DIARY FOR JULY.

1. Mon.. *Dominion Day.* Long Vacation begins.
   County Court Term begins.
   Heir and Devisee Sittings commence.
   Last day for County Council to equalize assessment rolls.
   Last day for County Treasurer to certify taxes due on occupied lands.
6. Sat... County Court Term ends.
7. SUN.. *6th Sunday after Trinity.*
14. SUN.. *7th Sunday after Trinity.*
15. Mon.. *Swithin.*
16. Tues.. Heir and Devisee Sittings end.
21. SUN.. *8th Sunday after Trinity.*
24. Wed.. *St. James.*
28. SUN.. *9th Sunday after Trinity.*

CONTENTS.

THE
Canada Law Journal.

JULY, 1872.

We are glad to see the Chief Justice of Ontario home again, and looking all the better for his holiday.

We clip from the English *Law Journal* a paragraph relating to Nisi Prius references, every word of which is applicable to our system, in the hope that some of our many legal members of Parliament may frame some fitting legislative remedy:

"There is nothing incident to the proceedings of a court of law more unsatisfactory than the process of referring a cause to arbitration at Nisi Prius. The witnesses have come from a distance, the attorneys are in attendance, the counsel have had their fees paid. Gradually, however, as the leading counsel for the plaintiff opens his case to the jury, the newspaper rises higher and higher before the judge's face, till at last his Loreship is entirely hidden from view—a sure sign that the case will ultimately be referred, and the parties have to begin over again. Judges are in the habit of saying that they are justices of a Superior Court, and not public accountants, and therefore they will not try certain cases. But as the law now stands, if both parties to an action desire it to be tried in the ordinary way, a judge and jury often stand very much in the position of accountants. Moreover, the evil is not simply the almost entire waste of the costly proceedings previous to the day of trial. The arbitrator appointed is probably a man with a hundred other things to do, who gives the reference a day in one week and a couple of hours in the next, till, as the case drags on, the unfortunate litigant thinks the arbitrator, who delays his case, rather more vexatious than the judge who refused to try it. Such a state of things surely calls for an amendment of the law."

It is well that prominence should be given to one of the unwritten rules of the Court of Chancery, which the Chancellor adverted to in *McLean* v. *Cross*, 3 Ch. Cham. R. 440: this, namely, that local Masters and Registrars are not to practice their profession in partnership with any solicitor who is at the time a practitioner in Chancery. They are not to do this even although they may not actually share in the emolument of suits. The reason is obvi-

ous: that the partner of the local Master may not have undue preference in the estimate of clients, or the appearance even of an undue advantage over his fellow-practitioners; and, specially, that an officer of the Court may not have to deal with cases in which he is to some extent personally interested.

The *Morning Post* says it is rumoured that Lord Chancellor Hatherley will very shortly retire, to be succeeded by Lord Romilly, (the present Master of the Rolls) who will himself be succeeded by Sir Roundell Palmer.

Here is the way Yankee juries treat a recalcitrant juryman. In Rockland County, N.Y., during the Supreme Court Circuit, a jury went out to determine upon a verdict. After wrangling a whole day and failing to agree, they were discharged by the Court. Subsequently the following prayer for relief, signed by ten members of the jury, was solemnly preferred to the Court: "We the jurors in the above trial, hereby petition this honourable Court to order the name of —— out of the jury-box for the following reasons: In our opinion he is the most stubborn and contrary man that the Almighty ever made, and is not fit to sit as a juror in any case. He was never known to agree to any question of law with either judge or juror."—We have no doubt this persecuted citizen went home after the trial and told his wife that he had been struggling all day against eleven mule-headed men who would not listen to reason.

LAW SOCIETY OF ONTARIO.

Easter Term—1872.

The following is a *resumé* of the proceedings of Convocation, during Easter Term, published by order of the Benchers.

Monday, 20th May.—The usual oral examinations of the Articled Clerks and Students-at-Law, were proceeded with and concluded.

Tuesday, 21st May.—The Report of the Examining Committee was received.

The Treasurer laid on the table a letter from Rolland Macdonald, Esq., Q.C., resigning his seat as a Bencher.

Ordered, that the resignation be accepted.

Messrs. Patterson, Crickmore and Meredith were appointed a Committee to examine the Journals and report the names of any Benchers who have failed to attend the meetings of the Benchers for three consecutive Terms.

The Committee so appointed reported that they had examined the Journals, and found that Miles O'Reilly, and Albert Prince, Esquires, elected Benchers, had failed to attend any meetings of the Benchers for the three consecutive Terms of Easter and Michaelmas, 1871, and Hilary, 1872.

Ordered, that the Report be adopted; that the Secretary do notify Messrs. Miles O'Reilly and Prince, that in consequence of their non-attendance at any meeting of the Benchers of the Law Society for three consecutive Terms, they have ceased to be Benchers under 34 Vic. ch. 18.

Ordered, that a special meeting be called for Thursday, 30th instant, for the election of two Benchers, in place of Miles O'Reilly and Albert Prince, Esquires, and for the consideration of such other business as may be brought before the meeting.

Examining Committee for next Term to be Messrs. Patterson, Harrison, Mackenzie, Crawford, and Meredith.

Abstract of Balance Sheet for first quarter of 1872, laid on the table.

Abstract of Balance Sheet for First Quarter of 1872.

INCOME.

Call Fees	$1,360 00	
Certificated Fees	1,477 00	
Admission Fees	1,188 00	
Term Fees	104 00	
Attorney Examination Fees	504 00	
Sale of Reports	252 00	
Government Warrant	1,500 00	
		$6,385 00

EXPENDITURE.

Reporters' Salaries	$1,750 00	
Salaries	675 00	
Scholarships	120 00	
Admission Fees returned	252 00	
Secretary and Examiners' Fees up to Feb. 20	297 85	
Term Fees returned	2 00	
Office	10 47	
Grounds	3 25	
Hall	551 65	
Library	412 46	
Call Fees returned	486 00	
Attorney Examination Fees returned	160 00	
Reports, Printing of	1,349 65	
Insurance	782 78	
Law Expenses	391 42	
Law Journal Account	81 00	
		$7,325 53

Expenditure less Income ..		90 534
Outstanding Assets—Cash.	66 18	
Bank deposits	14,401 61	
Debentures, Currency	4,000 00	
Special deposit	10,200 00	
		$28,667 79

May 25th.—The Hon. John Hillyard Cameron was unanimously re-elected Treasurer for the current year.

The nomination of the several Committees of Convocation was adjourned until Thursday, the 30th of May.

Thursday, May 30th.—M. R. Vankoughnet, Esq., of Toronto, was elected a Bencher in the room of Miles O'Reilly, Esq., to serve for the residue of his term.

James Maclennan, Esq., of Toronto, was elected a Bencher in the room of Albert Prince, Esq., to serve for the residue of his term.

Messrs. Sinclair, Patterson, and McCarthy were appointed a Committee to report Standing Committees for current year.

The Committee so appointed reported as follows:—

"Your Committee appointed to strike Committees, beg to report the following names.

For Finance Committee:

Mr. Crawford, Mr. Patterson, Mr. Read, Mr. Sinclair, Mr. Vankoughnet.

For Reporting Committee:

Mr. Armour, Mr. Blake, Mr. Maclennan, Mr. McCarthy, Mr. M. C. Cameron.

For Library Committee:

Mr. Blake, Mr. Crickmore, Mr. Harrison, Mr. Mackenzie, Mr. Meredith.

For Legal Education Committee:

Mr. Benson, Mr. Burton, Mr. Moss, Mr Palmer, Mr. Patton.

And your Committee would submit to Convocation, that it would be advisable to enlarge the number of each Committee to seven, leaving the quorum to be three as at present; and in the event of this suggestion being adopted, your Committee propose the following additional names, viz.:—

Finance—Mr. O'Reilly, Mr. Pardee.

Reporting—Mr. Bell, Mr. Moss.

Library—Mr. Becher, Mr. McMichael.

Legal Education—Mr. Armour, Mr. Patterson.

All which is respectfully submitted.

(Signed,) C. S. Patterson,
Chairman.

30th May, 1872.

Resolved, That the Report as amended be adopted.

Resolved, That all Standing Committees shall consist of seven members, with three as a quorum.

Resolved, That the Reports of the Courts of Law and Equity shall be conducted by an Editor in Chief and a Reporter for each of the Superior Courts.

Resolved, That the salaries of the Reporters shall be as follows: Editor in Chief, sixteen hundred dollars; Chancery, twelve hundred dollars; Common Law, each Court, eight hundred dollars.

Resolved, That the office of Editor in Chief be offered to Christopher Robinson, Esq., Q.C.;

That the present Reporter of the Common Pleas be continued as Reporter of that Court;

That the present Reporter of the Court of Chancery be continued as Reporter of that Court;

That Mr. Henry C. W. Wethey, be appointed Reporter of the Court of Queen's Bench.

Resolved, That the salaries of the Reporters under the rules now adopted, come into operation on the first day of July, 1872.

Resolved, That on the removal of any Reporter by the Society, his salary shall cease upon his removal.

Resolved, That the Chamber Reports be continued to 1st July, 1872, and that the Chamber Reporters be paid on that day each the sum of three hundred and seventy-five dollars, in compensation for their respective appointments, and of all claims against the Society.

Resolved, That the Committee on Reporting shall prescribe the duties to be performed by the several Reporters and the Editor in Chief, and shall report thereon from time to time to Convocation.

Mr. Sinclair moved for a call of the Bench, for the re-consideration of the resolution for the continuance of the Reporter in Chancery, for the last Friday in Term, which motion was lost.

Resolved, That the Finance Committee be authorized to confer with the Government on the subject of the covenant of the Law Society for the maintenance and repair of the several Courts, and to complete a new agreement if they consider it advisable to do so, and report to the first meeting of Convocation afterwards, either in committee or otherwise.

Report of Finance Committee as to salary of Engineer received and adopted, and salary allowed at ($500) five hundred dollars per annum from 1st of April last.

Resolved, That the present mesenger be allowed the sum of one hundred and eight dollars per annum in lieu of his fees formally paid him by students for admission and call.

Resolved, That the following be a standing order:

After the present term no person shall be appointed an officer of the society (other than ex

aminer) except after at least one week's notice by the Secretary of the intention to appoint, given by circular to each Bencher; provided that it shall nevertheless be competent for the Treasurer to temporarily fill any vacancies which the exigencies of the case may require to be filled.

The Rules on the subject of Legal Education were read a first, second and third time, and carried.

Resolved, That it be referred to the committee on Legal Education to report next Term on the subject of a Law School, and the system to be adopted under the statute of the last session respecting the Law Society.

Ordered, that the sum of fifty dollars be paid to Mr. Evans for his services as examiner this Term.

Ordered, that Mr. Evans be appointed examiner for next Term.

Resolved, That the Standing Committees shall meet on the rising of Convocation to elect chairmen.

Friday, June 7th.—The petition of Albert E. M. Loscombe was presented, but no action was taken on it.

The petition of Donald Greenfield Macdonald was presented, and the prayer of it was granted.

The letter of C. Robinson, Esq., Q. C., accepting the Editorship-in-chief of the Reports, both Law and Equity, was received.

Resolved, That the service of John Fisher Wood, under articles dated 18th of April, 1871, be allowed from that date, notwithstanding that the said articles were not filed in the office of the Clerk of the Crown and Pleas until 18th May, 1872.

Memorial of Salter J. Vankoughnet, Esq., received and read.

Resolved, That convocation accord to Salter J. Vankoughnet, Esq., the option of accepting or declining the offer of the Reportership of the Common Pleas till the first Tuesday of next Term, his performance of the duties under the new system, and at the reduced salary in the interval, not to be considered as prejudicing his position.

J. HILLYARD CAMERON,
Treasurer.

COURTS OF APPEAL.

The subject of appellate jurisdiction is one which is now attracting much attention, not only in England, but in the most important of her colonies. We print in another place the report of the Commissioners of Victoria, concerning the establishment of a Court of Appeal for Australasia. As to the Dominion, we gave our readers some time ago the draft of the Supreme Court Bill; but difficulties have arisen in the establishment of the Court from the fact that Quebec pursues a system of law different from that of the other Provinces. This is precisely the same difficulty in kind, though less in degree, which has long prevented the establishment in the mother country of a more satisfactory Court for colonial and other appeals than the Privy Council.

The Judicial Committee of the Privy Council as a Court of ultimate appeal has long occupied a very anomalous position. Its decisions, final and of supreme authority as regards the colonies, are yet not considered binding upon the superior courts of Great Britain and Ireland. Unlike the decisions of the House of Lords, as a Court of Appeal, which are authoritative declarations of the law to be followed in all Courts, not to be over-ruled by the House itself in subsequent appeals, not to be gotten rid of save by legislative interference; those of the Privy Council, while no doubt determining the particular case under appeal, are not necessarily to be followed in other cases involving the same point for adjudication.

That these observations may not seem exaggerated, let a few cases be noted as confirmatory of what has been advanced. Upon the construction of an Imperial Act of Parliament passed in 1861, giving the Admiralty jurisdiction in case of damage done to a ship, it was was held by the Privy Council that the term "damage" in the Act extended to a case of personal injury: The Beta, L. R. 2, P. C. 447. The Court of Queen's Bench declined to follow this decision, and have held upon demurrer to a declaration in prohibition that the term did not include injury of such a a character: *Smith* v. *Brown*, L. R. 6 Q. B. 729. So, on an earlier occasion, in *The General Steam Navigation Company* v. *The British and Colonial Navigation Company*, L. R. 3, *Exch.* 330, the majority of the Barons thought themselves not bound to follow a prior decision of the Privy Council on a question of pilotage as reported in The Stettin: Brow and Lush, 199, 203; 31 L. J., P. D., and Ad. 208. From this view Kelly, C. B., dissented, on the ground that he did not feel himself at liberty to depart from the law laid down "by the overruling authority of the Judicial Committee

of the Privy Council, which, being a decision of a Court of last resort," should be taken to govern. Again: when upon the highly important question, as to whether Colonial Legislative Assemblies had inherent power to punish by imprisonment for a contempt committed outside the House, the Privy Council at first, in 1836, affirmed the doctrine that there was such a power: *Beaumont* v. *Barrett*, 1 *Moo.*, P. C. C. 59. But when, in 1842, another appeal came up, presenting the same matter for adjudication, the same Court delivering judgment through the same Judge, Parke, B., disaffirmed the existence of any such constitutional power as a legal incident in Colonial Houses of Assembly: *Kielly* v. *Carson*, 4 Moo., P. C. C. 63. This later opinion was adhered to when, for a third and last time, in 1858, the same question arose in *Fenton* v. *Hamilton*, 11 Moo., P. C. C. 347.

