DIARY FOR JULY.

1 Wed...*Dominion Day.* Long Vac. beg. Master and Reg. in Chy., Cks. and Dep. Clks. Crown to make fees. Co. Treas. to make ret. to Local ret. of under Clks. [32 V. c. 36, s. 113. Co. Coun. to equalize [assessment rolls (do. s. 71.)
3 Fri.....Quebec founded, 1608.

5 SUN...*5th Sunday after Trinity.*
6 Mon....Co. Ct. Heard. Term begins in Devisee sits. begin.
9 Thurs..[Clks. Crown to pay over fees to Prov. Dep.
10 Fri.....Last day for Master and Reg. in Chy., Clks. and Treas.
11 Sat.....Last day for notice of primary exams.

12 SUN...*6th Sunday after Trinity.*
13 Mon....Last d. new div. of Wards in Cities & Towns (Mun.
14 Tues...[Act, s. 18). Last d. for Co. J. to ret. ass. appot.
15 Wed....[Clk. of Mun. (32 V. c. 36, s. 63 (6).)
16 Thurs..Heir and Dev. sits. end. Cawnpore massacre 1857.

19 SUN...*7th Sunday after Trinity.*
22 Wed....*Mary Magdalen.*
25 Sat.....*St. James.* Battle of Lundy's Lane, 1812.

26 SUN....*8th Sunday after Trinity.*

CONTENTS.

THE

Canada Law Journal.

Toronto, July, 1874.

The bill of Mr. Bass to abolish imprisonment for debt in England, has been defeated by a vote of 215 to 72. The measure was not only wrong in principle, but badly and illogically worked out in detail.

The number of capital convictions in the Dominion of Canada since 1st July, 1867, as shown by a return printed during the late session of the Dominion Parliament, were 69, of which 42 were for murder, 20 for rape, 4 for piracy, one for wounding with intent to murder, one for stabbing with intent to murder, and one for levying war against Her Majesty. Of these in 40 cases the sentences were commuted to different terms of imprisonment, one was pardoned, and in 28 instances the sentences were carried into effect.

It is difficult to say, and especially so in a new country, where bad taste in matters professional ends, and where unprofessional conduct begins. We are concerned to discountenance both; the former, if unchecked, soon takes the more aggravated form of the latter. We have heard of exception being taken to the advertising of professional cards in the columns of newspapers and periodicals, but whilst thinking this is an extreme view to take, we are inclined to doubt whether the Barrister who, in an historic city in this Province, placarded public places with cards, announcing the fact that he gave special attention to marine protests, has thereby developed a purity of taste in matters professional at all worthy of imitation.

THE NEW JUDGES.

On the 16th day of last month William Proudfoot, Q. C., was sworn in as one of the Vice-Chancellors of the Court of Chancery, and, on the day following, Hon. Vice-Chancellor Strong, George William Burton, Q. C., and Christopher Salmon Patterson, Q. C., were sworn in as Justices of the Court of Error and Appeal, under the recent Act.

We have already spoken of this Act, and expressed an opinion that it would have been more satisfactory if some arrangement had been made by "the powers that be" which would have resulted in the appointment, as the new Justices of Appeal, of the three chiefs of the Superior Courts of Law and Equity. We fear that for a time at least the new court will not, *as a Court of Appeal*, owing to the strength of the courts below, secure that confidence which such a court should command. Nor can we be surprised at this, when we see that the new court is partly composed of men taken directly from the Bar; for in a conflict of opinion between a court which from its constitution *may* be composed principally of new men, and a court the members of which have large judicial experience, and have for years undergone a judicial training, there can, we fancy, be no question but that the profession and the thinking public would accept the decision of the latter in preference to the former.

Whilst we feel bound to say as much as this, and once again to deplore the existence of circumstances, whatever they may be, which have deprived the Province, in its court of highest resort, of the services of sages of the law who have grown grey on the judicial bench, we are far from reflecting upon the appointments that have been made. Of Mr. Justice Strong's thorough fitness for his present position we have already spoken, and as to those taken from the Bar, we believe the choice was fairly and honestly made from the best available material. The observations we have felt it our duty to make being directed not to persons, but to the principle involved, we may properly conclude, as we most gladly do, by congratulating the new judges heartily upon the high position they have attained.

MEETING OF COUNTY JUDGES.

There was a large meeting of the County Judges at Osgoode Hall late last month, when various topics of interest were discussed. We are unable now, from want of space, to refer to their proceedings at length, but shall do so next month.

The Board of County Judges also met at the same time. Being aware that the Board was engaged in considering the question of an increase of fees to Division Court officers, under the clauses in the Administration of Justice Act of last session, we were anxious to give officers the earliest intimation of any change made. At the last moment, and at some inconvenience to ourselves, we have procured the table of fees to Clerks and Bailiffs, which will be found substantially correct. It comes into force on the first day of this month. We have not had time to examine the items very carefully but notice that for a great many services no increase whatever has been made, and the Board, it strikes us, has not been very liberal in any case. No doubt the table will, *in the cities*, overpay officers, but we presume a discriminating tariff, if within the province of the Board, was not deemed expedient. Probably legislation in that direction will be necessary. The tariff will be found on page 207.

We have received copies of Mr. Walkem's annotated edition of the Married Woman's Property Acts, and Mr. Ewart's Manual of Costs, but too late for review in this issue.

CONSOLIDATION OF STATUTE LAW.

We observe in the estimates of the Local House, for this year, the appropriation of five thousand dollars for consolidation of the statute law. No more useful volumes for Canadian legist or layman were ever compiled than those commonly known as the Consolidated Statutes of Canada—Upper Canada and Lower Canada. It is advisable to prosecute the scheme already so happily begun, and to have a re-consolidation of the law at stated and appropriate intervals. Since 1859, the date of our first consolidation of statute law, a sufficient interval has elapsed to warrant the preparation and issue of another volume of like compendious and comprehensive character. Indeed, a revision and consolidation of the statute law of Ontario in each decennial period would not be amiss, when one considers the vast changes and amendments of the laws which take place in ten years of rapidly progressive colonial life.

At present the consolidated statute book of Upper Canada has been, as it were, completely riddled by Parliamentary shot. Hardly a single chapter has been left untouched. Page after page has been excised, and chapter after chapter has been repealed. Taking a comprehensive glance at the changes thus wrought by subsequent legislation, we find that of the chapters in the statutes the following have been totally repealed :—chapter 5, relating to the registration of deeds and instruments creating debts to the Crown; chapter 14, relating to the Court of Impeachment; chapter 28, respecting the procedure in actions of dower; chapter 36, respecting reporters in the Superior Courts; chapter 38, which relates to the office of Sheriff; chapter 41, respecting Homœopathy; chapter 52, respecting Mutual Insurance Companies; chapter 54, respecting Municipal Institutions; chapter 55, respecting the assessment of property; chapter 59, respecting the public health; chapter 61, respecting game laws; chapter 69, respecting the property of religious institutions; chap. 86, respecting the partition and sale of real estate; chapter 89, respecting the registration of deeds and other instruments; chapter 96, respecting the apprehension of fugitive offenders from foreign countries; chapter 97, relating to high treason, to tumults and riotous assemblies, and to other offences; chap. 99, to prevent the unlawful use of fire arms (section 3 of this Act is not repealed); chapter 100, relating to the desertion of soldiers or sailors; chapter 101, respecting forgery and perjury in certain cases; chapter 110, to allow to any person indicted a copy of the indictment; chapter 111, respecting amendments at trial; chapter 115, respecting the commuting of sentence of death; chapter 116, respecting corruption of blood, and chapter 124, respecting the return of convictions and fines (section 7 is unrepealed.)

In addition to this, account is to be taken of the immense number of minor changes, short of the repeal of whole chapters; such as the excision of sections and the substitution of other sections, the addition of new clauses, the various modifications and amendments, verbal and otherwise, which the legislation of successive years has ingrafted upon or pruned off from the consolidated statute book. Considerations of this kind at once manifest the necessity for re-consolidation or revision, and the immense benefits which the entire community will derive from such work properly done.

