-Law or Articled Clerk (as the case may be), upon giving the prescribed Notice and paying the prescribed Fee.

All Examinations of Students-at-Law or Articled Clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

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

FINAL EXAMINTIONS.

For Call.

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

For Call, with Honours.

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

For Certificate of Fitness.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, 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.

SCHOLARSHIPS.

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

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

3rd Year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

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

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.

The Primary Examinations take place on the Tuesday and Wednesday next but one before each Term.

The Final Examinations and the Intermediate Examinations take place during the week immediately before each Term.

The Scholarship Examinations take place during the second week of Michaelmas Term.

TERMS.

Hilary Term begins on the first Monday in February.

Easter Term begins on the third Monday in May.

Trinity Term begins on the first Monday after the 21st of August.

Michaelmas Term begins on the third Monday in November.

FEES.

Notice Fee	One Dollar.
Primary Examination Fee (Students)	Fifty Dollars.
Primary Examination (Articled Clerks)	Forty Dollars.
Intermediate Examination Fee	One Dollar.
Attorneys, Final Examination Fee	Sixty Dollars.
Barrister's	One Hundred Dollars.

In Special Cases, under 39 Victoria, chapter 31, a Fee of Two Hundred Dollars is payable in addition to the above.

N.B.—After Easter Term, 1878, Best on Evidence will be substituted for Taylor on Evidence; Smith on Contracts, for Leake on Contracts.