With this fluctuation of decision contrast the judicial position of the House of Lords as set forth in the language of Lord Campbell: "By the constitution of the United Kingdom, the House of Lords is the Court of appeal in the last resort, and its decisions are authoritative and conclusive declarations of the existing state of the law, and are binding upon itself when sitting judicially, as much as upon all inferior tribunals." *The Attorney General* v. *The Dean and Canons of Windsor*, 8 Ho. of L. C. 391. See also the language of Lord Eldon in *Fletcher* v. *Lord Sondes*, 1 Bligh, N. R. 144, 249, on the same point, and per James, V. C., in *Topham* v. *Portland*, 38 L. J. N. S., Ch. 513.

The *Solicitors' Journal* maintains that there are six points which are essential to the existence of a satisfactory Supreme Court of Appeal: It should be (1) single; (2) Imperial; (3) constant; (4) of weight corresponding to its authority; (5) reasonable rapid in action; and (6) not prohibitory in point of expense. Without commenting upon all these points, we may say, as to the first, there is no doubt it is extremely desirable to do away with the distinctions which we have shown to exist between the decisions of the two present Courts of ultimate appeal. The law as laid down by the one highest Court should be of validity for all purposes, in all Courts, and at all times, till changed by statute. In no other way can certainty in the law be reached. By the second requisite is meant that the members of the Court should be drawn not only from the English, but from the Scotch, Irish, and Colonial bench. In other words, that it should be in truth a representative court, where at least one of the judiciary body should be practically acquainted with each of the different systems of law which obtain over the wide-spread dominions of England. Only in this way, it seems to us, can the fourth requisite be secured; so that, in learning and judicial experience, colonists may regard this tribunal as superior, not only in name, but in fact, to their own Provincial Courts. When Mr. Knapp first began, some thirty years ago, to report the decisions of the Privy Council, Sir John Leach, in his usual imperious style, refused to lend an ear to the new reports, at the same time acutely remarking that decisions regarding systems of jurisprudence of which the Court knew little or nothing, could never acquire authority; and that it was a useless exposure of inevitable and incurable judicial incapacity to publish their judgments. These strictures are to a considerable extent well founded. The surest way to obviate them and others of a like kind, is to constitute the appellate court in manner as indicated; thereby its moral weight shall be decisively greater than the Colonial and other Courts whose decisions it reviews. Apart from this great advantage, there is another which we need hardly elaborate. That is, the very strong bond of union which would be thus formed between the mother country and her colonies. It would be, we conceive, constitutionally impossible, as well as highly undesirable to do away with the right of appeal from the colonies to the Privy Council. Practically but few appeals go there from this Province, so strong, and, in many respects, so well constituted is our own Provincial Court of Appeal. According to statistics laid before the Dominion Parliament, there were, between the years 1869 and 1872, but two appeals from Ontario to the Privy Council. From the other Provinces the figures stood thus: Nova Scotia, one; New Brunswick, two; Quebec, twenty-one. Yet though we of this Province are seldom before the Privy Council, we should not relish being deprived of the right to go there. While our confidence is great in the present constitution of the Judicial Committee, yet a reformation such as has been mooted, and the infusion of a Colonial element into the

appellate system, would afford us the highest satisfaction. In no more grateful way could our Colonial *status* be recognized than in the establishment of one great Imperial Court of pre-eminent jurisdiction and paramount authority, elevation to the bench of which should be the highest goal of colonial forensic ambition.

SELECTIONS.

POWERS OF PROVINCIAL LEGISLATURES

"The British North America Act, 1867," by s. 92, provides that "In each Province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say"—and then enumerates sixteen classes, amongst which are—

"8. Municipal institutions in the Province.

"14. The administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts.

"15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

"16. Generally all matters of a merely local or private nature in the Province."

By s. 91 it provides that "It shall be lawful for the Queen by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (*notwithstanding anything in this Act*), the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say"—and then enumerates twenty-nine classes of subjects, amongst which is—

"27. The Criminal Law, except the constitution of courts of Criminal Jurisdiction, but including the procedure in criminal matters."

And the section closes in the following words: "And any matter coming within any of the classes of subjects enumerated in this section, shall not be deemed to come within the class of matters of a local or private nature, comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

A vast difference between the powers granted to the Federal Parliament and those bestowed on the Provincial Legislatures, is apparent to any one carefully studying the sections in question.

To the Federal Parliament belongs the right of making laws, not only upon all classes of subjects enumerated in s. 91, but also upon all classes of subjects not enumerated in s. 92. To the Provincial Legislatures is allotted the right of making laws in relation to matters coming within the classes of subjects enumerated in s. 92 alone. But that right is further restricted by s. 91, which in effect provides that if there be any clashing, or conflict, between the classes of subjects allotted to the Federal Parliament and those allotted to the Provincial Legislatures, the matter, with respect to which such clashing or conflict arises, shall be deemed to come exclusively within the Jurisdiction of the Federal Parliament.

The authority, then, of the Federal Parliament, so far as the Provincial Legislatures are concerned, is supreme, save with respect to the classes of subjects enumerated in s. 92, over which the Provincial Legislatures have, to a certain extent, exclusive powers to legislate. But when a matter is presented for legislation which falls within a class of subjects enumerated in s. 91, and at the same time comes within a class of subjects enumerated in s. 92, such matter belongs exclusively to the Jurisdiction of the Federal Parliament.

The powers of the Provincial Legislatures are sharply defined by the Act creating the constitutions of the Province.

The powers of the Federal Parliament on the contrary, are general, embracing all subjects save those specially confided to the Provincial Legislatures; so that all powers of Government granted by the B. N. A. Act, 1867, save those exclusively allotted to the Provincial Legislatures, which do not clash with those specially granted by s. 91, vest in the Parliament of Canada.

One of the consequences resulting from the distribution of legislative powers between the Federal Parliament and the Provincial Legislatures is, that all persons occupying judicial positions throughout the Dominion, may, at any moment, in suits or proceedings before them, be obliged to pronounce upon the constitutionality of Federal or Provincial Statutes. In such case the duty of such persons is clear; if a Federal Statute is unconstitutional, to disregard it; and to act in like manner where a Provincial Act is *ultra vires*. A Supreme Court vested with authority to pass in review all Acts whether Federal or Local, and to declare an Act of Parliament or of a Legislature constitutional or unconstitutional, as the case may be, is an absolute necessity of a Federation such as the Dominion of Canada. Its non-creation vests in Justices of the Peace and Commissioners for the trial of small causes, the powers which should alone be vested in such Supreme Court, and confides to the most ignorant, powers which

should be entrusted solely to the most erudite of Judicial officers. If this state of things is allowed to continue, the greatest confusion will prevail, and it is the duty of the imperial Parliament immediately to provide for the constitution, maintenance, and organization of a Court possessing the power of deciding in favour of or against the constitutionality of Acts of Parliament and of Provincial Legislatures.

A constitutional question, fraught with grave consequences to municipal corporations, was lately raised in the Province of Quebec, under the following circumstances:

The Legislature of the Province of Quebec, by 32 Vic. c. 70, s. 17, provided as follows: "In addition to the powers already accorded to the Council of the City of Montreal, in and by its Acts of incorporation, and the several acts of amendment thereof, to enforce the observance of the by-laws of the said Council, made under and by virtue of the Acts for the purposes in the said acts expressed, it shall be lawful for the said Council to impose in and by such by-laws a fine not exceeding twenty dollars and costs of prosecution, to be forthwith leviable on the goods and chattels of the defendant, or to enact that in default of immediate payment of the said fine and costs, the defendant may be imprisoned in the common gaol for a period not exceeding two months, the said imprisonment to cease upon payment of the said fine and costs, or to impose the said fine and costs in addition to the said imprisonment."

Sec. 19 of the same Act provides that "the five preceding sections, and section fourteen and fifteen of the thirty-first Victoria, chapter thirty-seven, shall not be deemed to apply to any matter of criminal procedure before the said Recorder's Court."

Previous to the passing of the 32 Vic. c. 70 (Quebec) the City Council of Montreal had passed a by-law, chap. 17 (Glackmeyer, p. 306), whereof s. 8 was in the following words: "Every description of gaming and all playing of cards, dice, or other games of chance, with betting, and all cock fighting and dog fighting, are hereby prohibited and forbidden in any hotel, restaurant, inn or shop, either licensed or unlicensed, in this said city; and any person found guilty of gaming or playing at cards or any other game of chance, with betting, in any hotel, restaurant, inn or shop, either licensed or unlicensed, in this said City, shall be subject to the penalty hereinafter provided."

S. 9 of the same by-law provided that "any person who shall offend against any of the provisions of this by-law shall, for each offence incur a penalty not exceeding twenty dollars, and be liable to an imprisonment not exceeding thirty days, and a like fine and imprisonment for every forty-eight hours that such person shall continue in violation of this by-law."

So far as the provisions of the said by-law against gaming were concerned, the City Council derived its authority from 23 Vic., c. 72, s. 10, § 1, which provided as follows: "it shall be lawful for the said Council at any meeting or meetings of the said Council composed of not less than two-thirds of the members thereof, to make by-laws which shall be binding on all persons for" (amongst others) "the following purposes . . . to restrain and prohibit all descriptions of gaming in the said city, and all playing of cards, dice, or other games of chance, with or without betting, in any hotel restaurant, tavern, inn or shop, either licensed or unlicensed, in the said city;" and by the 13th section of the last mentioned Act, it was provided: "And by any such by-law, for any of the purposes aforesaid the said Council may impose such fines, not exceeding twenty dollars, or such imprisonment, not exceeding thirty days, or both, as they may deem necessary for enforcing the same."

On the 18th March, 1870, the City Council of Montreal, acting as was supposed under the authority of 32 Vict., c. 70, s. 17, re-enacts all the sections of by-law chap. 17, with the exception of s. 9, in lieu of which it was provided as follows: "Any person offending against any of the provisions of this by-law shall be liable to a fine not exceeding twenty dollars and cost of prosecution, and to an imprisonment not exceeding two months for each offence." (By-law 36, Glackmeyer, App. p. 138.)

Under by-law 36, a person was convicted of playing cards with betting in an hotel in the city of Montreal, and was condemned to pay $20 fine and costs, and to be imprisoned in the common gaol for two months.

The by-law and conviction was referred to solely as illustrations of the working of 32 Vic. c. 30 s. 17, and it is proposed to inquire whether the said section is not *ultra vires* of the Legislature of Quebec.

The arguments made use of in favour of the constitutionality of the section in question are to the following effect:

Under the British North America Act, 1867, s. 92, the Provincial Legislatures have the exclusive right of making laws in relation to matters coming within certain classes of subjects therein enumerated, amongst which classes figure "8. Municipal Institutions in the Province." Consequently the Quebec Legislature had a right to legislate in relation to all matters relating, or essential, to the corporation of Montreal. Having the power to legislate in relation to municipal institutions exclusively, it necessarily follows that the Provincial Legislature have the power of granting to such municipal institutions the right of making by-laws, and as without the power of enforcing obedience to their provisions such by-laws would be but waste paper, it must be taken for granted that the power, formerly exercised

by the Province of Canada, of delegating a right to municipal institutions of passing by-laws and of enforcing obedience to such by-laws, by therein imposing punishment on offenders against their provisions, is under s. 92, § 8, vested in the Provincial Legislature of Quebec. Further that there really is no conflict with the exclusive power possessed by the Federal Parliament over the Criminal Law and Procedure in Criminal matters, as the offence charged, to wit, playing cards with betting, is not an offence under the Criminal Law, but is merely an act prohibited under what may be called police regulations, which form no part or portion of the Criminal Law of the Dominion.

Apparently there is a good deal of force in the line of argument adopted in defence of the section of the statute attacked, but it is not the less true that its validity rests entirely upon the meaning to be attached to, and the extent of the words "The Criminal Law, except the constitution of Courts of Criminal jurisdiction, but including the Procedure in criminal matters," occurring in s. 91, § 27 of The British North American Act, 1867.

It becomes necessary, therefore, in the first place to establish the meaning of the words "The Criminal Law," and "The Procedure in criminal matters."

No difficulty can be experienced in arriving at the conclusion that the Criminal Law is that portion of the law relating to crimes. Consequently the investigation becomes narrowed down into an inquiry as to what is a crime?

It would almost seem as if the Legislature of Quebec were of opinion that the Criminal Law does not apply to any minor non-indictable offence—that in fact all offences punishable solely on summary conviction do not fall within the domain of Criminal Law, and are not recognized as crimes.

According to the definition of Blackstone, "A crime or misdemeanor is an act committed or omitted, in violation of public law. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are merely synonymous terms; though, in common usage, the word "crimes" is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of misdemeanors only."*

Mr. Sergeant Stephens in his Commentaries gives the following definition: "A crime is the violation of a right, when considered in reference to the evil tendency of such violation as regards the community at large."†

Mr. Justice Littledale in *Mann* v. *Owen*, 9 B. & C. 602, thus expressed himself: "The proper definition of the word 'crime' is an offence for which the law awards punishment."

In the case of *Hearne* v. *Garton*, 2 E. & E. 64, it was held that the provision of the Great Western Railway Act, 5 & 6 W. 4 c. 107, enacting "that every person who shall send or cause to be sent by the said railway any vitriol, or other goods of a dangerous quality, shall distinctly mark or state the nature of such goods on the outside of the package, or give notice in writing to the servant of the Company with whom the same are left, at the time of sending, on pain of forfeiting £10 for every default, or being imprisoned," made such sending of dangerous goods without notice a criminal offence—and Mr. Justice Crompton there said (p. 76): "I do not think that the act is merely for the protection of the railway; it is also for the protection of the public; and it makes the sending a crime, not merely in form, but in reality, by affixing a punishment to it."

In the case of *Attorney General* v. *Radloff*, 10 Ex. 84, which was an information in the Exchequer to recover penalties for smuggling tobacco, the whole question turned upon the point whether such information was a criminal proceeding, and the Court, composed of Pollock, C.B., Parke, Platt and Martin, BB., was equally divided. Pollock, C.B., and Parke, B., being of opinion that it was a criminal proceeding, and Platt and Martin, BB. considering it a civil matter. Parke, B. made use of the following expressions: "Next, is this a criminal proceeding by which the defendant is charged with the commission of an offence punishable by summary conviction? As to its being a criminal proceeding: an information by the Attorney General for an offence against the revenue laws is a criminal proceeding—it is a proceeding instituted by the Crown for the punishment of a crime—for it is a crime and an injury to the public to disobey statute revenue law; and accordingly the old form of proclamation, made before the trial of information for such offences, styles these offences misdemeanors."

Pollock, C.B. said: "In the first place I am of opinion that the proceeding in this Court to recover penalties on an information filed by him on behalf of the Crown, is a criminal proceeding. . . . . The only remaining question then is—is it a criminal offence? I should be sorry if I could bring myself to entertain any doubt about it. I think it is a very grave offence against the public. I cannot distinguish, either in morals or law, between cheating the state and cheating a private individual. . . . . I am of opinion, therefore, that it is a criminal offence. It is very true that it is not punishable in the ordinary way by indictment; but it is punishable by fine, and the fine may be imposed on summary conviction. Therefore, this being, in my judgment, an offence punishable on summary conviction, and the question arising in a criminal proceeding, I am of opinion that the defendant was not a competent witness, and was properly rejected."