The work itself is of a kind which demands no small critical and legal acumen, while the results appear so much like mere compilation, that proper acknowledgments are seldom made or appropriate thanks given to those who engage in labour so unostentatious, and yet so

indispensable. Yet, if we look back to the historical record of law in this Province, as embodied in the earlier revision and the later consolidation of the statutes, we shall find that the names of some of the best lawyers we now have, or ever have had, figure in the work; and, we say confidently, that without the co-operation of such men, the undertakings never could have been accomplished in so efficient and satisfactory a manner as has been the case. Having regard especially to the latter work of consolidation, and considering the vast amount of labour involved, it is astonishing to see how few errors or omissions have been made by the consolidators. Yet a diligent perusal of the reports shows that there are some few such errors and omissions, and it should be the business of the next set of consolidators to correct and remedy these, as a part of their multifarious duties.

The difficulties attending a task of the kind in question are not exaggerated in the report of the commissioners now engaged in the revision of the statute law of the State of New York—albeit it appears that the scope of their commission is more extensive than that given in this Province. They remark that to group together similar statutes; omit redundant or obsolete enactments; make necessary alterations; reconcile contradictions; supply omissions; amend imperfections; prepare annotations; furnish references to decisions, and explain or expound the same; suggest contradictions, omissions and imperfections appearing in the original text, with the mode in which they have been reconciled, supplied or amended; designate statutes deserving repeal, and the reasons therefor, and recommend such new Acts as such repeal may render necessary,—all this forms a work of great magnitude, intricacy and tediousness, and demands the highest intellectual and moral faculties. The performance of this labour, they go on to observe, necessitates the careful re-writing of nearly every section, a constant study of reported cases, the comparision of inconsistent authorities, the searching for and application of proper legal principles, and careful deliberation on the language to be employed in the expression of the ideas.

No doubt the undertaking is much simplified in Ontario, and the present consolidators will enter upon and largely benefit by the labours of their predecessors. Still there is much new law that will task the powers of our *best* legists—say, for instance, the codifying, as it were into one Act, all the provisions relating to the adminstration of justice, as found in the Acts specially so designated, and in the various provisions spread over the Common Law Procedure Act and the multitudinous amendments thereof. However, in such a beneficial work we can afford to hasten slowly, and to spend thereon four or five-fold the sum already appropriated. But we must also have the best talent the country can boast of to make the work satisfactory.

ERSKINE DR. KENEALY AND HIS CLIENT.

Our friends of the *Albany Law Journal* defend Dr. Kenealy with a pertinacity worthy of a better cause. There probably never was a worse case than that of the learned doctor except his late client's, and as the doctor was driven in the desperateness of that case to use the most forlorn arguments, so his American champions are compelled to raise very novel and startling pleas in his defence. We are so accustomed to look for what is lively and humorous in the columns of the *Albany Law Journal*, that we may be forgiven if, in reading its last article on the Tichborne case, we feel the same doubt which often distresses the readers

of Mark Twain's books, namely, whether the author is speaking seriously or in jest. A parallel between Dr. Kenealy's wholesale and reckless vituperation, and Erskine's well-merited denunciation of Lord Sandwich in Captain Baillie's case, could hardly be drawn in sober earnest. Such a parallel the *Albany Law Journal* draws, and, in fact, argues that if Dr. Kenealy is to be rebuked by the press, forsaken by his associates, and deprived of his gown Erskine should have been treated in the same way. Is the *Journal* only laughing at the poor doctor, or does it speak with serious simplicity? We have not space to catalogue the transgressions for which Dr. Kenealy is brought to task, but we must take the liberty of reminding our contemporary of some of the principal offences of which, as every one who followed the course of the trial knows, he was guilty. He assailed in the most unmeasured terms the Roman Catholic priesthood, whom he accused of being in a wicked conspiracy to obtain possession of the Tichborne revenues, an accusation which had not a solitary fact for its foundation. He constantly asserted that the government was using sinister means to bring about the conviction of his client. He aspersed the character and motives of numbers of disinterested witnesses who were so unfortunate as to give testimony that told against him, such attacks being totally unsupported by evidence. He traduced Lady Radcliffe in such a way that the jury thought it necessary to refer specially to his aspersions in their verdict. He impeached the honesty and insulted the dignity of the Bench, so that even the *Albany Law Journal* declared "that had Dr. Kenealy addressed such remarks to an average American Court, he would not have escaped with a lecture." Nor were the offences referred to committed once only and without premeditation, but they were persisted in and repeated throughout the whole of an address of extraordinary length. This is the advocate for whose conduct Erskine's history is supposed to furnish a parallel. We entreat the writer in the *Albany Law Journal* to read the story of *Rex* v. *Baillie* again. We think a second perusal will lead him to agree with us that the mere *technical* error of animadverting on the conduct of Lord Sandwich, a corrupt and profligate politician who, in the *political* prosecution in question, was chiefly interested in obtaining a judgment adverse to Captain Baillie, and was known by all to be "the dark mover behind that scene of iniquity," bears no similitude to the manifold and repeated offences of Dr. Kenealy. With great deference also we beg to remind our contemporary that though (as he truly says) the English people "took" to Mr Erskine, after his astonishing *début*, the "government" of the day did not "take" to Mr. Erskine at all, Lord Sandwich, the real prosecutor in *Rex* v. *Baillie*, being a member thereof. Furthermore, that Erskine's history furnishes an example, and by no means an uncommon one, of the way an English advocate pushes on, *not through royal favor*, for George III. hated the Whigs, to whom Erskine belonged, but *in spite of royal dislike.* Erskine's greatest fame was gained in State trials, when he defended men whom the King's favorite minister, the younger Pitt, had indicted for high treason. We mention these facts in answer to certain remarks about the subserviency natural to English lawyers, which are made, doubtless with sincerity, in the article under notice.

The *Albany Law Journal* speaks of the King sending the horse-guard and galloping people off to the Tower: of Orton finding it necessary to cross the Irish channel to get a counsel: of English lawyers being dependent on the Crown for advancement: of the difference it would have made in the Tichborne case had

"her majesty the queen?" (—initial letters all small, according to the principles of democracy, if not of orthography, the strong point of the article being that we spell Judges with a capital J.,) expressed an interest in Mr. Orton: of the difficulty the next "claimant" will have in finding a counsel, &c. These things show an acquaintance with the character and institutions of the English which is really surprising. When we read them we are irresistibly reminded—we say it in all good-nature—of a certain passage in that famous book, "Martin Chuzzlewit."

"Hush! Pray, silence!" said General Choke, holding up his hand, and speaking with a patient and complacent benevolence that was quite touching. "I have always remarked it as a very extraordinary circumstance, which I impute to the natur' of British institutions and their tendency to suppress that popular inquiry and information which air so widely diffused, even in the trackless forests of this vast continent of the Western Ocean, that the knowledge of Britishers themselves on such points is not to be compared with that possessed by our intelligent and locomotive citizens. This is interesting, and confirms my observation. When you say, sir," he continued addressing Martin, "that your Queen does not reside in the Tower of London, you fall into an error, not uncommon to your countrymen, even when their abilities and moral elements air such as to command respect. But, sir, you air wrong. She *does* live there!"

SELECTIONS.

MASTER AND SERVANT—FELLOW SERVANTS.

We (*Central Law Journal*) publish elsewhere in this number the opinion of the Supreme Court of the United States on the general subjects indicated in the title, which was recently given in the case of the *Union Pacific Railroad* v. *Fort*, and in a note thereto the opinion of the same court in the case of the *Northwestern Union Packet Co.* v. *McCue*. Both opinions were prepared by Mr. Justice Davis, and they will be read with great interest by the profession, who will not fail to approve the sound, salutary and liberal doctrine so clearly declared in Fort's case.

We avail ourselves of the occasion to make some editorial observations on the more important aspects of the general subject of the Liability of Masters to Servants. The courts of Great Britain and America have established the general doctrine of the non-liability of the employer for an injury to one servant caused by the negligence of another servant in the same common employment. In England this doctrine has been affirmed time and again by every court in Westminster Hall, and finally by the House of Lords after full argument by able counsel and upon the most deliberate consideration.—*Bartonshill Coal Co.* v. *Reid*, 3 Macqueen App. Cas. 266. The first case was *Priestley* v. *Fowler*, 3 M. & W. 1. In *Holmes* v. *Clarke* (itself an important case on this subject), 7 H. & N. 937, 947, 1862, Mr. Justice Byles remarks: "The case of *Priestley* v. *Fowler* introduced a new chapter into the law, but that case has since been recognized by all the courts, including the Court of Error and the House of Lords. So that the doctrine there laid down, with all the consequences fairly deducible from it, are part of the law of the land.