* Bl. Com. p. 5, (ed. 1769.)

† Stephen's Com. p. 77.

Platt, B., though of opinion that the proceeding by information in the Exchequer was not a criminal proceeding, put the following question: "What then is a 'civil proceeding' as contradistinguished from a 'criminal proceeding?' It seems to me that the true test is this, if the subject matter be of a personal character, that is, if either money or goods are sought to be recovered by means of the proceeding—that is a civil proceeding; but, if the proceeding is one which may affect the defendant at once, by the imprisonment of his body in the event of a verdict of guilty, so that he is liable as a public offender—that I consider a criminal information.

In the case of *Bancroft* v. *Mitchell*, L. 2 R. Q. B. 549, a bankrupt who had obtained an order of protection under s. 112 of 12 & 13 Vict. c. 106, was arrested on a warrant of commitment for not obeying an order made on him under 43 Eliz. c. 2, s. 6, for payment of a weekly sum to the guardians of a union for the support of his mother:—and it was held that the process under which the plaintiff was arrested was of a criminal nature and not for a debt; and that he was, therefore, not protected from arrest under s. 113 of 12 and 13 Vic., c. 106.

Blackburn J. (at p. 555 of the report), said: "The question remains, what is the nature of the process under which the plaintiff was arrested? What is it that the plaintiff has done or omitted to do? He is the son of a woman who is chargeable to the parish, and he is of sufficient ability to support her. By statute 43 Eliz., c. 2, s. 7, it is enacted that the children of every poor person not being able to work, being of sufficient ability, shall, at their own charge, relieve and maintain every such poor person, in that manner and according to that rate, as by the justices shall be assessed, upon pain that every one of them shall forfeit 20s. for every month which they shall fail therein. It was as a *punishment* for the disobedience of an order made under this section that the plaintiff was arrested. . . . The statute makes what was a duty of imperfect obligation a positive duty. . . . . The offence here is that the plaintiff being of ability would not support his impotent relative—that is a duty the neglect of which though only morally wrong before the statute, is made a *crime* by the statute."

In the same case (at p. 556) Mr. Justice Mellor said: "But I have come to the conclusion that the duty of a son to support his mother, having been originally moral only, was made a positive duty by the statute which requires that in the event of the son neglecting that duty, he shall pay such sum as the justices shall order, and then the ultimate enforcement of that duty is carried by fixing a penalty, and in the event of the non payment of that penalty, a punishment of not more than three months' imprisonment is imposed. That is in the nature of a punishment for a criminal offence."

In *Ex parte Graves in re Prince*, L. R. 3 Ch. Ap. 642, where a debtor was convicted under the 6th section of the Copyright Act (25 & 26 Vic. c. 68), for violations of copyright in engravings, and sentenced to pay a fine *to the proprietor of the copyright*, and in default was imprisoned, and after his conviction executed a deed of composition with his creditors, it was held by the present Lord Chancellor, Lord Hatherley, then Sir W. Page Wood, L.J., and Sir C. J. Selwyn, L.J., that the process under which the debtor was arrested was of a criminal nature, and not for a debt, and that he was not entitled to a discharge. Lord Hatherley (at pp. 644, 645) said: "The case of *Bancroft* v. *Mitchell* has thrown great light on the construction of the provisions of the sections referred to. The *Copyright Act* clearly makes that which the debtor has done an offence against the law. . . . . The scope of the statute throughout is to make the act done an offence; the penalty is to be paid to the person injured, but it is not to be the measure of the damages which he may recover, for he may bring his action and recover damages independently of the penalty. . . . . I think, therefore, that the arguments that the debtor escapes by paying money, and therefore the imprisonment is only a process to enforce a payment of money, is answered by Mr. Justice Blackburn's judgment."

Sir C. J. Selwyn, L.J. (at page 645) said, after referring with approval to Mr. Justice Mellor's opinion in *Bancroft* v. *Mitchell*, "Whether we take the letter or the spirit of the Act, the result is the same. If we look at the letter, the words used are "penalty" and "conviction," all pointing to a criminal offence. If we look to the spirit of the Act, we find certain acts prohibited and treated as offences and certain penalties imposed, and in addition to the penalty, the prosecutor may recover damages by action."

In the 5th edition of Paley's Law and Practice of Summary Convictions, edited by H. T. J. Macnamara, Esq., Recorder of Reading, at pp. 112, 113, the question of what is a "criminal proceeding" is treated in the following manner: "The question, therefore, what is a 'criminal proceeding' as the subject of summary conviction, depends on the manner in which the legislature have treated the cause of complaint, and for this purpose the scope and object of the statute, as well as the language of its particular enactments, should be considered. It may be, as a general rule, that every proceeding before a magistrate, where he has power to convict in contradistinction to his power of making an order, is a criminal proceeding, whether the magistrate be authorized, in the first instance, to direct payment of a sum of money as a penalty, or at once to adjudge the defendant to be imprisoned; and it must be borne in mind that

where a statute orders, enjoins, or prohibits an Act, every disobedience is punishable at common law by indictment; in such cases the addition of a penalty, to be recovered by summary conviction, can hardly prevent the proceeding in respect of the offence from being a criminal one."

T. W. Saunders, Esq., Recorder of Dartmouth, in his work on the Practice of Magistrates' Courts, p. 58, (2nd ed.) thus expresses himself: "Except, therefore, in criminal proceedings, which include an *offence* punishable on summary conviction, the parties and their husbands or wives (as the case may be) are eligible as witnesses on either side, and even in criminal cases the disqualification only applies to the defendant."

J. F. Stephen, Esq., Recorder of Newark on Trent, in his work entitled "A General View of the Criminal law of England," says: "A law is a command enjoining a course of conduct; a command is an intimation from a stronger to a weaker rational being that if the weaker does or forbears to do some specified thing, the stronger will injure or hurt him. A crime is an act of disobedience to a law, forbidden under pain of punishment" (p. 8). "The definition of crimes may therefore be conveniently restricted to acts forbidden by the law under pain of punishment. This definition, however, requires further explanation; for what, it may be asked, is a punishment? Every command involves a sanction, and thus every law forbids every act which it forbids at all, under pain of punishment. This makes it necessary to give a definition of punishments as distinguished from sanctions.

"The sanctions of all laws of every kind will be found to fall under two great heads; those who disobey them may forced to indemnify a third person either by damages or by specific performance, or they may themselves be subjected to some sufferings. In each case the legislator enforces his commands by sanctions, but in the first case the sanction is imposed entirely for the sake of the injured party. Its enforcement is in his discretion and for his advantage. In the second, the sanction consists in suffering imposed on the person disobeying. It is imposed for public purposes, and has no direct reference to the interests of the person injured by the act punished. Punishments are thus sanctions, they are sanctions imposed for the public, and at the discretion and by the direction of those who represent the public (p. 4). . . . . The result of the cases appears to be that the infliction of punishment in the sense of the word just given is the true test by which criminal are distinguished from civil proceedings, and that the *moral nature* of the act has nothing to do with the question" (p. 5). It is sufficient in this place to observe that they illustrate the general proposition that the province of criminal law must not be supposed to be restricted to those acts which popular language would describe as crimes, but that it extends to every act, no matter what its moral quality may be, which the law has forbidden, and to which it has affixed a punishment" (p. 7).

It may, perhaps, be as well here to give an extract from Le Sellyer's *Traite de la Criminalité*, showing what constitutes in France the "crime" of the English Law. "La criminalité c'est la qualité de certains actes les rendant passibles de l'application d'une loi pénale. Ces actes sont compris sous l'expression generale d'*infractions*. . . . Nous donnerons de l'infraction, la définition que donnait du délit le code de brumaire en ajoutant copendant un caractère oublié par ce code, à savoir qu'il n'y a de délit où d'infraction que dans less actes ou omissions *punis* par la loi. . . . Nous dirons donc que l'infraction est toute action toute omission contraire aux lois qui ont pour objet le maintien de l'ordre social et la tranquillité publique et qui est punie par la loi."* (Nos. 2 and 3.)

To define is always difficult, and it is easy to perceive that the answer to the question, what is a crime? is necessarily a definition.

From the foregoing citations, however, it is submitted that the definition of a crime as "an act or omission forbidden by the law under pain of punishment," is strictly correct; but in order thoroughly to understand it, the word "punishment" must also be defined.

The task in this case is hardly less difficult than in that of "crime," but "punishment," it is submitted, may be declared to be "suffering in property or person imposed by the law (in the interests and name of society), on those who violate the law.

The imposition of punishment, then, appears to be the true test by which criminal are distinguished from civil proceedings, and punishment stamps the act or omission, to which it is affixed as a crime.

But it has already been shewn that the Criminal Law is that portion of the law relating to crimes; therefore that portion of the law relating to acts or omissions forbidden under pain of punishment, forms part of the Criminal Law, and all laws regulating proceedings to be adopted to apply such punishments to offenders are laws regulating procedure in criminal matters, and also form part of the Criminal Law.

It is clear, therefore, that by the 32 Vict. c. 70 s. 17, the Legislature of Quebec usurped authority over the Criminal Law (not within the limits granted to them by s. 92 of "The B. N. A. Act, 1867") and its authorization of the Council of the City of Montreal to pass by-laws inflicting punishment on certain offenders against the provisions of those by-laws, was invalid null and of no effect.

Moreover, a Provincial Legislature has but the right of imposing punishment by fine, penalty *or* imprisonment for enforcing any

* See also *Parker* v. *Green*, 2 B. & S. 299; *Cattell* v. *Ireson*, E. B. & E. 91; 2 Austin (ed. 1869) 1101.

law of the Province, made in relation to any matter coming within any of the classes of subjects enumerated in s. 92. It cannot, therefore, impose punishment for any offence which is not an infraction of some of its own laws, made in relation to some matter coming within a class of subjects enumerated in s. 92. It cannot impose punishment by fine *and* imprisonment for the same offence. It cannot regulate the proceedings by which such punishment shall be applied to offenders (otherwise called the Procedure).

The Parliament of the Province of Canada possessed full power over the Criminal Law and had also full power over Municipal Institutions, so that the grant to the Corporation of Montreal of a limited power to award punishment for violation of its By-laws, was strictly within the powers of that Parliament, and such delegation was valid. But how can it be pretended that Provincial Legislatures have the right of delegating to Municipal Institutions greater legislative powers than they possess themselves? How can it be pretended that when Provincial Legislatures have but the right of punishing infractions of *their own laws* by fine, penalty or imprisonment, they have power to vest in municipal institutions the right of punishing infractions of *their* by-laws by fine, penalty *and* imprisonment?

The true rule to follow, it is submitted, with respect to the legislative jurisdiction of Provincial Legislatures, is to confine it strictly to the subjects expressly allotted to them, and in all cases where there is the slightest conflict between the local and federal legislative jurisdiction as to the right to legislate upon any matter, to place it amongst the subjects falling within the powers of the Dominion Parliament.

So far as Procedure in criminal matters is concerned, Provincial Parliaments have no right to legislate, even upon the procedure to be followed in order to secure the punishment of persons guilty of infraction of their own laws. It is perfectly true that Provincial Legislatures have the right of creating certain crimes under s. 92, § 15, by imposing punishment for enforcing observance of their laws; but having so created the crime, their powers with respect to it, save in one particular, appear to end; it then becomes a portion of the Criminal Law, over which the Federal Parliament has jurisdiction, and the Federal law of criminal procedure governs all the proceedings to be taken against the offender, the Provincial Legislature having, however, the exclusive right of repealing the Act by which such crime was created, and thereby removing it from the calendar of crimes.

It may be here remarked that it is exceedingly doubtful if Provincial Legislatures can appoint the mode in which a person accused of a crime created by a local Act can be tried. It would seem as if in the Federal Parliament alone was vested the power of providing that certain offenders should be tried summarily. consequently, as the law of procedure exists at the present moment, all persons charged with offences created by Provincial Legislatures must be tried before a jury. The only mode in which this inconvenience can be remedied is by Act of the Federal Parliament, providing that in all cases, wherein the punishment for an offence imposed by any Act does not exceed a certain sum, or a specified term of imprisonment, the offender shall be tried summarily.

In conclusion, it is submitted that by "The British North America Act, 1867," it was intended to place the Criminal Law and the administration of justice in criminal matters amongst the exclusive powers of the Federal Parliament—that but two exceptions to the general rule therein laid down are made, one by s. 91, sec. 27 and s. 92, sec 14, by which the constitution, maintenance, and organization of Provincial Courts of criminal jurisdiction are placed amongst the exclusive powers of Provincial Legislatures; the other by s. 92, sec. 15, by which in each Province the Legislature may exclusively make laws imposing punishment by fine, penalty or imprisonment, for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in s. 92.

Evidently the intention of the British Parliament was to provide for the uniformity of the Criminal Law throughout the Dominion—to avoid the inconvenience of having one system of procedure governing Federal crimes, and another system governing Provincial crimes.

The delicious *pot pourri* which might be expected if Provincial Legislatures had unlimited power to meddle with Criminal Procedure is apparent from 34 Vic. c. 2, s. 171 (Quebec), which is in the following words:

"In prosecutions for the sale or barter of intoxicating liquor of any kind, without the license therefor by law required, or contrary to the true intent and meaning of the law in that behalf, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered, or the precise consideration therefor, or to the fact of the sale or barter having taken place with his participation, or to his personal and certain knowledge, but the justices trying the same, so soon as it may appear to them that the circumstances in evidence sufficiently establish the infraction of the law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly."

It is to be remembered that penalties to a very large amount may be inflicted under 34 Vic. c. 2, and that in default of immediate payment, it is therein provided that, at the option of the prosecutor, the defendant may be imprisoned for a period of not less than two, and not exceeding six months, so that there can be no doubt that all acts therein prohibited under pain of punishment, are

crimes, created by the legislature of Quebec under and by virtue of s. 92, § 15 of "The British North America Act, 1867." But whence did the Quebec Legislature draw authority to *amend* and alter the law of procedure in criminal matters as is attempted by 34 Vic. c. 2, ss. 148—199?

It is submitted that all the sections of that Act, having reference to procedure are null, void, and of no effect, having been passed in violation of the provisions of "The British North America Act, 1867."—Wm. H. Kerr. —*La Revue Critique.*

COURT OF APPEAL FOR AUSTRALASIA.

The following is the report of the Royal Commissioners of Victoria, concerning the establishment of a Court of Appeal for the Australasian Colonies:

This subject has been frequently mooted. The arguments in its favour are the increased facilities for the hearing of appeals, the promptness of decision, conformity of law, and considerable reduction in the cost of appealing that will be thereby afforded.

A Court of Appeal has become almost a matter of necessity. The number of appeals from the vast dominions of the Crown is greater than it appears the Privy Council is capable of dealing with.

Independent of the difficulty in getting appeals heard by the Privy Council, it is thought that it would be more satisfactory to litigants if their cases were decided by judges who were familiar with the policy of Australian laws. Take, for instance, disputes affecting our pastoral and mining interests, which are based upon laws almost peculiar to Australia. Another difficulty presents itself in the case of appeals in criminal cases. In New South Wales, after a conviction for murder, the prisoner appealed; the conviction was sustained, but after so long a delay between the sentence and the decision of the Privy Council the judgment of the Court could not be carried into effect. In another case that occurred in Victoria, the Privy Council ordered, on a technical point, a new trial; but after so long a lapse of time, the witnesses had disappeared, and the prisoner, although previously found guilty, was allowed to go free.

It has been urged that it is not competent for a colony to establish a Court of Appeal which may exclude the appeal at common law to the Queen in Council, and that the Imperial Government would view any attempt in that direction with great jealousy. That objection can scarcely be urged now so far as it is a question of law, as it has been decided years ago.* An Act was passed by the Imperial Parliament, 28 & 29 Vict., c. 93, s. 5, which enacts "That every colonial Legislature shall have and be deemed to have at all times to have had full power within its jurisdiction to establish Courts of Judicature and to abolish and reconstruct them and to alter the constitution thereof, and to make provisions for the administration of justice therein."

In South Australia a Court of Appeal has been in existence for some years, consisting of the Governor and Executive Council, excluding the Attorney-General. In New Zealand there is also a local Court of Appeal, whose decisions appear to have given satisfaction, for there has been for many years but one appeal to the Privy Council from the Supreme Court of New Zealand. In Canada [alluding to the Province of Ontario] there is a Court of Error, created out of the two Superior Courts, the Queen's Bench and the Common Pleas. [The Commissioners omit the Court of Chancery.] There are, however, occasional appeals to the Privy Council, and it is now proposed to create a Canadian Court of Appeal, and the Governor-General in opening Parliament 1870, made special reference to the proposal in his speech.†

Considerations of grave importance suggest the expediency, if not the necessity, that a Court of Appeal, formed of colonial Judges, should be established for the Australasian colonies. The cost and delay occasioned by appeals to the Privy Council would be removed. Judges conversant with colonial life, manners and laws would adjudicate on matters

* That the right of the King in Council to hear and determine appeals from the colonial Courts on every subject and of every amount in value is one of the most ancient and undoubted prerogatives of the Crown. No prerogative right of His Majesty, much less one that is calculated as this is for the relief and protection of the subject in distant countries, can be abridged or abrogated except by the most direct and express words of an Act of the General Legislature. The King himself cannot derogate from his own right or refuse to exercise his own prerogrtive for the benefit of the subject. The King has no power to deprive the subject of any of his rights; but the King, acting with the other branches of the Legislature (in this case the Legislature was that of Lower Canada), as one of the branches of the Legislature has the power of depriving any of his subjects, in any of the countries under his dominion, of any of his rights (*Cuvillier* v. *Alwyn*, 2 Knapp's, Privy Council Case, 70). Where in the East Indies the Supreme Courts had authority to 'allow or deny appeals,' it was decided by the Privy Council that the common law right of appeal had been taken away (*Regina* v. *Alloo Paroo*, 3 Moore Jud. App. 488). Lord Brougham said, the Crown may abandon a prerogative, however high and essential to public justice, and valuable to the subject, if it is authorised by statute to abandon it. In *Christian* v. *Cowan*, 1 P. Wms. 329, it is said that, even if there be express words in the charter, excluding the right of the subject to appeal, these words shall not deprive him of his right. 'To this doctrine the Privy Council refused to assent, citing *Ash* v. *Rogle*, 1 Vern. 357; but, for the reason given above, they said, even if it were true, it did not apply to the case before them.'

† In 1834, the Appeal Court of Canada consisted of the Governor or the Chief Justice, with any two or more members of the Executive Council. A similar Court was constituted at Antigua; there, however, the judges may attend and assign reasons, but could not act as members of the Court. The Bahamas had a Court similar to Canada. At Barbadoes the Governor in Council acts; the judges are members of the Court, but no judge is allowed to sit or vote on cases where the appeal is from his own decision. Bermuda has a Court the same as at Barbadoes. In Dominica the Court is constituted as at Antigua, except that the number of the Council is limited to five. At Grenada same as at Dominica, and three members of the Council. In Jamaica the Court is established as a Court of Error, and is similarly constituted as in Canada.—*Clark on Colonial Laws*, passim.

presenting peculiar and distinctive features—the result of colonial habits, industries and trade. The decisions of the various Supreme Courts of the colonies upon purely colonial affairs would thereby be brought into harmony, and uniformity of law be thus encouraged, to the great advantage of commerce. The first effective step towards the union and consolidation of the colonies would thus, it is thought, be consummated.

We recommend that a Court of Appeal for Australasia be formed, consisting of one Judge from each colony, and that the Court should sit in each colony successively, or at such places as may be determined upon as occasion required; and that the quorum be regulated in proportion to the number of colonies that appointed Judges.

On the pronouncing of a judgment by the Court of Appeal similar machinery might be employed in carrying out its decisions as is now used with respect to appeals to the Privy Council.

Opinions vary as to whether the jurisdiction of the Court of Appeal should be modelled upon that of the House of Lords or the Privy Council. The House of Lords is something more than a judicial tribunal, though since 1849 it is the practice to leave the decision of judicial matters exclusively with the "Law Lords." The House of Lords can, however, hear impeachments, and in such cases all the Peers act. That may be said to be the original jurisdiction of the High Court of Parliament, and would not pass if the appellate jurisdiction alone of that tribunal were adopted. On the other hand, the Privy Council does not "hear and determine," it only "hears and reports" to Her Majesty. Bearing in mind the possibility, indeed the probability of a fusion of law with equity by some if not all of these colonies, it is desirable that, in the creation of a Court of Appeal, due provision in that regard should be made, and also that the Court would be empowered to exercise any special jurisdiction any of the colonies may desire to confer upon it.

Another question arises as to how far the Court of Appeal is to be one of final determination, excluding the appeal to Her Majesty in Council. We deem it advisable to leave to the Legislature of each colony to determine that question for itself, by empowering the colonies to enact suitable laws providing the cases in and the terms upon which an appeal may be had to the Queen.—*Law Journal.*

THE TICHBORNE CASE.

This case, which has without doubt occupied a greater amount of public attention than any within memory, has special claims upon our space. We need hardly say that our remarks will be limited to the proceedings which have already taken place. We do not presume to offer any opinion as to what will or may be the ultimate result to the person universally known as the "Claimant," nor is it our intention to comment upon the extraordinary fact that it has taken upwards of one hundred days—many of which were wasted—to decide one of the simplest issues ever submitted to a jury.

Never has there been so severe a strain upon, and test applied to, our judicial machinery, from the police who kept the doors (and who by the way did their extremely difficult task admirably) to the Lord Chief Justice himself; and we cannot say (whatever allowance may fairly be made under the circumstances of the case), that upon the whole the result is, in our judgment, satisfactory.

Of some of the learned gentlemen engaged in the case, little or nothing is known. Whatever is known may readily be said to be to their credit and honour; and of one, probably the youngest man engaged in the case, unhappily nothing more can be known in this life.

Two of the leaders, the Attorney-General (subject, however, to some observation) and Mr. Hawkins, Q.C., have increased their well-earned reputations, in their respective ways. Of Sergeant Balantine it may be said that he opened a hopeless case. Sir George Honeyman and Mr. Giffard have had but little public opportunity to show what men they are, they stand now, in the esteem and respect of their follows as they stood before, as well-instructed, careful and sound lawyers. Mr. Hawkins was so successful in his cross-examination of Baigent, an acute and difficult witness, that our function is a simple one—it is to congratulate him, and pass on.

It is said that the Attorney-General, in the course of this case, lost and regained a reputation — a showy, plausible, and somewhat epigrammatic criticism, which means, if it means anything, that the cross-examination of the Claimant was a failure, that the opening speech for the defence was a success. Every one who attends our Courts must be aware that the efficiency of cross-examination depends to a very great extent upon the manner of the counsel who cross-examines. The late Mr. Edward James was a masterly cross-examiner; his quiet, firm, and determined manner, and powerful presence, had great effect both with the witness and the audience. Mr. Sergeant Ballantine and Mr. Sergeant Parry are both able cross-examiners. The Attorney-General is not: his polished manner and silvery diction, admirable for some purposes, so far from aiding him in this particular province of his calling, tell against him. But, apart from manner, the cross-examination was admirable, laying as it did the foundation of a speech which, for minute industry, mastery of his case, and clear statement, lighted here and there by some passage of pathetic tenderness, was a great forensic achievement.

Whatever force or power of manner was wanting in the cross-examination—however much it may have failed to the view at the moment—its ultimate effect was as fatal as if it

had been enforced and aided by the most scathing and severe manner possible. That wherein Sir John Coleridge failed signally, and wherein Sergeant Ballantine excelled, was temper—that supreme essential to the advocate. There is nothing, perhaps, more exasperating than to find your opponent calm and cool, and oneself drifting into heat and anger. It was the Sergeant's coolness and perfect *sangfroid* that, exciting every now and then a laugh from the audience, aroused the Attorney-General's anger. Hence one or two as unseemly exhibitions as well could be, over which the Chief Justice either did not or could not exercise any control whatever.

Some while ago, the amenities passing between counsel in the Irish Court of Queen's Bench, excited public attention. But the *Irish Law Times* was able to retaliate to some purpose, and characterising the "scenes" in our Common Pleas as almost unprecedented, restored the balance of forensic impropriety to this country.

It has been remarked that whatever may be the practice and position of Mr. Sergeant Ballantine at the Bar, the Sergeant is not a "successful" man. In the attributes which are supposed to be the absolute conditions of forensic success, the Sergeant is wholly wanting. His position and reputation are unique. Possessing no university or scholastic reputation, never having been known as a learned lawyer, without family or social *prestige*, without political or parliamentary influence, and without either eloquence or even any approach to it, he is what he is—one of the most successful advocates—perhaps, in his own way, the most successful advocate in England. After thirty-eight years' practice, the Sergeant cannot attain, nay, cannot even expect, professional promotion, supposing him to care for or desire it. Yet he possesses the gift or gifts that to an advocate stand in lieu and instead of all other, without which all other gifts are vain, and with which all others can be dispensed with. It has been said that "genius is patience." It may be said that the genius of the advocate consists in tact and temper, and these qualifications, at once the substitute and equivalent for many others, the Sergeant possesses.

It is either the fault or the misfortune of Sir William Bovill, that since his elevation to the Bench he has been a party to the most severe conflicts between the Bench and the Bar within our memory. Our readers may remember the *fracas* between the late Mr. Edward James and the Chief Justice, at Manchester; as painful a scene, in our opinion, as ever happened in a court of law.

Since then there have been others, culminating, however, in the scathing criticism of Sergeant Ballantine upon the judge's manner to and cross-examination of a witness, during the progress of this case, which concludes, as we sincerely hope, a series (to use a phrase common in transpontine dramas) of "terrific combats," at once dangerous to the discipline that must be observed at the Bar, and fatal to the dignity and influence of the Bench. But it is with regret that we notice, that while the jury have not only entirely escaped from anything like comment upon the manner in which they have discharged their duty, but, on the contrary, have won golden opinions for their patience, courage and devotion to it, while the Bar has, upon the whole, passed muster with the public critics, the one constituent part of the tribunal upon which ridicule—that most severe of all forms of censure—has been cast, is the judge. The phrase, "Oh, I am so ill," of the judge—whether such were the exact words or not is immaterial—at the time ran a close race in popularity with the "Would you be surprised to hear" of the Attorney-General. It is a little unpleasant to read, among a string of sarcastic eulogies, that the Lord Chief Justice will no longer exhibit "his wonted impartiality," which marked his lordship "as the one judge in England competent to conduct such a case." It has been said that Cervantes laughed away the chivalry of Spain. Men may deserve blame—may be blamed, and be forgiven; but to be ridiculed, and to be ridiculous, is fatal. The severest public censure that a public man can render himself obnoxious to, is the public laughter. It is not by any means pleasant to see, from *Vanity Fair* downwards to the ridiculous ephemeral broad sheets sold in our streets, the Chief Justice in every attitude, and with every atribute, save that of dignity. It may be said that censures of this kind are contemptible; *per se* they might be, but they catch the eye, and are meant both at once to meet and form public opinion. At a time in our history when every institution is on its trial; when the fact that a thing is, has altogether ceased to be any reason for its continuing to be, it would indeed be a day of rebuke and humiliation if anything that the Chief Justice has said or done could impair the dignity of that one institution of the country, the Judicial Bench, in which its people have ever put absolute trust—an institution that has certainly escaped calumny, never (at all events for long years) deserved censure, and has almost escaped criticism.

Last, and not least, "the jury" have won the respect and approbation of their countrymen. They are not responsible for the length of the trial; they stopped it when they could, and it would not have been wise to have stopped it at an earlier stage. But it is with feelings of surprise, nay, of amazement, that we hear that they and the counsel in the case (all, or which, plaintiff or defendant?) have since the termination of their labours dined together—we presume, to celebrate the event! "If London were in ashes," Sydney Smith remarked, "some place would be found among the ruins where the disaster could be celebrated by a banquet." We hardly know whether this latter event is more improbable than the former is undesirable, and we hope to hear the

report contradicted; for we are bound to say, although after such a time both counsel and jury might claim to be old friends, an entertainment given under such circumstances, although lawful, is certainly not expedient.—*Law Magazine.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

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

Lawrie et al. v. McMahon.

Insolvent Act, 1869, sec. 134.—Appeal.—Death of Insolvent.

When the insolvent who has appealed from the decision of a County Judge refusing to set aside an attachment against him, dies during the pendency of this appeal, and no personal representative has been appointed, the appeal fails.

[Chambers, February 28, 1872. *Galt, J.*]

This was an appeal from the judgment of the County Judge of the County of Lincoln refusing a petition of the defendant to set aside an attachment issued against him as an insolvent.

Since the decision of the learned Judge of the County Court was given, McMahon, the insolvent, died intestate, and no letters of administration had been granted to any person.

Harrison, Q. C., contended that under sec. 134 of the Insolvent Act of 1869, this appeal could be prosecuted notwithstanding the death of the petitioner, and though no person had been authorised to administer to his estate.

T. Moss appeared for the creditors, and urged that under the circumstances no further steps could be taken in the matter.

Galt, J.—It is unnecessary to consider the grounds of appeal against the judgment if there is no person authorized to bring them forward. The 134th section, as it appears to me, expressly requires that any persons who wish, on behalf of the insolvent, to interfere in the proceedings in insolvency on behalf of the estate of the debtor must be clothed with authority to act as his legal representative, and as there is no person at present in that position I have no jurisdiction to entertain the matter.

Harper v. Smith.

Change of Venue.

When the place where the cause of action arose and the place of residence of the defendant and of his witnesses concur, a change of venue will be ordered to such county, although the plaintiff's witnesses reside where the venue is laid.