In a very recent case this rule is said to be "conclusively settled." *Feltham* v. *England*, L. R. 2 Q. B., 33, 1866. In this case Mellor, J., says that "this rule is not altered by the fact that the servant to whom the negligence is imputed was a servant of superior authority, whose lawful direction the plaintiff was bound to obey."

In another case it is said: "A foreman is a servant as much as the other servants whose work he superintends." Per Willes, J., in *Gallagher* v. *Piper*, 111 Eng. C. L. 669, 1864. Further, as to who are "fellow-servants" within the rule, see *Wigmore* v. *Jay*, 5 Wellsby Hurl. & Gord. 354, 1850; *Skipp* v. *Eastern Counties Railway Co.*, 9 ib. 221; *Wiggett* v. *Fox*, 11 ib. 832; *Bartonshill Coal Co.* v. *Reid*, 3 Macq. H. L. Cas. 266; *Waller* v. *South, etc., Railway Co.*, 2 H. & C. 102; *Gallagher* v. *Piper*, 111 Eng. C. L. 669; *Morgan* v. *Vale, etc., Railway Co.*, 5 B. &. S. 570, 736; *Tunney* v. *Midland, etc., Railway Co.*, Law Rep. 1 C. P. 291; *Lovegrove* v. *London, etc., Railway Co.*, 16 C. B. N. S. 669. See *Murphy* v. *Smith*, 19 C. B. N. S. 361, as to servant being considered as the mas-

ter's representative in the establishment. On this last point, see also remarks of Mr. Justice Davis in Fort's case to the effect that Collett, who had been entrusted by the railroad company with the care and management of dangerous machinery, was the representative of the company, which was liable "either upon the maxim of *respondeat superior* or upon the obligations arising out of the contract of service" for Collett's wrongful order to the plaintiff—that order relating to a duty within the scope of Collett's employment and outside the scope of the plaintiff's engagement, and wholly disconnected with it.

In this country the *general rule* is recognized as the law by the courts of, perhaps, every state which has passed upon the question, except where it is changed by statute. The only dispute is as to the extent of the rule, or rather as to the cases to which it is justly applicable. It is not necessary to cite the American cases; they will be found mostly collected in the Treatise of Shearman & Redfield on Negligence. We do not recollect any case in the Supreme Court of the United States, either directly sustaining or rejecting the general doctrine. It is noticeable, however, that in the case of the *Northwestern Union Packet Co.* v *McCue*, decided at the present term, Mr. Justice Davis, delivering the opinion of the court, remarks: "It is insisted on the part of the plaintiff in error, that a master is not responsible to a servant for injuries caused by the negligence or misconduct of a fellow-servant in the same general business;" but "*whether this general proposition be true or not* it is not necessary to determine in the state of this record." And in Fort's case the same learned justice observes: "It was assumed on behalf of the plaintiff in error, on the argument of this cause, that the master is not liable to one of his servants for injuries resulting from the carelessness of another, when both are engaged in a common service, although the injured person was under the control and direction of the servant who caused the injury. Whether this proposition, as stated, be true or not, we do not propose to consider, because, if true, it has no application to this case."

This language would lead to the inference that the Supreme Court may entertain doubts as to the soundness of the rule under discussion. But as the general doctrine is so firmly rooted by judicial decisions in Great Britain and in the different state courts of this country, as it is one which pertains to general jurisprudence, and involves no question of *federal* law, it would seem that it is no more open to re-agitation in a federal court than in any other court of common law powers.

We next mention some exceptions to the rule, or cases which are not considered as falling within its reasons, and to which, therefore, it does not apply. We consider it to be settled, both in England and America, that the master is bound to use ordinary care to employ, or to retain in his employment, *none but competent servants*, and to use like care to *furnish and maintain suitable and safe machinery and structures*. *Bartonshill Coal Co.* v. *Reid, supra; Tarrant* v. *Webb*, 18 C. B. 797; *Weems* v. *Mathieson*, 4 Macqueen 215; *Clarke* v. *Holmes, supra;* and see cases next cited. We also consider that view to be correct, and regard it as quite conclusively settled by the courts, that this duty of the master is so far personal and inalienable that responsibility for injuries directly caused by the negligent discharge of it exists, although the master may for his own convenience act through other servants. On this subject see the following very recent cases in addition to those last cited: *Brothers* v. *Cartter*, 52 Mo. 372, 1873, and cases cited by Wagner, J.; *Gilman* v. *Eastern Railroad Co.*, 10 Allen, 233; s. c. 13 Allen 433, and cases cited by Gray, J.; *Laning* v. *N. Y. Central R. R. Co.* 49 N. Y. 521, 1872. And the reason is that this duty of the master is direct and personal, and must be discharged in person or by others for him, for whose negligent acts and omissions he is responsible where these are the immediate cause of injury to his servants.

On this point we call attention to the following observations of Mr. Justice Davis in Fort's case: "It is apparent, from these findings, if the rule of the master's exemption from liability for the negligent conduct of a co-employee in the same service be as broad as is contended for by the plaintiff in error, that it does not apply to such a case as this. This rule proceeds on the theory that the employee, in entering the service of the principal, is presumed to take upon himself the risks incident to the undertaking,

among which are to be counted the negligence of fellow-servants in the same employment, and that considerations of public policy require the enforcement of the rule. But this presumption cannot arise where the risk is not within the contract of service, and the servant had no reason to believe he would have to encounter it. If it were otherwise, principals would be released from all obligations to make reparation to an employee in a subordinate position for any injury caused by the wrongful conduct of the person placed over him, whether they were fellow-servants in the same common service or not. Such a doctrine would be subversive of all just ideas of the obligations arising out of the contract of service, and withdraw all protection from the subordinate employees of railroad corporations. These corporations, instead of being required to conduct their business so as not to endanger life, would, so far as this class of persons were concerned, be relieved of all pecuniary responsibility in case they failed to do it. A doctrine that leads to such results is unsupported by reason and cannot receive our sanction."

In this connection an important practical question may be adverted to, and that is, as to the effect of knowledge on the part of the servant injured that the master had not discharged his duty in providing competent fellow-servants or fit and safe materials or machinery. The following are the more important cases on this point: *Watling* v. *Oastler*, Law Rep. 6 Exchcq, 73, 1871; *Senior* v. *Ward*, 1 El. & El. 385 (102 Eng. C, L. 384); *Dynen* v. *Leach*, 26 L. J. 221; s. c. 40 Eng. L. and Eq. 491; *Assop* v. *Yates*, 2 H. & N. 768; *Griffiths* v. *Gidlow* 3 H. & N. 648; *Smith* v. *Dowell*, 3 F. & F. 238; *Laning* v. *New York Central R. R.*, 49 N. Y., 521, 1872 (full discussion); *Frazier* v. *Penn. R. R. Co.*, 38 Penn. St. 104; *Davis* v. *Detroit, etc., R. R. Co.*, 20 Mich. 105, 127, 1870, where the cases are referred to and the subject fully examined by Cooley, J.; *Hayden* v. *Manufacturing Co.*, 26 Conn., 538, 1861; *Buzzell* v. *Manufacturing Co.*, 48 Maine, 113; *Jones* v. *Yeager*, 2 Dillon C. C. 65, 68. They authorize the deduction of the general rule that if the plaintiff voluntarily continue in the master's service with full knowledge of the incompetency of the co-servant, or of the unfit and defective machinery, and of the danger thereby occasioned, this will be considered such "contributory negligence" on his part as to defeat his right to recover unless upon some special ground, as in *Holmes* v. *Clark*, 6 Hurl. and N. 349, affirmed 7 ib. 937, where the servant made complaint, and the master thereupon promised that the grounds of it should be removed. This rule, that knowledge by the servant injured of the danger will disentitle him to recover if he voluntarily remains in the service without complaint, clearly applies to a case where it is the duty of the servant himself to inform the master or superior of the co-servant's unfitness, or the unfitness of the materials or structures. The reason for this exemption of the master from responsibility, would not seem to apply when the servant injured could not reasonably be held to know the danger to which the master's neglect of duty exposed him. It seems to us that some of the cases have asserted rather too rigid a rule against the servant, arising out his knowledge of the neglect of the personal duty of the master as respects co-servants and materials, and his supposed acquiescence in it; and there are aspects of this subject that need to be further discussed and decided before the law can be regarded as settled.