[Chambers, March 19, 1872. *Mr. Dalton.*]

J. K. Kerr obtained a summons calling on the plaintiff to show cause why the venue should not be changed from the County of Haldimand to the County of Wentworth, on the ground that the cause of action arose in the latter county, and that the cause could be more conveniently tried there. The application was made before plea, and after declaration, from which it appeared the action was brought for malicious arrest. In support of the application the defendant's affidavit was filed, showing that the arrest complained of was made at Hamilton, in the County of Wentworth: that the plaintiff had been tried and acquitted there on the charge upon which he was arrested: that nearly all the witnesses to be examined resided in Hamilton: that all the defendant's witnesses resided in that city, there being six in number of whom he then knew, and that the trial of the cause in Haldimand instead of in Wentworth would cause unnecessary expense which would be saved by the proposed change of venue.

F. Osler showed cause, and cited *Diamond* v. *Gray*, 5 Prac. Rep. 33, and *Helliwell* v. *Hobson*, 3 C. B. N. S 761. The defendant must show a preponderance of convenience greatly in his favour, and he has not done so on this application, and unless that be shown, the plaintiff can lay the venue where he likes; and, in addition, it is shown that the defendant cannot have a fair trial at Hamilton, which is another reason why the plaintiff should not be deprived of his right to lay the venue where he chooses. He filed affidavits of the plaintiff to the effect that he lived near Cayuga, in the County of Haldimand: that Wm. Hall, Andrew Street, and other witnesses, all of whom resided near Cayuga, were necessary witnesses on his behalf, all of whom he intended to subpœna: that he had at least four witnesses residing near Cayuga: that a trial at Cayuga, where the assizes last only for a few days, would be less expensive than at Hamilton, where the assizes always last a long time, and where it is more expensive to live and keep witnesses while waiting for the trial than at Cayuga: that the defendant is a grain-buyer, and has many friends at Hamilton, where the plaintiff is a stranger; that there are many grain-buyers who have great influence there, all of whom are making common cause against him, and that he is certain he cannot obtain a fair trial at Hamilton owing to the influence the defendant and his friends can bring there against him.

J. K. Kerr, contra. The venue should be laid where the cause of action arose, and that is the proper place for the trial unless a preponderance of convenience requires the trial to be elsewhere. In this place the balance of convenience concurs with the place of cause of action, and the defendant's residence: *Levy et al* v. *Rice*, L. R. 5 C. P. 119. *Helliwell* v. *Hobson* has been called in question more than once. In *Durie* v. *Hopwood*, 7 C. B. (N. S.) 835, Erle, C. J. said "It is important that a cause should be tried where the cause of action arose, and I think it advisable to act on that principle so far as the interests of justice can be made to coincide with that course." In *Church* v. *Barnett*, L. R. 6 C. P. 117, the Court would not reverse the order of the Master and the Judges who heard the appeal, but Montague Smith, J., said "If the matter had come before me in the first instance, this motion probably would not have been necessary." As to the danger of not getting a fair trial, the defendant has been tried and acquitted at Hamilton on the charge out of which this action arose, and *Roche* v. *Patrick*, 5 Prac. Rep. 210, establishes that this is not material.

Mr. Dalton.—In considering the question as to what is the proper place for the trial of an action, I think much importance should be attached to the place where the cause of action arose. That is the proper place for the trial unless the balance of convenience is against having the trial there. Since the decision in in *Levy et al.* v. *Rice*, L. R. 5 C. P. 119, referred to in the argument, I think it is settled, as laid down by Bovill, C. J., "that the cause ought to be tried where the contract was made, where the breach took place, and where the defendant resides;" and by Montague Smith, J., "probably the best rule is that when the preponderance of convenience, and the place of contract, and of the defendant's residence concur, these should regulate the Judge's discretion in ordering a change of venue" In the case before me the cause of action, the defendant's residence, and the preponderance of convenience (although not great) all concur, and I therefore think the venue should be changed to Wentworth.

Summons absolute.

ENGLISH REPORTS.

COURT OF EXCHEQUER.

Brown v. The Great Western Railway Co.

Action of tort—Particulars.

In an action to recover damages for injuries sustained by the plaintiff through the negligence of the defendant, the defendant is not entitled to particulars of the injuries on an affidavit merely stating that his defence is embarrassed by the want of such particulars.

Semble, that the defendant would have been entitled to such particulars on an affidavit showing that he had no knowledge of the case the plaintiff intended to set up at the trial, and that the defendant had no means of acquiring such knowledge without the aid of the court.

[Ex. April 20, 1872.—20 W. R., 585.]

The declaration stated that the defendants were carriers of passengers by railway; that the plaintiff became a passenger on the railway for reward to the defendants, to be by them safely and securely carried on a certain journey, but defendants did not safely and securely carry the plaintiff on the said journey, but so negligently managed the railway and the train in which the plaintiff was travelling, that he was bruised, wounded, and suffered severe concussions and contusions, and was and is permanently injured, and was prevented from attending to his business, and incurred loss of time and expense in and about the cure of his said injuries.

The defendants, before pleading, took out a summons for an account in writing of the particulars of the injuries complained of in the declaration. This summons was heard by Master Johnson, who endorsed it, "No order; the defendants, by their medical man, to have liberty to examine the plaintiff." Against this decision the defendants took out an appeal summons, which was dismissed with costs by Mr. Justice Keating, on the broad ground that the plaintiff ought not to be restricted and tied down in the manner he would be if such particulars were ordered and given.

Griffits now moved for a rule in the terms of the original summons at chambers on an affidavit setting out the facts above stated, and that the defendants' medical officer had seen and examined the plaintiff, but no particulars of the plaintiff's injuries had ever been delivered, and that the defendants were embarrassed in the defence of the action for want of such particulars. [Martin, B.—In an action of tort it is not usual to make an order for particulars, unless on affidavit showing that there is special reason why they are required.] The affidavit shows that the defendant's case will be prejudiced for want of these particulars: the Company want to pay money into court. [Kelly, C. B.—The affidavit does not state that the defendants have applied for information without which their legal advisers cannot conduct their case.] I am instructed to move for this rule on the general principle that in such an action as this, the defendants are entitled to particulars of the injuries. [Bramwell, B.—I doubt whether the plaintiff ought not to be tied down to prevent his springing a case on the defendants at the trial.]

The Court refused to rule, intimating that they would have granted it if it had been shown by affidavit that the defendants did not know what case was going to be set up against them, and that they had no means of knowing, except with the aid of the court.

Rule refused.

UNITED STATES REPORTS.

SUPREME COURT OF ILLINOIS.

Ill. Central R. R. Co. v. Jesse L. Abell.

If a railway passenger holding a ticket entitling him to alight at a particular station, is carried past such station without his consent and without being allowed a reasonable opportunity of leaving the train, he has an action against the company for whatever damages.

Verdict obtained by dividing by twelve.—That while jurors may resort to a process of this sort as a mere experiment, and for the purpose of ascertaining how nearly the result may suit the views of the different jurors, yet a preliminary agreement that each juror should privately write upon a slip of paper the amount of damages to which he thought the plaintiff entitled, and place the slip in a hat, that the amounts should be added together and their sum divided by twelve should be the verdict, will vitiate a verdict found under such an agreement.

[C. L. N., June 26, 1872.]

Opinion of the Court by Lawrence, C. J.

If a railway passenger holding a ticket entitling him to alight at a particular station, is carried past such station without his consent, and without being allowed a reasonable opportunity of leaving the train, he has an action against the company for whatever damages may have accrued to him for non-delivery at the place of his destination,

It is urged that the verdict is not sustained by the evidence, but we refrain from the consideration of that point as there is another upon which the case must be sent to another jury. It appears by the affidavit of the officer having in charge the jury, that, after agreeing to find for the plaintiff, they differed widely as to the damages, and it was then agreed that each juror

should privately write upon a slip of paper the amount of damages to which he thought the plaintiff entitled, and place the slip in a hat; that the amounts should then be added together and their sum, divided by twelve, should be the verdict. This was done and a verdict rendered accordingly.

It is true a juror swears that there was considerable consultation after this was done, and that each juror agreed upon the result thus reached as his verdict. He does not however deny that an agreement was made such as is stated in the officer's affidavit, and we cannot doubt it was that agreement which controlled the amount of the damages. The rule upon this matter is well setted. It is, that while jurors may resort to a process of this sort as a mere experiment, and for the purpose of ascertaining how nearly the result may suit the views of the different jurors, yet a preliminary agreement that such a result shall be the verdict, will vitiate a verdict found under and by virtue of such an agreement. *Dunn* v. *Hall*, 8 Blackf, 32; *Dana* v. *Tucker*, 4 J. R., 487; *Harvey* v. *Rickett*, 15 J. R., 87.

This rule is so reasonable as to need no comment. As this verdict was evidently found under the pressure of such an agreement, the judgment must be reversed.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

(*From the American Law Review.*)

FOR NOVEMBER AND DECEMBER, 1871, AN D JANUARY, 1872.

(*Continued from p.* 152.)

Devise.

1. Testatrix devised freeholds to trustees in trust for E. for life, remainder to use of first son of E. for life, without impeachment of waste; remainder to use of his first and other sons successively in tail male; like remainders to third and other sons of E. Said sons of E. to have power of jointuring and charging portions. Afterwards a barony was conferred upon E. for life, remainder to E.'s second, third, and other sons in tail male. Proviso, that if such sons, &c., should succeed to the earldom of D., the barony should go to the next son. Testatrix, in a codicil, revoked her will, devising said freeholds to trustees, "to convey, settle, and assure" the same "in a course of entail to correspond as nearly as may be with the limitation of the barony and the provisos affecting the same," and "with all such powers, provisos, declarations, and agreements" as counsel should advise. The House of Lords held on this that said freeholds ought to be limited in strict settlement on the second and younger sons of E. for their respective lives, without impeachment of waste, remainder to the first and other sons in tail male; that there should be such powers of jointuring and charging portions as contained in the will, and that there should be in the settlement a shifting clause in the words of the above proviso: *Held*, that the settlement should not contain a clause postponing raising portions until on or after the decease of the person charging the same; nor a clause avoiding portions and jointures in case the freeholds should shift by the accession of the tenant to the earldom of D.—*Viscount Holmesdale*, v. *West*, L. R. 12 Eq. 280. See L. R. 4 H. L. 543; 5 Am. Law Rev. 304.

2. A. devised a house held under a corporation for the life of K., and twenty-one years after his decease, to trustees in trust to permit her nieces, B. and C., during their joint lives, while single, &c., to reside in said house "during the remainder of the said term for which the said house is held of the corporation aforesaid." After date of the will K. died, and the testatrix surrendered her lease and received a new one for seventy-five years, and after date of the new lease made two codicils to her will: *Held*, that notwithstanding the surrender of the original lease, said trusts were subsisting trusts for at least twenty-one years from the death of K.—*Wedgwood* v. *Denton*, L. R. 12 Eq. 290.

3. Devise "to the use of every son of J. S. now living, or who shall come into existence in my lifetime, and the assigns of such son during his life;" remainder to trustees to preserve contingent remainders, "but to permit such son and his assigns to receive the said rents and profits during his life; and after his decease to the use of such son's first and other sons successively in tail male: *Held*, that the sons of J. S. took as tenants in common, remainder on the death of each son to such son's first and other sons, in tail male, with cross remainders over.—*Surtees* v. *Surtees*, L. R. 12 Eq. 400.

4. A testator devised his real estate upon trust to pay to his daughter an annuity of £6,000 out of the rents, and subject thereto to accumulate for twenty-one years from the testator's death, and to pay off from time to time out of the accumulated fund the incumbrances on said estate. As soon as the incumbrances were paid off, said annuity was to be increased to £8000. He directed his personal estate to be applied in discharging incumbrances when and as should to the trustees seem fit, and any surplus to be accumulated and held on the same trusts as said rents. At the testator's death the personal estate was more than sufficient to

pay off all incumbrances, but the trustees retained enough of such estate to cover the incumbrances and interest thereon, as it was paying a high rate of interest, and they increased the annuity to £8,000: *Held*, that such incumbrances were practically paid off when such personal estate was in the trustees' hands, producing income enough to pay interest upon the incumbrances, and that the annuity was properly increased.—*Astley* v. *Earl of Essex*, L. R. 6 Ch. 898.

5. A testator devised certain estate in trust to pay the income to his two daughters during their respective lives, independently of the control of any husband or husbands with whom either of them might intermarry, and after their respective decease, upon trust to convey the whole equally between the respective husbands of said daughters. If either daughter died unmarried, her share upon the limitations of the other moiety. A daughter married, and her husband died, devising to her his share in said testator's property: *Held*, that the husband had an indefeasible estate of inheritance in said estate, and having devised the same to his wife, she could give a good title to her grantee.—*Radford* v. *Willis*, L. R. 7 Ch. 7.

6. A testator gave certain shares of his real and personal estate to his daughters, making the share of his daughter M. chargeable with a sum advanced, and also directing that if M. should be indebted to either of her brothers or sisters in respect of advances, the trustees under the will were to deduct such debts from M.'s advance, and pay the same to the brother or sister to whom it was owing: *Held*, that the trustees were entitled to deduct such advances without interest, although barred by the statute of limitations.—*Poole* v. *Poole*, L. R. 7 Ch. 17.

7. Devise to trustees "as to" one estate to the use of testator's son R. for life, and to R.'s sons in tail male and tail general; and in default of such issue, to testator's son J. for life, and to his sons in tail male and tail general; and in default of such issue male, to R.'s daughters in tail male; and in default of such issue female, to J.'s daughters in tail male "As to" a second estate, in similar terms to J., after which the will proceeded, "and in default of such issue male and female of all the sons and daughters of his sons R. and J.," then over. *Held*, that the devise over was ambiguous, but under all the circumstances of the case referred to both estates, and not the latter only.—*Gordon* v. *Gordon*, L. R. 5 H. L. 254.

See Bequest; Condition; Executors and Administrators, 1; Joint Tenancy; Mortmain; Partnership; Power; Reversionary Interest; Security, 2; Tenant for Life.

Director.—*See* Company, 3; Ultra Vires.

Distribution.—*See* Bequest, 2.

Divorce.

The court decreed nullity of marriage where the parties had been married two years and nine months, where there had been no consummation, and the same was practically impossible, as the wife, who was suffering from excessive sensibility, refused to submit to the remedies proposed by physicians, and denied her husband all access, though she had no structural defect. *G*—— v. *G*——, L. R. 2 P. & D. 287.

Domicile.

1. A French subject took up his sole place of abode and business in England, where he lived thirty years, making occasional visits to France. He married and intended to end his days there, but refused to be naturalized, as he was a Frenchman, and might return to reside in France. *Held*, that his domicile was English.—*Brunel* v. *Brunel*, L. R. 12 Eq. 298.

2. To effect a change of domicile it is sufficient that there is intention of settling in the new locality, and of making a principal or sole and permanent home there, and no intention to change civil *status* is necessary.—*Douglas* v. *Douglas*, L. R. 12 Eq. 617.

See Will, 1.

Easement.

Under 2 and 3 Will. 4, c. 71, a landlord gains no easement or right whatever until twenty years of adverse possession have elapsed. Therefore a tenant of a house which has enjoyed access of light and air over adjoining land, for fourteen years, may take such land, and thereby uniting possession, prevent his landlord gaining an easement. A tenant in possession may refuse to allow his landlord to arrest the growing right of a neighbor to an easement. If enjoyment of light and air continue as above for fourteen years, and then is suspended by unity of possession of the dominant and servient estates, and after such unity is severed the enjoyment is continued six years more, an easement is gained.—*Ladyman* v. *Grave*, L. R. 6 Ch. 763,

See Ancient Light; Reservation; Way.

Eels.—*See* Fish.

Encroachment.—*See* Landlord and Tenant.

Entry.—*See* Mortgage, 2.

Equitable Mortgage.—*See* Mortgage, 3.

Equity.

1. The manager of a society, by permission of its directors, deposited money with the de-

fendant. The latter drew a check for the same, and gave it to the manager, who never paid it to the society, and shortly afterward died. The trustees of the society brought a bill against the defendant for repayment, on the ground that such deposit was illegal, and the plaintiff had notice thereof, and that the repayment to the manager was without authority of the directors: *Held*, that if there had been a breach of trust, the directors had been parties to it, and being the real plaintiffs, could not compel repayment to the trustees, who were only formal parties to the suit. Also, that the bill not being framed on the ground of a breach of trust, was a mere money demand, and did not authorize proceedings in equity. *Hardy* v. *Metropolitan Land and Finance Co.*, L. R. 12 Eq. 386.

2. Notes were discounted at an exorbitant rate for a young man, who gave security for the notes. The court ordered the security to stand for the sums actually advanced, with interest, though there was no fraud in the case. —*Tyler* v. *Yates*, L. R. 6 Ch. 665; s. c. L. R. 11 Eq. 265; 5 Am. Law Rev. 657.

See Bequest, 1; Husband and Wife; Specific Performance, 1.

Equity of Redemption.

A woman was entitled to a rent charge in the event of her surviving her husband. She became a party to, and executed and acknowledged a mortgage of the estate, subject to the charge, the deed declaring that she joined "for the purpose of absolutely releasing, and forever extinguishing," the rent charge; and by the proviso for redemption, the estate (conveyed to the mortgagee, subject to certain prior charges) was to be reconveyed to the husband "subject as aforesaid." The estate was reconveyed to the husband: *Held*, that "it was no unreasonable view" that the wife's release of her rent charge was subject to equity of redemption, and that the title was too doubtful to be forced upon a purchaser.—*In re Betton's Trust Estates*, L. R. 12 Eq. 553.

Equity Pleading and Practice.

1. A bill by a lessee against his lessor for specific performance, and for an injunction restraining a previous lessee from obstructing the rights claimed by the complainant, is multifarious; but such objection must be taken by way of demurrer, and not at the hearing.—*Cousens* v. *Rose*, L. R. 12 Eq. 366.

2. Three out of four residuary legatees filed a bill against the testator's widow and former partner, who were executrix and executor respectively, praying for accounts of what said partner had, or might, but for wilful neglect, have received from testator's estate; that he might be charged with what was due both before and since the testator's death, in respect of said partnership; and for a receiver of the assets of the partnership; and for an injunction restraining said partner and executor from interfering with the testator's estate and the assets of the partnership: *Held*, that the bill was not demurrable for omission of the fourth residuary legatee, nor for multifariousness, *i.e.*, misjoinder of subjects of suit.—*Pointon* v. *Pointon*, L. R. 12 Eq. 547.

Estate for Life.—*See* Devise, 4.

Estate Tail.—*See* Devise, 1, 3, 7.

Evidence.

A testator appointed his son, Forster Charter, as his executor. He had two sons, William Forster Charter and Charles Charter: *Held*, that inasmuch as if a man has several Christian names they are together but one name, the testator had not sufficiently described either of his sons, and evidence showing the testator intended to appoint his son Charles was admissible.—*Charter* v. *Charter*, L. R. 2 P. & D. 315.

See Negligence, 1; Pleading.

Execution.—*See* Tort.

Executors and Administrators.

1. A testator devised to a creditor his real and personal estate in trust for payment of his debts, and made the creditor his executor: *Held*, that the fact that the trustee was executor, gave him no right to retain his whole debt from the trust fund in preference to other debts. —*Bain* v. *Sadler*, L. R. 12 Eq. 570.

2. A testator appointed his wife executrix, "and in default of her" two other persons to be executors. Probate was granted to the wife, who died, leaving the estate partly unadministered: *Held*, that probate should be granted to the said two persons as substituted executors.—*In the goods of Foster*, L. R. 2 P. & D. 304.

See Bequest, 1, 3; Equity Pleading and Practice, 2; Evidence.

Fish.

Eels are river fish.—*Woodhouse* v. *Etheridge*, L. R. 6 C. P. 570.

Foreign Enlistment Act.—*See* Prize.

Foreclosure.—*See* Mortgage, 2.

Forfeiture.—*See* Damages, 1; Piracy.

Fraud.—*See* Mortgage, 3; Trust, 2.

Frauds, Statute of.

A. entered into a contract with B. for the purchase of wool, and signed and handed to B. a memorandum of the terms of sale. B. subsequently wrote to A., "It is now twenty-eight

days since you and I had a deal for my wool. . . . I shall consider the deal off as you have not completed your part of the contract. yours, B." And on A. asking for a copy of said memorandum, B. wrote, "I beg to enclose a copy of your letter," enclosing a copy of the memorandum. *Held*, that there was sufficient memorandum of the contract signed by B. to satisfy the statute of frauds.—*Buxton* v. *Rust*, L. R. 7 Ex. 1.

See Broker, 2; Landlord and Tenant.

Fraudulent Preference.—*See* Bankruptcy, 3; Surety.

Freehold.—*See* Common.

Freight.—*See* War.

Grant.—*See* Reservation.

Guarantee.—*See* Bankruptcy, 1.

Guardian.—*See* Illegitimate Children.

Husband and Wife.

A wife has no equity to a settlement out of arrears of past income of her leasehold property, which have been duly received by her husband, but retained and accumulated for a particular assignee of the same.—*In re Carr's Trusts*, L. R. 12 Eq. 609.

See Divorce; Equity of Redemption.

Illegitimate Children.

A testator cannot by his will appoint a guardian for his illegitimate children.—*Sleeman* v. *Wilson*, L. R. 13 Eq. 36.

Improvement.—*See* Tenant for Life.

Incumbrance.—*See* Devise, 4.

Infant.

A mother maintained her son before, and for six years after, his majority, but with no intention of making a claim for maintenance. *Held*, that she had no claim for maintaining her son during minority, and that to claim the same for the period since majority, she must show a contract.—*In re Cottrell's Estate*, L. R. 12 Eq. 566.

See Collision; Sale.

Injunction.—*See* Ancient Light.

Injury.—*See* Damages, 2.

Insurance.

1. *The Charlemagne* was insured to Calcutta, and thirty days after arrival, on a valued policy, and at and from Calcutta by the same underwriters on a second valued policy. The vessel was damaged before arrival, was partially repaired before the expiration of thirty days, and thereafter, and when the second policy had attached, was totally destroyed by fire. *Held*, that the owners were entitled to recover under the first policy such sum as said repairs would have cost if they had been completed; and under the second policy the whole amount of the valuation therein.—*Lidgett* v. *Secretan*, L. R. 6 C. P. 616.

2. The defendant was insured on merchandise, "the assured's own, in trust, or on commission, for which he is responsible." He bought tea in warehouse, and sold it while there, and was paid, but had not indorsed over the warrant for delivery, when the tea was destroyed by fire. *Held*, that the property in the tea having passed to the purchaser, the tea was not covered by the policy.—*North British Insurance Co.* v. *Moffatt*, L. R. 7 C. P. 25.

3. In accordance with the rules of Lloyd's the ship *Annie* was classed in 1865 as A 1 for seven years. In order to retain this position a vessel must undergo a half-time survey; if the result is satisfactory, the letters "H. T." are placed opposite her name in Lloyd's book, but the time for such half-time survey is not in all cases strictly observed. Copies of the books in the hands of subscribers are corrected weekly. In October, 1869, the owner of said vessel was notified that it was time for the half-time survey, and he replied that he had decided not to continue his vessel in Lloyd's book. The owner applied for insurance in the above month to the defendant, who, having a copy of Lloyd's book, in which said *Annie* stood A 1 for seven years from 1865, asked if the *Annie* therein mentioned was his vessel, and was told it was. Said vessel was initialed for insurance November 15, and a policy made out December 1, 1869; she was struck from Lloyd's book November 16, and the plaintiff was notified thereof November 17, and the vessel was lost December 31. It was left to the jury to determine among other things whether the plaintiff's resolve not to continue his vessel on Lloyd's and his reply to that effect, was a material fact, and the jury found in the negative. *Held*, (by Mellor, Lush, and Hannen, JJ.), that the case was properly left with the jury. By Cockburn, C. J., dissenting, that though the case was properly not withdrawn from the jury, the facts showed a material concealment, and that the case should be sent down for a new trial.—*Gandy* v. *Adelaide Insurance Co.*, L. R. 6 Q. B. 746.

Joint Tenancy.

A gift to "all and every her child and children, and his, her, and their executors, administrators, and assigns, for his, her, and their own absolute use and benefit," *held* to create a joint tenancy.—*Morgan* v. *Britten*, L. R. 13 Eq. 28.

See Adverse Possession; Bequest, 6, 11; Devise, 3; Trust, 1.

Judgment.—*See* Tort; Trover.

Jurisdiction.—*See* Sale.

Landlord and Tenant.

A lessee enclosed with consent of the lessor a piece of land adjoining the premises already demised, and held the whole some thirty years. It was contended that there was a parol demise of said adjoining piece of land, which created a tenancy at will, which expired by 3 & 4 Wm. 4, c. 27, § 7, on one year from such demise, and that after the expiration of this year, the statute of limitations began to run, whereby the lessee in this case had acquired title. *Held*, that the ordinary rule that an encroachment by a tenant must be taken to be for the benefit of the lessor, and treated as part of the demised premises, applied, and that the lessee had acquired no title.—*Whitmore* v. *Humphries*, L. R. 7 C. P. 1.

See Common; Devise, 2; Easement; Limitations, Statute of, 2; Way, 1.

Lease.—*See* Devise, 2; Equity Pleading and Practice, 1; Way, 1.

Legacy.—*See* Bequest; Condition; Devise; Executors and Administrators, 1; Joint Tenancy; Mortmain; Partnership; Reversionary Interest; Set-off; Tenant for Life.

Lex Loci.—*See* Will, 1.

Libel.

The plaintiff was a manufacturer of a bag he called the "Bag of Bags." The defendant published the following concerning said bag: "As we have not seen the Bag of Bags, we cannot say that it is useful, or that it is portable, or that it is elegant. All these it may be, but the only point we can deal with is the title, which we think very silly, very slangy, and very vulgar; and which has been forced upon the public *ad nauseam*." *Held* (Lush, J., dissenting), that a question was presented for the jury as to whether the above words were intended to disparage the plaintiff in the conduct of his business. Demurrer to delaration on said words overruled.—*Jenner* v. *A'Beckett*, L. R. 7 Q. B., 11.

Lien.

1. By articles of association a bank was to have a lien on shares for money due from the shareholder. The bank was wound up, and its property sold to a second bank. Shareholders not subscribing to the second bank were paid £2 per share. *Held*, that the bank's lien extended to such sum, as representing a share.—*In re General Exchange Bank*, L. R. 6 Ch. 818.

2. Goods were carried by railway for a company on a credit account, a condition being that the railway was to have a general lien on such goods for all moneys due. Coke was put in trucks belonging to the company on the railway line, and there detained by the latter. *Held*, that a lien being a right to hold goods that had been carried in respect of such carriage, or, if so agreed, in respect of debts of the same character contracted in respect of other goods, to stop said coke before it had been carried, and hold the same for a debt, was contrary to the nature of a lien.—*Wiltshire Iron Co.* v. *Great Western Railway Co.*, L. R. 6 Q. B. (Ex. Ch.) 776; s. c. *ib.* 101.

See Charter-Party, 1.

Limitations, Statute of.

1. A. agreed to build ships for the plaintiff and deliver at a specified time. For delays beyond that time, certain sums were to be paid by A. as liquidated damages, and to be deducted from the purchase-money. All disputes were to be referred to arbitration. The ships were not built at the specified time, and a dispute arose; a draft reference was prepared, and an arbitrator named by the plaintiff only. The plaintiff subsequently wrote a letter to A., stating that he had named an arbitrator, and ending: "The final arrangements for the reference therefore rest, and have long rested with you." Again the plaintiff wrote, stating that he had received a paper, purporting to be a memorandum of an account between himself and A., which was altogether incorrect, both in principle and in detail, omitting all deductions and credits to which he was entitled, which latter would leave the balance considerably in his favour; but that he was willing to have all accounts and questions settled by arbitration, and that he again called on A. to concur. The letter to be "wholly without prejudice." *Held*, that the above letters contained no unconditional admission of a debt, or promise to pay whatever might be found to be due upon arbitration, and did not take A.'s claim out of the statute of limitations. And further, that the words "without prejudice" would prevent the second letter having such effect.—*In re River Steamer Co.*, L. R. 6 Ch. 822.

2. The owner of an estate subject to a tenancy at will has by statute a right of entry at the end of a year from the commencement of the tenancy. Where a tenant at will had held the premises for twenty-two years, it was *held*, that at the expiration of twenty one years from the commencement of the tenancy, the twenty years prescribed by statute had run, and the tenant had gained title; and that whether dur-

ing said period there had been acts sufficient to determine said tenancy, was immaterial, as no new tenancy had been created.—*Day* v. *Day*, L. R. 3 P. C. 751.

See Adverse Possession; Devise, 6; Easement; Landlord and Tenant.

Luggage.—*See* Salvage, 2.

Maintenance.—*See* Settlement, 2.

Marriage Settlement.—*See* Settlement.

Married Woman.—*See* Equity of Redemption; Husband and Wife; Infant.

Marshalling Assets.—*See* Security, 2.

Misjoinder.—*See* Common; Equity Pleading and Practice.

Mortgage.

1. The court ordered specific performance o an agreement to execute a mortgage containing an absolute power of sale.—*Ashton* v. *Corrigan* L. R. 13 Eq. 76.

2. If a mortgagee enters at a time when he is entitled to an order to foreclose, and receives the rents and profits, he opens the foreclosure by such receipt.—*Prees* v. *Coke*, L. R. 6 Ch. 645.

3. The plaintiff received deeds by way of equitable mortgage, and subsequently the mortgager executed a legal mortgage. The solicitor of the legal mortgagee omitted examining a parcel given him purporting to contain all the title-deeds, but from which the plaintiff's said deeds were wanting. *Held*, that there was not such a case of wrongful negligence as to postpone in equity the legal to the equitable mortgage.—*Ratcliffe* v. *Barnard*, L. R. 6 Ch. 652.