SHOULD ACCUSED PERSONS BE WITNESSES?

At the late Social Science Congress the following question was discussed:—

"Is it desirable that defendants in criminal proceedings should be competent or compellable to give evidence in their own behalf, or on behalf of or against others jointly indicted?"

We heartily agree with the Attorney-General that if we are to alter our law, the alteration must be thorough. An optional witness would be an intolerable anomaly, and if an accused person is to be a competent witness he must also be a compellable witness.

The gentlemen who have from time to time agitated this question do not appear to have tested their theories by facts. We all admit that the object of a judicial inquiry should be to elicit truth, and that is also the professed object of

the English criminal law. Do we hinder the attainment of that object by shutting the mouths of the accused, or, to be more accurate, by not allowing them to give evidence on oath?

Now, a vital principle of our law is the presumption of innocence, and that being so, no man can be lawfully convicted except by the weight of the evidence adduced against him. But the mere denial of the accused person on his oath would not and ought not to greatly influence the jury. When there is an almost irresistible temptation to commit perjury the testimony is worthless. Let us suppose a case in which, if the accused person is convicted, he will be sentenced to ten years' penal servitude. For ten years he will be cut off from human society and from his nearest and dearest relations. He is sworn, and, without the slightest conscientious scruple, falsely avers that he is guiltless. But then we shall be told that there will be the cross-examination to elicit the truth. Well, if the accused is a stupid person, the cross-examination is likely to damage his case whether he is innocent or guilty. If the accused is a smart person, he need not dread the cross-examination. His game is an easy one. His position is not like the position of any other witness. He does not care a jot about the danger of a prosecution for perjury. He is only solicitous to escape from a present peril. If he is acquitted, the verdict of the jury will be a testimony that he has spoken the truth. If he is convicted, and has a heavy sentence passed upon him, he is no worse off on account of his flagrant perjury.

The lips of an accused person are not sealed. We do not refer to the privilege of making a statement after conviction, and before the Court passes sentence. We say that, throughout the trial, the accused speaks by the mouth of his counsel. The witnesses for the prosecution are cross-examined, and the witnesses for the defence examined, according to the instructions of the accused. Moreover, the counsel for the prisoner, in his address to the jury, has the opportunity of giving the prisoner's explanation of the circumstances; and we do not think that the oath of a person in jeopardy of penal servitude would be of more value than his unsworn statement.

On the whole we see no reason for changing our system, whilst we see grave objections to accused persons giving evidence on oath.—*The Law Journal.*

NEGLIGENCE—PROXIMATE AND REMOTE DAMAGE.

One of the most interesting cases on the law of negligence which has been determined for some time is the *Metallic Compression Casting Company* v. *Fitchburg Railroad Company*, decided by the Supreme Judicial Court of Massachusetts, and to appear in volume 109 of the Massachusetts Reports. It will be found in the American Law Times Reports (N. S.) vol. 1. p. 135.

On the 24th of January, 1870, a little before midnight, the plaintiff's manufacturing establishment was discovered to be on fire. The buildings were situated in Somerville, about fifty feet south of the track of the Fitchburg railroad. Two fire engines were brought upon the ground, belonging to the Somerville fire department, and one from Cambridge. Not being able to procure a supply of water otherwise, they laid the hose across the railroad track, under the direction of the chief engineer of the Cambridge fire department, and obtained a supply from a hydrant on the north side of the track. The water was, by means of the hose, applied to the fire and diminished it, and would probably have extinguished it in a short time but for the acts of the defendants. At that time a freight train came along from the west, and though its managers had sufficient notice and warning, and might have stopped and had no occasion for haste, they paid no attention to the hose, but carelessly passed over it with their train and thereby severed it, and stopped the water. They injured the hose so much that it could not be seasonably repaired, and thereby the plaintiff's buildings were consumed. They did not delay to give time for uncoupling the hose, which would have delayed them but a few minutes. The railroad was crossed by another at a grade a few hundred feet before the place where the hose was severed; and the train was not stopped before the crossing, as required by the Gen. Stats. c. 63, § 93.

The owners of the buildings bring this action to recover damages against the railroad corporation; and upon the foregoing facts the court hold: (1) that the violation of the statute did not affect the defendants' liability; (2) that the firemen had a right at common law to lay the hose across the railroad; (3) that it was immaterial that they were volunteers from another town; (4) that it was immaterial that the plaintiff did not own the hose; (5) that the severing of the hose was the proximate cause of the destruction of the building; and (6) that the defendants were liable for the negligence of their servants in severing the hose.

Upon the question that the injury was too remote to entitle the plaintiff to recover Mr. Chief Justice Chapman, in pronouncing the judgment of the court, said: "The question of proximate cause is often involved in difficulty, by reason of the endless variety of circumstances in which injuries may occur; and the cases on the subject are very numerous. A case which much resembles the present is *Atkinson* v. *Newcastle & Gateshead Waterworks Co.*, Law Reports, 6. Exch. 404. The plaintiff's saw-mill and lumber-yard took fire; and in consequence of the defendants' neglect in respect to the head of water, the plaintiff could not obtain a supply, and their property was burned. It was held, that the defendants were liable on the common-law principle stated in Comyn's Digest, Action on the Case, A: 'wherever a man has a temporal loss or damage by the wrong of another, he may have an action on the case to be repaired in damages.' The defendants contended that the damages were too remote, but the court held otherwise. Kelly, Ch. B., significantly asked, 'what kind of damage can be more a proximate consequence of the want of water than the destruction by fire of a house which a proper supply of water would have saved?' Baron Bramwell remarked that it was the immediate consequence of the proximate cause. *Couch* v. *Steel*, 3 El. & Bl. 402, was cited as decisive of this principle. Among other cases illustrating the subject of direct consequence are *Scott* v. *Shepherd*, 2 W. Bl. 892; *Gilbertson* v. *Richardson*, 5 C. B. 502; *Lee* v. *Riley*, 18 C. B. (N. S.) 722; *Dickinson* v. *Boyle*, 17 Pick. 78; *Wellington* v. *Downer Kerosene Oil Co.*, 104 Mass., 64. Other cases are cited where the damages are held to be too remote, but they are unlike the present case. The law regards practical distinctions rather than those which are merely theoretical; and practically, when a man cuts off the hose through which the firemen are throwing a stream upon a burning building, and thereupon the building is consumed for want of water to extinguish it, his act is to be regarded as the direct and efficient cause of the injury."—*Central Law Journal.*

DESTRUCTION OF PRIVATE PROPERTY TO PREVENT SPREAD OF FIRES.

It is difficult to conceive how an advocate could face a court of justice—especially such a court as the Supreme Judicial Court of Massachusetts—and assert that, because a railroad company had obtained a legal title to the land occupied by its track, a fire company could not lawfully lay a hose across it for the purpose of extinguishing a fire. Yet this proposition was asserted in *The Metallic Compression Casting Company* v. *Fitchburg Railroad Company*, 1 Am. Law Times' Reports (N. S.) 135; and the court was obliged to reiterate a principle which has been familiar to lawyers, at least, since the time of Lord Coke. In 12 Coke 13, it was said, in illustrating a principle which was resolved by all the judges, that "for the commonwealth a man shall suffer damage; as, for saving of a city or a town, a house shall be plucked down if the next be on fire; and the suburbs of a city, in time of war, for the common safety, shall be plucked down; and a thing for the commonwealth every man may do without being liable to an action." In *British Cast Plate Manufacturers* v. *Meredith*, 4 Term R. 796, it is said, by Butler, J., "there are many cases in which individuals sustain injury for which the law gives no action; for instance, pulling down houses or raising bulwarks for the preservation and defence of the kingdom against the king's enemies. The civil-law writers indeed say that the individuals who suffer have a right to resort to the public for satisfaction; but no one ever thought that the common law gave an action against the individual who pulled down the house, etc. This is one

of those cases to which the maxim applies, *salus populi, suprema lex.*" In *The Mayor, etc.*, v. *Lord*, 18 Wend. 129, it is said by the Chancellor Walworth that "the rule appears to be well settled that in case of actual necessity, to prevent the spreading of a fire, the ravages of a pestilence, the advance of a hostile army, or any other public calamity, the private property of an individual may be lawfully taken or destroyed for the relief, protection or safety of the many, without subjecting those whose duty it is to protect the public interests, by whom or under whose direction such private property was taken or destroyed, to personal liability for the damage which the owner has thereby sustained." See, also, to the same general effect, *Russell* v. *Mayor*, etc., 2 Denio, 461; *Hale* v. *Lawrence*, 1 Zab. 714; *American Print Works* v. *Lawrence*, 1 Zab. 248; *Lorocco* v. *Geary*, 3 Cal. 69; *Meeker* v *Van Rensselaer*, 15 Wend. 397; *McDonald* v. *Pedwing*, 13 Minn. 38. The Supreme Judicial Court of Massachusetts had also said, in *Taylor* v. *Inhabitants of Plymouth*, 8 Metcf. 465, that, "independently of the statute, the pulling down of a building in a city or compact town in time of fire, is justified upon the great doctrine of public safety, when it is necessary."