4. A solicitor induced a client to advance money upon mortgage, and subsequently advised a second client to do the same, without informing him of the first mortgage. The second mortgage was registered first. *Held*, that the second mortgagee must be taken to have had notice of the first mortgage through his solicitor, and had not gained priority.—*Rolland* v. *Hart*, L. R. 6 Ch. 678.

See Equity of Redemption; Security, 2.

Mortmain.

A testator bequeathed money towards expenses of building a church at Z., but if not begun in testator's lifetime, or within two years of his death, the legacy not to be payable. *Held*, that to make such a gift valid, the site on which the building is to be erected must be referred to, and the application of the money to the purchase of land must be expressly excluded, and said legacy was held void.—*Pratt* v. *Harvey*, L. R. 12 Eq. 544.

See Charitable Institution.

Multifariousness.—*See* Equity Pleading and Practice.

Naturalization.—*See* Domicile, 1.

Negligence.

1. The defendants owned a railway bridge over a highway, supported by an iron girder resting upon brick piers, from which a brick fell on the plaintiff, shortly after the passage of a train. The bridge had been used three years at the time of the accident. *Held*, that the defendants were bound to use due care in providing for the safety of the public, and that the question of negligence was rightly left with the jury.—*Kearney* v. *London and Brighton Railway Co.*, L. R. 6 Q. B. (Ex. Ch.) 759; s. c. L. R. 5 Q. B. 511; 5 Am. Law Rev. 298.

2. Declaration that the defendant was possessed of yew-trees, the clippings of which he knew to be poisonous, whereby it became the duty of the defendant to prevent the clippings being placed on others' land, yet the defendant took so little care of the clippings that they were placed on land not the defendant's, where the plaintiff's horses lawfully being, eat of the same and were poisoned. *Held*, on demurrer, that the facts alleged did not cast the alleged duty on the defendant.—*Wilson* v. *Newberry*, L. R. 7 Q. B. 31.

See Collision; Mortgage, 3.

Nonjoinder.—*See* Common, 2.

Notice.—*See* Mortgage, 4.

Parties.—*See* Bequest, 1; Common; Equity, 1; Equity Pleading and Practice.

Partnership.

By articles of partnership, profits were to be divided annually. Subsequently the partners resolved to make up the accounts half-yearly in March and September, but they held meetings very irregularly, in which they disposed of profits by resolution, until which resolution no profits were carried to the credit of either partner. A partner directed in his will that from the day of his decease the annual income of his personal estate should belong to B., and that for this purpose the net profits of the partnership should be deemed annual income. The testator died in August, 1869. At a meeting of the testator's executor and the surviving partner, it was resolved that the profits of the year ending March, 1869, be divided, and they were carried to the credit of the testator's account under date of September, 1869, and in December they were paid to his executor. In March, 1870, it was resolved to divide the profits of the half-year ending September, 1869, and the same were paid to the executor. *Held*, that the profits of the year ending March, 1869, were capital, and formed part of the testator's estate; but that the profits of the half-year,

ending September, 1869, were income only and went to B.—*Browne* v. *Collins*, L. R. 12 Eq. 586.

See Bequest, 13; Equity Pleading and Practice.

Patent.

1. A patentee described his invention and the machinery by which it was to be made, and then claimed the production of said invention by machinery. *Held*, that the claim was not *per se* too large.—*Arnold* v. *Bradbury*, L. R. 6 Ch. 706.

2. A patent for the combination of several separate and distinct matters is valid, though each of such separate matters is previously known.—*Cannington* v. *Nuttall*, L. R. 5 H. L. 205.

Penalty.—*See* Damages, 1.

Performance.—*See* Specific Performance.

Perpetuity.—*See* Charitable Institution.

Personal Estate.—*See* Sale; Settlement, 1.

Piracy.

A ship belonging to a pirate and sold to a *bona fide* purchaser for value is not subject to forfeiture to the crown on proceedings instituted after the sale.—*Regina* v. *McCleverty* (*The Telegrafo*), L. R. 3 P. C. 673.

Pleading.

In answer to a petition against a ship and her owners, the appellants denied the statements therein, and pleaded and proved that the damage complained of had been the subject of an action in a court of law in which judgment had been recovered and satisfied. It was also proved that the damage was done by one having charge of the vessel as consignee for sale, and not as agent for the owners. *Held*, that the defendants' general denial justified the admission of said latter evidence; also, that the defendant was entitled to have a decision on the defence specially pleaded, so that, if prejudiced, he might appeal. Where there is a remedy both *in personam* and *in rem*, a person who has resorted to one of the remedies may if he does not get thereby fully satisfied, resort to the other.—*Yeo* v. *Tatem* (*The Orient*), L. R. 3 P. C. 696.

Possession.—*See* Easement.

Power.

K. had power to charge real estate for children as follows: if there should be one or two children, for £3000; if three children, for £4000; if four or more children, for £5000 "said sums to vest in and be paid to the child or children respectively for whom the same respectively shall be charged, or to or among him, her, or them, and his, her, or their respective issue at such age or time" as K. should appoint. K. had five children, one of whom died an infant, and another leaving two children. After said deaths, K. appointed £2500 to one child, £2000 to another, and £500 to said two children. *Held*, that the whole £5000 had become appointable.—*Knapp* v. *Knapp*, L. R. 12 Eq. 238.

2. By marriage settlement a husband had power "as to so much of said hereditaments and premises as shall not exceed the annual income of £300" to the use of children of the marriage. By will the husband devised "the whole of my property, real and personal, consisting of a farm," being said hereditaments, "and whatever may devolve on me by virtue of said marriage settlement," in trust for said children in certain proportions. He also gave his trustee power "to divide the income of my entire property according to the provisions before made, or to sell the whole and divide the proceeds among my children." *Held*, that the will did not operate as an exercise of said power.—*Wildbore* v. *Gregory*, L. R. 12 Eq. 482.

See Devise, 1, 3; Mortgage, 1.

Prescription.—*See* Easement.

Principal and Agent.—*See* Broker; Charter-Party, 1; Railway.

Priority.—*See* Mortgage, 3, 4.

Prize.

The Foreign Enlistment Act enacts that if any person despatches a ship with intent, or having reasonable cause to believe, that the same will be employed in the naval service of any foreign state at war with any state friendly to Great Britain, such ship shall be forfeited. A French cruiser captured a German vessel, in the late war between the two countries, and placed a prize crew on board, who took the vessel to a port in England. There a British tug agreed to tow the prize to Dunkirk Roads. *Held*, that as a *deductio infra præsidia* was not necessary by the law of England or France to complete the capture, the tug was not an agent in effecting such capture; and that the presence of a prize crew and officer on board the prize did not constitute her a vessel of war, whereby to tow her would be to be employed in the service of a belligerent.—*The Gauntlet*, L. R. 3 Ad. & Ec. 381.

Probate.—*See* Executors and Administrators.

Promissory Note.—*See* Bills and Notes.

Proof.

Bills drawn by the A. bank upon the B. bank were accepted for the accommodation of the A. bank, upon the understanding that funds would be furnished to meet them. The bills

were discounted by C., but before they matured both said banks suspended payment. C. proved against both banks and recovered a dividend from both. *Held* that the B. bank might prove against the A. bank for the amount it had paid to C.—*In re Oriental Commercial Bank*, L. R. 12 Eq. 501.

See Bankruptcy, 2.

Proximate Cause.—*See* Collision.

Railway.

By 17 & 18 Vict., c. 31, no railway company shall give any undue or unreasonable preference or advantage to any person or company, nor subject any company or person to any undue or unreasonable prejudice or disadvantage. The plaintiff had a general authority from certain traders to receive all goods consigned to them, and arriving at a certain station on a railway. The railway refused to deliver goods to the plaintiff without a special order describing the goods in each case, though no such order was required of an agent of their own who was employed at the station to receive and distribute goods. *Held*, that the railway had subjected the plaintiff to undue disadvantage.—*Parkinson* v. *Great Western Railway Co.*, L. R. 6 C. P. 554.

See Lien; Negligence, 1; Specific Performance, 1.

Real Estate.—*See* Settlement, 1; Statute.

Release.—*See* Surety, 1.

Religious Institution.—*See* Charitable Institution.

Remainder.—*See* Bequest, 4, 6; Devise, 1–3; Reversionary Interest; Trust, 1.

Remainder-man.—*See* Tenant for Life.

Rents and Profits.—*See* Mortgage, 2.

Repairs.—*See* Tenant for Life.

Reservation.

The appellant granted land to G., "reserving, all and sundry, the coal and limestone within the bounds of the land specified, so as it shall be lawful for the said Duke to set down coal-pits, &c., and win coal and limestone within the bounds of the said lands; and to make all engines and easements necessary for carrying on the said coal and limestone work, and free entry thereto for making sale thereof and taking the same." *Held* (Lord Chelmsford, dissenting), that the appellant had by the reservation the absolute property in said coal and limestone, and might make a tunnel through them for the passage of other coal belonging to him in land adjacent.—*Duke of Hamilton* v. *Graham*, L. R. 2 H. L. Sc. 166.

Residence.—*See* Domicile.

Residuary Estate.—*See* Bequest, 2, 4, 10.

Residuary Legatee.—*See* Equity Pleading and Practice; Set-off.

Reversion.

A testator devised certain estates on trust to pay the income to his daughter, until she being discovert, should do any thing whereby said income should be aliened, or become receivable otherwise than by herself personally, in which event the income to be upon such trust for said daughter or her child, children, or remoter issue, as the trustees should think proper. An event happening as above described, it was *held* that the possibility that the trustees would appropriate some part of the said income to the daughter did not vest in her a reversionary interest contingent upon the discretion of the trustees.—*Milne* v. *Milne*, L. R. 2 P. & D. 295.

See Sale.

Sale.

Reversionary personal estate to which an infant was entitled was sold by order of court, a condition of sale being that the purchaser should not dispute the jurisdiction of the court to order such sale. *Held*, that the condition was proper and reasonable. It appears that as the purchaser knew the facts in the case, he could not have disputed the jurisdiction, had such condition been omitted.—*Nunn* v. *Hancock*, L. R. 6 Ch. 850.

See Bequest, 3; Frauds, Statute of; Insurance, 2; Mortgage, 1; Piracy; Settlement, 1; Warranty.

Salvage.

1. A propeller fell in with a steamer in distress, and agreed to tow her to Lisbon for a certain sum, the weather at the time being rough and threatening. After the towing had been undertaken the wind and sea became much heavier, and the hawsers connecting the vessels were several times parted. Finally the steamer was anchored, and her crew taken for the night into the propeller. The master of the propeller then informed the master of the steamer that he considered the contract to tow for said sum to be at an end, and the master of the steamer acquiesced. Next day, with much difficulty and danger, the steamer was towed by the propeller into Lisbon. The owners of the steamer paid the said contract price into court, with an additional sum to pay for quarantine expenses and demurrage incurred by the propeller in consequence of her putting into Lisbon. *Held*, that no such circumstances as to vacate the contract intervened; that there was no voluntary abandonment of said contract; that tendering said additional sum was not an admission that said contract was

not binding, and that therefore the propeller could claim no more than agreed to in the contract.—*The Waverley*, L. R. 3 Ad. & Ec. 369.

2. The wearing apparel of passengers, and other effects carried by them for their daily personal use, are not liable to contribute to salvage.—*The Willem III.*, L. R. 3 Ad. & Ec. 487.

3. The master and crew of a vessel are entitled to compensation for salvage services to another vessel, although both vessels belong to the same owners.—*The Sappho*, L. R. 3 P. C. 690.

Security.

1. The trustees of a society, having no power to borrow, borrowed a certain sum of W., giving him a note therefor, and depositing certain deeds with W. as security. *Held*, that whether W. could enforce his claim or not, the trustees were not entitled to recover the deeds without payment of the money advanced.—*Wilson's Case*, L. R. 12 Eq. 521.

2. A testator having devised estates to A. and B., deposited the title-deeds of the estate devised to A. with a bank as security against the general balance of his account. Afterward he deposited the title-deeds of the estate devised to B. as security for further small advances, and subsequently died: *Held*, that A.'s estate was liable for the amounts due up to the second deposit of title-deeds, and that the estates of both A. and B. were chargeable proportionately with the debt subsequently incurred.—*De Rochefort* v. *Dawes*, L. R. 12 Eq. 540.

See Bankruptcy, 2; Equity, 2.

Set-off.

B. had an account with a bank, upon which he overdrew £300. He also had a second account with the bank, headed executor's account, under which stood a large sum to his credit as executor of A. B. was A.'s residuary legatee, and there was a surplus of £1900 after providing for all legacies. *Held*, that the bank could set off the sum due from B. on his private account against the amount due him on the executor's account.—*Bailey* v. *Finch*, L. R. 7 Q. B. 34.

Settlement.

1. By marriage settlement real estate was conveyed to trusts for the children of the intended marriage in equal shares and proportions, as tenants in common, and their heirs and assigns respectively, with a power of sale, provided the purchase-money should be paid to the trustees to be laid out in the purchase of other lands and premises, or in government or real securities, to enure to the same trusts as declared concerning the real estate. The premises were sold under the power. *Held*, that the proceeds must be treated as personalty.—*Atwell* v. *Atwell*, L. R. 13 Eq. 23.

2. A father gave a fund to trustees, with directions that they should apply such part of the income as they should think fit for the education of his children; but thereafter he supported and educated them himself, without calling on the trustees. *Held*, that the father was not entitled to be repaid such sums as the trustees might have expended in educating the children. *In re Kerrison's Trusts*, L. N. 12 Eq. 422.

See Bequest, 8; Company, 5: Devise, 1; Husband and Wife; Power, 2.

Shareholder.—*See* Company; Lien.

Ship.—*See* Charter-party, 1–3; Collision; Damages, 2; Insurance, 1, 3; Piracy; Pleading; Prize; Salvage; War.

Solicitor.—*See* Mortgage, 4: Trust, 2.

Specification.—*See* Patent.

Specific Performance.

1. A railway company agreed to construct a side railway upon the plaintiff's land, and subsequently refused to perform its contract. *Held*, that a railway would be dealt with by a court of equity upon the same principles as individuals; and that the fact that the plaintiff might recover damages for the breach of contract was no defence to a decree for specific performance, which was ordered.—*Green* v. *West Cheshire Railway Co.*, L. R. 13 Eq. 44.

2. The owners of a colliery entered into a contract for the purchase of an adjoining field without informing its owner that they had taken a large quantity of coal from under the field. *Held*, that specific performance of the contract must be refused.—*Phillips* v. *Homfray*, L. R. 6 Ch. 771.

See Company, 1.

Statute.

By statute the "owners and occupiers of houses, buildings, and property (other than land) shall pay" a certain poor-rate. The appellants owned a canal and towing-path, bridges, and a dry-dock, lined with masonry, which formed part of the canal and towing-path, and was used only for repairing canal-boats. *Held*, that said property must be rated as land.—*Reg.* v. *Overseers of Neath*, L. R. 6 Q. B. 707.

See Damages, 1, 2; Limitations, Statute of, 2; Prize; Railway.