So much for the general principle. It remained, however, for a railroad company to assert that it was unlawful to lay a fireman's hose across its track to reach the only water which was accessible in order to save a large manufacturing establishment which was on fire. While in such emergencies the houses of private citizens may be torn down and blown up, and their property taken or destroyed as far as necessary, the *convenience* of a corporation must not be temporarily interrupted! The court, however, thought otherwise. Mr. Chief Justice Chapman, after reiterating the general principle laid down in the foregoing cases, said:

"The elaborate provisions which our statutes have made for the extinguishment of fires, indicate the magnitude of the interest which the community has in preventing the spread of conflagrations, but these statutes do not supersede the common law. Their purpose is merely to enable the community to protect themselves more effectually than they could do otherwise. Thus the organization of a fire department, with officers and implements, does not deprive the people of a neighbourhood from obtaining an engine and hose and crossing the neighbouring lands to obtain water for stopping a conflagration, without waiting for an organization; and individuals may climb upon neighbouring roofs to carry buckets of water. It is a sufficient justification that the circumstances made such an invasion of private property reasonable and proper in helping to extinguish the fire. The objection of the defendants that the officers of the fire department in Cambridge had no jurisdiction in Somerville, and could not act officially in that town, has no validity. They had a fire company organized, and an engine and hose, and were in the vicinity of the building, and they could not with propriety stand idly by and witness the spread of a fire which they might extinguish, merely because it was beyond the town line. They had a right, *as citizens*, to do what they reasonably could to prevent this public calamity, whether in their own city or a neighbouring town."

The court, however, intimate that there may be a limit to this principle, but where that limit is to be drawn is a question for the jury. Thus, the chief justice said: "It is urged that upon this principle one person may enter upon the property of another for the purpose of extinguishing a fire in a small building of no importance, and where there is no danger to other buildings. Undoubtedly the principle is to have a reasonable limitation. He who enters upon the property of another takes upon himself the burden of establishing the fact that there was a just occasion for it, and in this case the plaintiffs must submit to the jury, with proper instructions, the question whether there was good cause for laying the hose across the defendant's track. All that the court can say is that there is sufficient evidence to submit to the jury."—*Central Law Journal.*

CANADA REPORTS.

ONTARIO.

NOTES OF RECENT DECISIONS.

COMMON LAW CHAMBERS.

(*Reported by* Mr. H. J. Scott, B.A., *Student-at-Law.*)

Carnegie v. Tuer.

Insolvent Acts of 1864-1869—*Application of.*

[March 31, 1874—Mr. Dalton.]

In this case a summons was taken out to set aside a *fi. fa.* on the ground that the defendant had made an assignment, and obtained his discharge, under the Insolvent Act subsequent to the debt. An affidavit was put in that the defendant was an innkeeper, and it was therefore contended that he could not take advantage of the Act, as not being a trader. The assignment was made in March, 1869, under the Act of 1864. The Act of 1869 was passed on the 22nd of June of that year, and the discharge was not obtained until November, 1870, and was entitled "Insolvent Act 1869."

Held, that the proceedings being commenced under the Act of 1864, they must all be considered as taken under that Act, the procedure merely being regulated by the Act of 1869, and as the former Act was not confined to traders, the summons was made absolute.

Dickenson v. Harvey.

Suggestion on roll of death of Sheriff—Who entitled to execution.

[April 20, 1874—Mr. Dalton.]

This suit was on notes seized under a *fi. fa.* and fter judgment recovered the Sheriff died.

Held, upon an application to enter a suggestion of his death upon the roll, that his executors, and not the Sheriff who succeeded him in office, were entitled to execution.

Speers v. Great Western Railway Co.

Postponing trial—Accident—Damages.

[May 2, 1874—Mr. Dalton.]

This was an application to put off trial. The plaintiff was injured by an accident on the defendant's railway, and affidavits were put in to the effect that sufficient time had not elapsed from the date of the ccident to tell properly whether the injury would be permanent, and thus enable the jury to assess damages.

Held, that this was a sufficient reason for putting off the trial, and an order was accordingly made upon payment into Court, as upon a plea of payment into Court, of $1,000.

Taylor v. Grand Trunk Railway Co.

Leave to amend—Stay of proceedings.

[May 16, 1874—Mr. Dalton.]

In this case an order was made granting leave to plead and demur, with liberty to plaintiff to amend within a certain time, but without any express stay of proceedings. Before the expiration of the time for amendment the defendants filed and served pleas and demurrer.

Held, that giving a certain time to amend pleadings operates as a stay of proceedings, as to pleadings, until the expiration of that time, and the pleas and demurer were set aside as irregular.

UNITED STATES REPORTS.

SUPERIOR COURT OF PENNSYLVANIA.

McClintock's Appeal.

Sale of growing timber.

1. In agreements for the reservation or sale of growing timber, whether the timber is to be regarded as personal property, or an interest in real estate, depends on the nature of the contract, and the intent of the parties.
2. If the agreement does not contemplate the immediate severance of the timber it is a contract for the sale or reservation of an interest in land, and until actual severance, the timber in such case passes to the heir, and not to the personal representative.
3. When the agreement is made with a view to the immediate severance of the timber from the soil, it is regarded as personal property, and passes to the executor and administrator, and not to the heir.

Certiorari to the Orphans' Court of Lycoming county.

Opinion by Williams, J. Delivered October 23d, 1872.

The Orphans' Court was clearly right in deciding that the pine and hemlock timber reserved by the decedent in his deed to the administrator, was personal property, and in charging him with its value. In agreements for the reservation, or sale of growing timber, whether the timber is to be regarded as personal property, or an interest in real estate, depends on the nature of the contract, and the intent of the parties. If the a greement does not contemplate the im-

mediate severance of the timber, it is a contract for the sale or reservation of an interest in land, and until actual severance the timber in such cases passes to the heir, and not to the personal representative. But when the agreement is made with a view to the immediate severance of the timber from the soil, it is regarded as personal property, and passes to the executor or administrator, and not to the heir. The earlier authorities, it is true, do not appear to make any distinction between such contracts. Thus, it is said: If tenant in fee simple grants away the trees, they are absolutely passed from the grantor and his heirs, and vested in the grantee, and go to the executors or administrators, being, in understanding of law, divided as chattels from the freehold, and the grantee hath power, incident and implied to the grant, to fell them when he will, without any other special license. *Stukely* v. *Butler*, Hob. 173 a. So where tenant in fee simple sells the land, and reserves the trees from sale, the trees are in property divided from the land, although in fact they remain annexed to to it, and will pass to the executors or administrators of the vendor. *Harlakenden's Case*, 4 Co., 63 b; *Lifford's Case*, 11 id. 50; 4 Bac. Abr. Tit. Exr's and Admr's, H. 82; 1 Wm's Exr's, 94. But the distinction to which we have adverted, between contracts made with a view to the immediate severance of the timber, and those which are not, is taken in the latter authorities. *Crosby* v. *Wadsworth*, 6 East, 610; *Smith* v. *Surnam*, 9 B. & C. 561; 17 E. C. L. 443; Add. Contr. 31, and recognized in our own decisions; *Huff v. McCauley*, 3 P. F. Smith, 206; *Pattison's Appeal*, 11; id. 294. In the case last cited, the present Chief Justice said: We regard a contract for the standing timber on a tract of land to be taken off at discretion as to time, as an interest in land, and within the statute of frauds and perjuries, the transmission of which must be by writing. But in the case in hand, it is manifest that the parties intended by their contract to divide the pine and hemlock timber from the freehold, and give it to the quality of a chattel. It was not to be taken off at discretion as to time. By the express terms of the deed, the vendee of the land had the right to require its removal on giving, and the vendor was bound to take it off on receiving, thirty days' notice. The timber must, therefore, be regarded as a chattel which passed to the administrator. In so ruling, we do not trench upon the doctrine laid down in *Pattison's Appeal*, or qualify it in any respect whatever. The case was unlike this in one of its material elements, and was well decided on its facts; and the guarded language of the chief justice shows that he had in view the distinction which the law makes in regard to contracts for the reservation or sale of growing timber. If the reservation had been of a perpetual right to enter on the land, and cut all the pine and hemlock timber growing thereon, or of a right to cut and take it off at discretion as to time, then it would be within the rule laid down in *Yeakle* v. *Jacob*, 9 Casey, 376, and *Pattison's Appeal* and be regarded as an interest in land, which would pass to the heir and not to the administrator, on the vendor's death. But this element, as we have seen, is wanting, and, therefore, the Orphans' Court rightly held, under the authorities, that the timber in question was personal property, for the value of which the administrator was accountable. It needs no argument to show that the vendor received the whole property in the timber, and not merely a right to its "use and advantage" during his life. This is too apparent on the face of the deed to admit of doubt or question.

We see nothing in the facts of this case to take it out of the rule laid down in *Sterrett's Appeal*, 2 Penn'a Rep. 419, and it follows that the administrator was properly charged with the costs of the audit.

Decree affirmed at the cost of the appellant. —*Philadelphia Legal Gazette.*

DIGEST.

DIGEST OF ENGLISH LAW REPORTS

FOR NOVEMBER AND DECEMBER, 1873, AND JANUARY, 1874.

From the American Law Review.

ACCUMULATION.—*See* APPOINTMENT, 2; DEVISE, 4.

ACT OF BANKRUPTCY.—*See* BANKRUPTCY, 1.

ACTION.

A married woman owning separate real estate raised money, partly for building on said estate, and partly to pay a debt of her husband's. Both husband and wife joined in the mortgage, and the husband covenanted to repay the loan, which was payable in instalments. The husband and wife gave the defendant authority to receive the first instalment, and the defendant received the same and paid said debt, and held the residue for a debt due him from the husband. The husband and wife brought an action, in the wife's right, for said residue. *Held*, that said wife could be joined in the action.—*Jones* v. *Cuthbertson*, L. R. 8 Q. B. 504.

See COMPANY, 1; FALSE REPRESENTATION.

Digest of English Law Reports.

Ademption.—*See* Devise, 1.

Advance.—*See* Devise, 6; Settlement, 2.

Amalgamation.

One part of an indenture in two parts, expressing the term of amalgamation of two companies, was executed by one company, but the second company, before executing their part, added a proviso, altering its terms. *Held*, that said indenture was void, and that there was no amalgamation.—*Wynne's Case*, L. R. 8 Ch. 1002.

Ambiguity.—*See* Legacy, 4.

Ancient Light.—*See* Party-wall.

Annuity.—*See* Election; Legacy, 2.

Appointment.

1. A testator, who had power to appoint the income of a fund to his wife for her life, after directing that his debts should be paid, gave the residue of his property, real and personal, to which he might be entitled, or over which he might have any power of disposition or control, to his wife, her heirs, assigns, and legal representatives. *Held*, that the power was well exercised.—*In re Teape's Trusts*, L. R. 16 Eq. 442.

2. A testator, who had a power of appointment over £6000 charged upon real estate, by his will directed said sum to be invested in the purchase of land, and that the rents of such land should be accumulated in a manner which was void under the Thellusson Act. *Held*, that said rents went to the next of kin, and did not sink into the estate upon which they were charged, nor go to the testator's heirs.—*Simmons* v. *Pitt*, L. R. 8 Ch. 978.

See Devise, 2; Legacy, 1, 6, 9; Power.

Appropriation.—*See* Bills and Notes.

Arbitration.

1. The plaintiff company contracted to build a railway between certain termini, and the defendant company contracted to maintain said railway, and carry thereon all traffic arising between said termini. And the plaintiff and defendant agreed that all differences between them should be settled by a standing arbitrator to be named by them in January yearly. The plaintiff built said road, and the defendant carried traffic arising between said termini upon its own lines of railway and not over the plaintiff's railway. No arbitrator was appointed. The plaintiff filed a bill praying an injunction to restrain the defendants from carrying traffic arising between said termini over other than their own railway. *Held*, that the court had jurisdiction, and that the injunction should be granted.—*Wolverhampton & Walsall Railway Co.* v. *London & North-western Railway Co.*, L. R. 16 Eq. 433.

2. Declaration, that the defendant had agreed to keep on certain manors such a number only of hares and rabbits as would do no injury to trees upon the manor; yet that the defendant did not keep such a number, &c. Plea, that one of the terms of the agreement was, that if such injury was done the defendant would pay a reasonable compensation for the same, to be determined by two arbitrators or an umpire, and that no arbitrators had been appointed. Demurrer, *Held*, that the plea was a good one. There was no liability until an award was made.—*Dawson* v. *Fitzgerald*, L. R. 9 Ex. 7.

See Contract, 1.

Articles.—*See* Corporation.

Assent.—*See* Legacy, 9.

Bankruptcy.

1. G. owed money to N., who threatened proceedings for the recovery of his debt. G. stated to N. that he had no money, but that he had some oil, and that if N. could induce a certain firm to buy it he would pay N.'s debt out of the proceeds. N. stated the whole matter to said firm, who agreed to buy the oil of G. At this time G. had no oil, but a few days after he contracted for the purchase of oil from W., and the oil was delivered to said firm at G.'s request. G. never paid W. for the oil, and had no expectation of being able to do so when he ordered it. Said firm paid to N. the amount of his debt at G.'s request. G. became bankrupt. A jury found that said oil, being substantially the whole of G.'s property, was transferred by him when insolvent and not under pressure, with intent to give N. a fraudulent preference. The court thereupon held that the transfer was an act of bankruptcy and a fraudulent preference. On appeal, *Held*, that on the evidence the purchase of said oil was a *bonâ fide* transaction, and that N. was a payee in good faith and for a valuable consideration; and that there was no act of bankruptcy and no fraudulent preference.—*Ex parte Norton. In re Gollen*, L. R. 16 Eq. 397.

2. A. and B., partners, who had borrowed money of their father for the use of the partnership, covenanted, jointly and severally, that when requested by their father, or by a trustee, they would pay said money to trustee, who was to hold in trust for the father for life, remainder to A. and B. as tenants in common; and in the mean time A. and B. covenanted to pay interest upon said money. A and B. became bankrupt. *Held*, that said trustee had a claim provable against both the separate and partnership estates of A. and B. in bankruptcy, which was not subject to deduction on account of the reversionary interest of A. and B.—*Ex parte Stone. In re Welch*, L. R. 8 Ch. 914.

3. In 1866 the C. company, which was indebted to P., agreed to transfer to three other companies its whole undertaking, and the companies agreed to give the contract for constructing the C. railway to P. or his nominee. In 1867 P. executed an inspectorship deed surrendering his effects, and it was provided that he should receive his discharge as soon as all his effects should be assigned to the inspectors. In 1871 P., in consideration of a certain sum of money, nominated a certain firm as contractors to build said railway.

Held, that as P. was not a party to the agreement between the C. and other companies, and as the C. company did not make said agreement, or any covenant therein, as trustee for P., P. had no interest under the same which would pass by the inspectorship deed, and that said deed did not affect property coming to P. after the date of its execution. *Ex parte Piercy. In re Piercy*, L. R. 9 Ch. 33.

See Company, 2; Executors and Administrtrators, 3; Lien, 2; Partnership, 3.