Status.—*See* Domicile, 2.

Statute of Frauds.—*See* Frauds, Statute of.

Statute of Limitations.—*See* Limitations, Statute of.

Surety.

1. A debtor executed an assignment for the benefit of creditors, the assignees to carry on the debtor's business and pay the creditor's debts ratable out of all moneys received. The creditors executed a release with a proviso reserving their rights against sureties. *Held*, that the release operated merely as a covenant not to sue, and did not extinguish the debts, and that the rights against sureties were preserved.—*Bateson* v. *Gosling*, L. R. 7 C. P. 9.

2. A principal on a note paid the amount of the same by way of fraudulent preference to the payee, who was innocent of the fraud, and who on notice thereof repaid the amount to the trustees for creditors *Held*, that said payment did not discharge the surety.—*Petty* v. *Cooke*, L. R. 6 Q. B. 790.

See Bankruptcy, 1.

Surrender.—*See* Company, 2; Devise, 2.

Survivorship.—*See* Bequest, 2.

Tax.—*See* Statute.

Tenant at Sufferance.—*See* Limitations, Statute of, 2.

Tenant at Will.—*See* Limitations, Statute of, 2

Tenant for Life.

A testator devised estates to the plaintiff for life without impeachment of waste, with remainder over. His personal estate to be sold and invested in land upon the same trusts. The plaintiff applied to the court to order that the purchase-money of said personal estate and of real estate sold, should be applied to reimbursing him for improvements on the mansion-house; for further repairs and additional rooms to be made in the same; for new cottages and for rebuilding a public-house on the estate. The remainder-men objected. *Held*, that sums already expended could never be repaid unless constituting a charge upon the inheritance, which was not the case here; that the court had jurisdiction to order the same if the remainder-men objected; and that outlays in repairing could not be sanctioned, as it was the duty of the tenant for life to keep up the buildings, although he was by law dispunishable for waste.—*In re Leigh's Estate*, L. R. 6 Ch. 887.

See Bequest, 2, 6.

Tenant in Common.—*See* Adverse Possession; Bequest, 11; Devise, 3; Joint Tenancy.

Tender.—*See* Salvage, 1.

Title.—*See* Equity of Redemption; Landlord and Tenant; Trover.

Tort.

A judgment in an action against one of two joint tort-feasors, without satisfaction, is a bar to an action against the other for the same cause.—*Birnsmead* v. *Harrison*, L. R. 6 C. P. 584

Trover.

A judgment in trover without satisfaction does not vest the property in the defendant.—*Brinsmead* v. *Harrison*, L. R. 6 C. P. 584.

Trust.

1. B. by deed transferred a debenture to three persons with no declaration of trust. Shortly before, B. had written to his solicitor, naming said persons as trustees and stating the trust of a proposed settlement of the debenture to be "for my niece M. and her children." *Held*, that a trust was sufficiently declared for M. for life, remainder to her children as joint tenants.—*In re Bellasis' Trust*, L. R. 12 Eq. 218.

2. Trustee who lost the trust fund by the fraud of their solicitor, to whom the fund was intrusted for investment in a mortgage, were *held* liable for the loss.—*Sutton* v. *Wilders*, L. R. 12 Eq. 373.

See Bequest, 1; Devise, 2–5; Equity, 1; Executors and Administrators, 1; Insurance, 2; Reversionary Interest; Security; Settlement, 1, 2.

Ultra Vires.

1. By articles of association of a telegraph company its directors had power to sell the line. Three directors constituted a quorum for the transaction of business at any meeting. Two directors wrote a letter agreeing as directors to pay to the plaintiff 25 per cent. if he sold the line on certain terms, and to sign a legal obligation to such effect when called upon, and get the signatures of their co-directors to the same. The letter was sent to another director, who returned it signed by himself and another. The sale was effected, and adopted by the company. *Held*, that the above agreement was not *ultra vires*; and that three directors having concurred, it was unnecessary that they should have actually held conference in assembly together. The 25 per cent. was allowed the plaintiff.—*In re Bonelli's Telegraph Co.*, L. R. 12 Eq. 246.

2. The objects of a society by its certified rules were to purchase real or leasehold estate, and to erect buildings thereon. Said rule contained no power to borrow, but an additional rule was adopted allowing the directors to borrow for the purposes of the society. D. lent to the society money which was lent by the directors to another building society. *Held*, that borrowing for such purposes was *ultra vires* of the directors, and that D.'s claim could not be enforced against the company.—*Davis's Case*, L. R. 12 Eq. 516.

See Security.

Usury.—*See* Equity, 2.

Vendor and Purchaser.—*See* Reservation; Sale; Specific Performance, 2.

Vested Interest.—*See* Bequest, 5, 8, 12.

War.

A German ship, having a cargo of nitrate of soda, useful in the manufacture of gunpowder, arrived off Dunkirk, where the cargo was to be delivered, on July 16, 1870, and took a pilot on board, who told the master that war had been declared two days before between France and Germany. The tide was such that the vessel could not have entered Dunkirk before the afternoon of the 17th. The master had his vessel taken to the Downs, that he might there ascertain whether war had broken out or not, and there anchored on Sunday, July 17. That day he could obtain no information, but on Monday, the 18th, he telegraphed the owner, who forbade his proceeding to Dunkirk. On the 19th war was declared, and on the same day the vessel went to Dover as the nearest and safest port. There the charterers demanded the cargo, but did not offer *pro rata* freight, and the master refused to deliver. *Held*, first, that war may exist *de facto* so as to affect the subjects of a belligerent state either without a declaration on either side, or before a declaration, or with a unilateral declaration only, and that in the above case war had either broken out on the 17th of July, or was so imminent as to render Dunkirk an *unsafe* port, and the vessel was therefore not bound to enter; also, that she was justified in pausing to make inquires as to whether war had broken out. Second, that the master was not bound to deliver the cargo without any payment of freight either *pro rata itineris*, or by way of carriage to Dover.—*The Teutonia*, L. R. 3 Ad. & Ec. 394.

See Charter-party, 2, 3.

Warranty.

H. bought a horse warranted in a certain respect, to be returned before a certain day if not answering to its description. H. was told by a groom that the horse did not answer to the warranty, but took it home, where it met with an accident, whereupon H. returned it before the said day. *Held*, that neither the taking away the horse, nor its subsequent injury, deprived H. of his right to return it.—*Head* v. *Tattersall*, L. R. 7 Ex. 7.

Waste.—*See* Tenant for Life.

Way.

1. A lessor demised a certain dock, as follows: bound on the west "by a roadway or passage running between" said dock and certain warehouses, "together with the free liberty and right of way and passage, and of ingress, egress, and regress to and for the lessees, their workmen, and servants, and all and every other persons and person by their permission, in, by, through, and over said roadway or passage jointly with the lessor." A portion of said passage-way next to the warehouses was partially fenced in. *Held*, that the right of way extended over the whole passage-way, but not foot-passengers only.—*Cousens* v. *Rose*, L. R. 12 Eq. 366.

2. The owner of land who had dedicated a footway over the same to the public, conveyed material to and from his premises across said footway in waggons. It was found "that the freehold property in question could not be reasonably enjoyed without access to the existing footway, and that the rights of ownership and those of the public might be jointly exercised consistently with the general welfare." *Held*, that as one who dedicates to public use as a highway a portion of his land parts with no other right than a right of passage to the public, said owner might convey material as above.—*St. Mary, Newington* v. *Jacobs*, 7 Q. B. 47.

Will.

1. Lopez, the dictator of Paraguay, made Mrs. Lynch his universal legatee, and she claimed probate of his will in England. By decree of the Paraguayan government about two months after the death of Lopez, all the latter's property, wherever situated, was declared to be the property of Paraguay. *Held*, that the right to claim probate and succession to personal property depended on the law of Paraguay at the time of Lopez's death.—*Lynch* v. *Provisional Government of Paraguay*, L. R. 2 P. & D. 268.

2. After a testator had signed his will he inserted a clause above his signature, after which the attested witnesses signed their names. *Held*, that as the testator had neither signed nor acknowledged his will after inserting the clause, probate must issue without including the same. 15 Vict. c. 24.—*In the Goods of Arthur*, L. R. 2 P. & D. 273.

3. A testator executed his will in the presence of A. and B., and A. attested the same as witness, and B. signed opposite the word "executors." There was doubt whether the testator, who was an ignorant person, asked B. to sign as witness or executor. The court *held* that B., *primâ facie*, signed as witness as well as executor.—*Griffiths* v. *Griffiths*, L. R. 2 P. & D. 300.

See Bequest; Condition; Devise; Evidence; Executors and Administrators; Illegitimate Children; Joint Tenancy; Mortmain; Partnership; Power, 2; Reversionary Interest.

Witness.—*See* Will, 3.

Words.—"*If they shall die leaving issue*," *See* Devise. "*Moneys*," *See* Bequest 7. "*Participate*," *See* Bequest, 11. "*Without Prejudice*," *See* Limitations, Statute of, 1.

APPOINTMENTS TO OFFICE.

DEPUTY JUDGES.

JOHN WARISON, of the Town of Goderich, of Osgoode Hall, Esquire, Barrister-at-Law, to be Deputy Judge of the County Court of the County of Huron for and during the absence of six months' leave, from 1st of April inst., of Seeker Brough, Esquire, Judge of the County Court of the said County. (Gazetted June 22nd, 1872.)

JAMES ALEXANDER HENDERSON, of the City of Kingston, of Osgoode Hall, Barrister-at-Law, to be Deputy Judge of the County Court of the County of Frontenac. (Gazetted June 22nd, 1872.)

COUNTY ATTORNEY.

JOHN EDWIN FAREWELL, of Osgoode Hall, Esquire, Barrister-at-Law, to be County Attorney in and for the County of Ontario in the room and stead of Samuel H. Cochrane, Esquire, deceased. (Gazetted May 4th, 1872.)

REGISTRAR.

RODERICK McBAIN ROSE, of the City of Kingston, Esquire, to be Registrar of and for the County of Frontenac, in the room and stead of James Durand, deceased. (Gazetted May 25th, 1872.)

NOTARIES PUBLIC FOR ONTARIO.

WILLIAM McDOWELL, of the Village of Erin, Gentleman, Attorney-at-Law. (Gazetted April 27th, 1872.)

FREDERICK BURNHAM, of the Town of Peterborough, Esquire, Barrister-at-Law.

GEORGE S. HOLMSTED, of the City of Toronto, Esquire, Barrister-at-Law.

ADOLPHUS WILLIAM, of the Village of Welland, Gentleman, Attorney-at-Law. (Gazetted May 4, 1872.)

GEORGE A. BOOMER, of the City of Toronto, Esquire, Barrister-at-Law.

ARTHUR GODFREY MOLSON SPRAGGE, of the City of Toronto, Gentleman, Attorney-at-Law. (Gazetted May 11th, 1872.)

WILLIAM G. McWILLIAMS, of the City of Toronto; and SUTHERLAND MALCOLMSON, of the Village of Clinton, Esquires, Barristers-at-Law, and WILLIAM McBRIDE, of the City of Toronto, Gentleman, Attorney-at-Law. (Gazetted May 25th, 1872.)

GEORGE WILLIAM HERBERT BALL, of the Town of Galt, Esquire, Barrister-at-Law.

JAY KETCHUM, of the Town of Lindsay, gentleman, Attorney-at-Law. (Gazetted June 1st, 1872.)

JOHN CRERAR, of the City of Hamilton, Esquire, Barrister-at-Law.

HENRY HATTON STRATHY, of the Town of Barrie; and EDWARD BURNS, of the Village of Elora, Esquires, Barristers-at-Law. (Gazetted June 8th, 1872.)

LINDSAY HALL, of the Village of Aurora, Esquire, Barrister-at-Law. (Gazetted June 8th, 1872.)

JOHN FRANCIS CAMPBELL HALDAN, of the Town of Dundas, Gentleman, Attorney-at-Law. (Gazetted June 22nd, 1872.)

ASSOCIATE CORONERS.

JAMES ACLAND DE LA HOOKE, Esquire, M.D., for the County of York.

PETER McDONALD, Esquire, M.D., for the County of Norfolk. (Gazetted April 6th, 1872.)

SYLVESTER LLOYD FREEL, Esquire, M.D., for the County of York. (Gazetted April 13th, 1872.)

SAMUEL BYTH SMALL, Esquire, M.D., for the County of Huron. (Gazetted April 20th, 1872.)

WILLIAM E. JOHNSTON, Esquire, for the United Counties of Northumberland and Durham.

GEORGE W. WOOD, Esquire, M.D., for the County of Norfolk.

HUGH M. McKAY, Esquire, M.D., for the County of Oxford.

WILLIAM NODEN, Esquire, M.D., for the United Counties of Northumberland and Durham. (Gazetted May 11th, 1872.)

THOMAS WYRE VARDON, and HENRY ULLYOT, Esquires, M.D., for the County of Waterloo. (Gazetted May 25th, 1872.)

AUTUMN ASSIZES.

EASTERN CIRCUIT.

(Hon. Mr. Justice Gwynne.)

Perth	Wednesday...	11th Sept.
Pembroke	Tuesday	17th Sept.
L'Orignal	Monday.....	23rd Sept.
Cornwall	Friday	27th Sept.
Ottawa	Thursday	3rd October.
Brockville	Tuesday	15th October.
Kingston	Tuesday	22nd October.

MIDLAND CIRCUIT.

(The Hon. Mr. Justice Galt.)

Napanee	Monday.....	9th Sept.
Picton	Friday	13th Sept.
Belleville.....	Wednesday ..	18th Sept.
Lindsay	Monday.....	7th October.
Peterborough	Monday.....	14th October.
Coburg	Monday	21st October.
Whitby	Wednesday ...	30th October.

NIAGARA CIRCUIT.

(The Hon. Mr. Justice Wilson.)

Owen Sound	Tuesday	17th Sept.
Milton	Monday.....	23rd Sept.
Hamilton.....	Monday.....	30th Sept.
St. Catharines ...	Monday.....	21st October.
Welland	Monday.....	28th October.
Barrie	Monday.....	4th November

OXFORD CIRCUIT.

(The Hon. Justice Morrison.)

Cayuga	Thursday	12th Sept.
Berlin	Monday.....	16th Sept.
Brantford.....	Monday.....	23rd Sept.
Simcoe	Monday.....	14th October.
Woodstock	Monday.....	21st October.
Stratford	Monday.....	28th October.
Guelph	Monday.....	4th November

WESTERN CIRCUIT.

(The Hon. the Chief Justice of the Common Pleas.)

Walkerton	Monday	16th Sept.
Goderich	Monday.....	23rd Sept.
London.....	Tuesday	1st October.
Sarnia	Monday.....	14th October.
Sandwich.....	Friday	18th October.
Chatham	Monday.....	28th October.
St. Thomas	Tuesday	5th November.

HOME CIRCUIT.

(The Hon. the Chief Justice of Ontario.)

Brampton.....	Tuesday	24th Sept.
City of Toronto ..	Tuesday	1st October