Bequest.—*See* Appointment, 1; Charity; Election; Executors and Administrators, 2; Illegitimate Children; Legacy; Lex Loci; Marshalling Assets; Mortgage, 3; Trust, 3, 5.

Bill of Lading.

By the provisions of a charter-party, if any part of the cargo should be delivered in a damaged condition, freight should be payable "on the invoice quantity taken on board as per bill of lading, or half freight upon the damaged portion, at the captain's option." A bill of lading for a certain quantity of barley was signed by the master, who added, however, at the foot of the bill of lading, "quantity and quality unknown." The barley was damaged, and the master claimed freight for the invoice quantity taken on board as per said bill of lading. *Held*, that the master was entitled to the freight he claimed, notwithstanding said memorandum at the foot of said bill of lading.—*Tully* v. *Terry*, L. R. 8 C. P. 679.

See Freight; Insurance, 2.

Bills and Notes.

1. L., in Bombay, and G., in London, were engaged in joint transactions in buying and selling goods in India and England. According to their course of dealing, L. drew on G., discounted the drafts in Bombay, and with the proceeds purchased cotton, which was consigned to G., under the agreement that such cotton should be specifically appropriated to meet the bills. *Held*, that holders of such bills were entitled to have the cotton specifically appropriated, subject to the right of the joint creditors (if any) of L. and G. to have the proceeds of such cotton applied as part of the aggregate estate.—*Ex parte Dewhurst. In re Leggatt. In re Gledstanes*, L. R. 8 Ch. 965.

2. A., in New Orleans, remitted funds to B., in Liverpool, and then sold bills drawn on B., stating that the bills were drawn expressly against funds to a much larger amount already remitted to B. *Held*, that a purchaser of said bills was not entitled to a specific portion of the funds remitted to B.—*Citizens' Bank of Louisiana* v. *First National Bank of New Orleans*, L. R. 6. H. L. 352.

See Evidence, 1; Letter.

Bottomry Bond.—*See* Wages.

Broker.

Certain stock-brokers bought for their principal a large quantity of stock, for which they paid their own money. The principal died July 19, and on July 16, 18, and 19, the brokers sold the stock, which had fallen in value. In ordinary dealings the brokers would have kept the transaction open with their principal, in accordance with the custom of the Stock Exchange, until July 28. *Held*, that the brokers had a right to recover the difference between the amount paid for the stock and the amount for which it was sold, less any loss occasioned by selling before July 28, the next settling day.—*Lacey* v. *Hill*, L. R. 8. Ch. 921.

Burden of Proof.

In a case of damage the defendants made no charge of negligence against the plaintiffs, but denied generally the averments in the petition, and pleaded inevitable accident. *Held*, that the burden of proof was on the plaintiffs, and that they must begin.—*The Benmore*, L. R. 4 Ad. & Ec. 132.

Charge.

A tenant for life, with proviso for renewal, whose estate was subject to certain charges, neglected having a renewal of the lease, which, if duly renewed, would have still been subject to said charges. The tenant purchased the reversion, which was conveyed to trustees, to prevent merger of the term. Subsequently the tenant mortgaged the property in fee, said trustee joining in the conveyance. *Held*, that the charges upon the renewable term were fastened on the reversion also.—*Trumper* v. *Trumper*, L. R. 8 Ch. 870; s. c. L. R. 14 Eq. 295; 7 Am. Law Rev. 468.

See Appointment, 2; Legacy, 5; Mortgage, 3.

Charity.

A testator gave the residue of his real and personal estate to trustees for investment in government securities in their joint names, the interest to be from time to time given to such of the lineal descendants of R. as they might severally need, the trustees to make such provisions as would ensure a continuance of said trust at their decease. *Held* that the gift was charitable.—*Gillam* v. *Taylor*, L. R. 16 Eq. 581.

See Contract, 6; Marshalling Assets.

Check.—*See* Evidence.

Child en Ventre sa Mere.—*See* Legacy, 11.

Codicil.—*See* Legacy, 7.

Collateral Agreement.—*See* Landlord and Tenant.

Company.

1. The L. company desired to have 40,000 shares taken in the company. The I. company guaranteed a subscription for said shares, and applied to a bank to discount their notes for £200,000, which the bank agreed to do upon the guarantee of the L. company that until the notes were paid it would leave with the bank an amount equal to the sum remaining due on the notes, and that if the notes were not paid the bank might pay them out of the amount. The £200,000 was carried to

the credit of the I. company, which then provided shareholders, and paid a deposit of £5 per share on the 40,000 shares, thus replacing the £200,000 to the credit of the L. company at the bank. Afterward, the notes not being paid, the bank paid them out of the above sum standing to the credit of the L. company. After an order had been made winding up the L. company, a shareholder filed a bill on behalf of himself and all the other shareholders, except the defendants, against the L. company and the bank to recover said £200,000 for the benefit of the L. company, as having been applied in breach of trust. Bill dismissed.—*Gray* v. *Lewis. Parker* v. *Lewis*, L. R. 8 Ch. 1035. See *Gray* v. *Lewis*, L. R. 8 Eq. 526.

2. The plaintiff, who held shares in a company, sold them to A., who sold them to B. The company was wound up, and a call made upon said shares. B. was unable to pay, and the company proved for the amount of said calls against A., who had become bankrupt, but no part of said amount was paid. The plaintiff paid a sum in settlement of the claim against him for said calls, which he was obliged to pay under the Companies Act. *Held*, that A. was liable to indemnify the the plaintiff against calls made after A. had transferred said shares to B., and that said liability was not discharged by A.'s bankruptcy, as it was not provable under § 135 of the Bankrupt Act, 1861.—*Kellock* v. *Enthoven*, L. R. 8 Q. B. 458.

3. If the governing body of a company is so divided that it cannot act together, the court will grant an injunction and appoint a receiver, if necessary, until a meeting has been held by the company, and a proper governing body appointed.—*Featherstone* v. *Cook. Trade Auxiliary Co.* v. *Vickers*, L. R. 16 Eq. 298.

4. By deed of settlement of a company, a shareholder desiring to transfer his shares to any person was to hand in the name of such person to the directors, who were either to accept them as transferee or find some one within fourteen days who would take the shares at market price. Failing to find such person, the person proposed would be entitled to the transfer. The company amalgamated with a corporation without authority under said deed, but with assent of all the shareholders. A year later the former directors of the company executed a deed with the corporation resuscitating the company, and shortly afterward the corporation was wound up. Afterward A. transferred 200 shares to P. for a nominal consideration, and the transfer was approved by the directors. *Held*, that said transfer was invalid.—*Allin's Case*, L. R. 16 Eq. 449.

5. The plaintiff sold fifteen shares to a broker, who gave the name of K. as transferee. K. subsequently turned out to be an infant, the plaintiff was obliged to pay calls, and he filed a bill against the broker for indemnity. The broker answered that he had purchased ninety shares, in which said fifteen were included, for A., B., and C., but that the shares were left standing in K.'s name, and were not appropriated between A., B., and C. *Held*, That A., B., and C. were severally liable in respect of five shares each of the plaintiff's fifteen.—*Brown* v. *Black*, L. R. 8 Ch. 939 ; s. c. L. R. 15 Eq. 363.

See Mortgage, 1 ; Partnership, 2 ; Penalty.

Condition.—*See* Arbitration, 2 ; Mortgage, 2 ; Trust, 4 ; Vendor and Purchaser, 2.

Conditional Limitation.—*See* Settlement, 4.

Condonation.—*See* Fraud.

Consideration.—*See* Contract, 4 ; Settlement, 1.

Construction.—*See* Appointment, 1 ; Charity ; Contract, 1, 5 ; Election ; Executors and Administrators, 2 ; Freight ; Guarantee ; Illegitimate Children ; Insurance, 3 ; Marshalling Assets ; Settlement, 4.

Contract.

1. The plaintiff railway company applied to the defendant railway company for a loan, which the defendant agreed to advance upon receiving running powers over the plaintiff's line. The money was advanced and an agreement entered into, whereby (1) the defendant was to have running powers over the plaintiff's line, subject to such by-laws as the plaintiff should make from time to time ; (2) the receipts from through traffic to be divided in certain proportions ; (3) the defendant to be at liberty to have their own servants at the plaintiff's stations ; (4) there was to be a complete system of through booking, whether running powers were exercised or not ; (5) the defendant, if using its running powers, to fix the fares, and, if the plaintiff objected, the same to be referred to arbitration ; (6) the defendant not to carry local traffic upon the plaintiff's line unless desired so to do, and in such case to receive fifteen per cent. of the local fares ; (7) the two companies to send by each other all traffic not otherwise consigned to and from stations on the lines of each other when such lines formed the shortest route ; (8) any difference under this agreement to be settled by arbitration. The plaintiff gave the defendant three months' notice of the determination of the agreement. *Held*, that the agreement was not determinable.—*Llanelly Railway and Dock Co.* v. *London & North-western Railway Co.*, L. R. 8 Ch. 942.

2. The defendants contracted to deliver to the plaintiffs 2000 tons of iron in equal monthly deliveries during the year 1871, payment to be made by acceptance at four months from the 10th of the month following delivery. At several periods before December, 1871, the plaintiffs requested the defendants by letter to deliver no more iron during the then current month, and these requests were acquiesced in by the defendants. In December, the price of iron had risen, and the plaintiffs demanded delivery of the remainder

of the 2000 tons undelivered, or 1280 tons, and brought action for non-delivery. *Held*, (by KELLY, C. B., and PIGOTT, B.,—MARTIN, B., dissenting), that the plaintiff was not entitled to recover.—*Tyers* v. *Rosedale & Ferry-hill Iron Co.*, L. R. 8 Ex. 305.

3. A corporation on July 17 sold at auction the lease of certain tolls, upon condition that the purchaser should on the fall of the hammer pay a month's advance, and furnish two sureties, who should sign a lease. The purchaser paid the advance, but never furnished the sureties, and on August 4 wrote to the corporation that he could not complete the sale, and asked a return of his advance. The contract of sale was not executed by the corporation under its seal, nor by any person authorized under its seal to sell. The corporation on August 7 adopted said sale, which was entered on the minutes under seal. *Held*, that as there was no contract under the seal of the corporation there was no mutuality; and that the payment of said advance was not such a part performance that the contract might be enforced in equity against the purchaser; and that the ratification of August 7 came too late.—*Mayor of Kidderminster* v. *Hardwick*, L. R. 9 Ex. 13.

4. A company advertised for offers for the supply of such quantity of certain stores as the company might order during one year. The defendant sent a certain offer, which was accepted. The defendant refused to supply certain of said stores ordered by the company. *Held*, that there was a sufficient consideration for the defendant's promise to supply the goods ordered, although the company was not obliged to order such goods.—*Great Northern Railway Co.* v. *Witham*, L. R. 9 C. P. 16.

5. The plaintiff sold goods to the defendant, to be paid for according to the written contract in "from six to eight weeks." The sale took place May 1, and the action was begun June 18. The judge left it to the jury to say what was the mercantile meaning of the expression "from six to eight weeks." The jury found that the action had not been brought too soon. *Held*, that the question was properly left to the jury.—*Ashforth* v. *Redford*, L. R. 9 C. P. 20.

6. The plaintiff and defendant, both subscribers to a charity, agreed that if the former would vote for an object of the charity the defendant favored, the defendant would at the next election vote for the object of the charity the plaintiff favored. *Held*, that the contract was valid.—*Bolton* v. *Madden*, L. R. 9 Q. B. 55.

See ARBITRATION, 2; BANKRUPTCY, 2; BROKER; CORPORATION; FRAUDS, STATUTE OF; INJUNCTION; INSURANCE; JURISDICTION; LANDLORD AND TENANT; LEASE; MORTGAGE, 2; PENALTY; RAILWAY, 2; SETTLEMENT, 1, 3.

CORPORATION.

By the registered articles of association of a mining company it was provided that immediately after incorporation P. enter into an agreement for the purchase of the mine for a sum in cash and 3200 fully paid-up shares. The vendor of the mine received said shares, and directed that ten of them should be allotted to P. By statute, an agreement concerning paid-up shares must be registered. *Held*, that the articles of association did not constitute an agreement with said vendor of the mine, and that consequently the holder of the shares allotted to him was liable as a contributory.—*Pritchard's Case*, L. R. 8 Ch. 956.

See COMPANY, CONTRACT, 3.

COSTS.—*See* LIEN, 1.

COVENANT.—*See* ARBITRATION, 2; PENALTY.

CUMULATIVE LEGACY.—*See* LEGACY, 7.

CURTENY, TENANT BY.—*See* ESTOPPEL.

DAMAGES.—*See* LANDLORD AND TENANT; STAUTE.

DEATH.—*See* GUARANTEE, 1; LEGACY, 9.

DECLARATION OF TRUST.—*See* TRUST, 1.

DEVISE.

1. A testator in his will directed that his debts should be first paid out of his residuary estate, and then gave a share of the residue to his daughter for life, remainder to her children as tenants in common, remainder to testator's other children. Subsequently to the date of his will the testator executed a settlement in which he recited his agreement to give his daughter £5000, whereof £1000 was to be paid to her intended husband, and £4000 was to be a provision for his daughter, and then covenanted to pay to the trustees of the settlement in his life-time, or within two years after his death, £4000 to be held upon certain trusts. The £1000 was paid to the husband of said daughter. *Held*, that said daughter's share of the residuary estate was adeemed to the extent of £4000.—*Coodre* v. *Macdonald*, L. R. 16 Eq. 258.

2. A testator devised specific estates in trust for each of his children for life, with power in each child to appoint to such person as he or she should marry an annuity not exceeding, in the whole, one-third of the income of the estate devised to him or her for life. He then directed his trustees to hold his residuary estate upon trusts and subject to powers which should correspond with those declared concerning those estates specifically devised. *Held*, that each child had power of appointment of an annuity not exceeding one-third of the income of the specifically devised estate and his share of the residuary estate.—*Cooper* v. *Macdonald*, L. R. 16 Eq. 258.

3. A testator made specific devises upon trust for each of his children for life, remainder to the children of each tenant for life as tenants in common, with cross-remainders beteen such children, and failing such issue of the tenant for life, in trust for the testator's other children as tenants in common, or, if there should be only one of his children "then living," in trust for that child and his heirs. There followed bequests of residuary real and personal estate upon trusts to correspond with those above set forth, with a proviso that if any of the testator's children

should die in his lifetime, leaving children, they should take the share they would have received if their parent had survived the testator. *Held*, that the gift over on failure of issue of a tenant for life was to the testator's children or to their children living at the time when the gift over took effect.—*Cooper* v. *Macdonald*, L. R. 16 Eq. 258.

4. A testator devised his real estate in strict settlement with a proviso that during the minority of any person who should become tenant for life the trustees of the settlement should accumulate the rents, and should invest such accumulations and interest thereon at certain periods in the purchase of lands to be settled to the same uses. *Held*, that the court could not authorize laying out any portion of said accumulations in necessary repairs and improvements of the estate—*Brownskill* v. *Caird*, L. R. 18 Eq. 493.

5. A testator gave his real and personal estate in trust to convert both into money and from the proceeds pay certain legacies, and to hold the residue of his said personal estate so converted into money as aforesaid in trust to pay the income to his four natural children until they should respectively attain the age of twenty-one, and when they should attain that age, upon trust to transfer the said residue of his personal estate unto said children in equal shares as tenants in common. *Held*, that under the residuary clause the proceeds of the real estate passed, and that the share of a child who died under twenty-one lapsed and would, as regards the real estate, go to the testator's heirs-at-law, and, as regards the personal estate, go to the testator's next of kin.—*Spenser* v. *Wilson*, L. R. 16 Eq. 501.

6. A testator devised certain estates upon trust for his daughter E. for life, remainder to the use of E.'s husband W. for life, remainder to trustees for 1000 years to raise portions for younger children of E. and W., remainder subject to said term to the eldest and other sons of E. in tail male. The testator then directed that in case said E. and W or either of them should, during their lives or the life of the survivor of them, advance or pay any sum of money for the use of any younger child for whom a portion was provided, then such sum should be taken in full or part satisfaction of the portion to which such child would have been entitled under the will, unless said E. and W. or the survivor of them should direct to the contrary by a deed sealed and attested. E. and W had several children, of whom one, J., was of weak mind. E., W., and their eldest son covenanted together that if the share of J. devolved upon any of them, they would divide it among the younger children of E. and W. J. died, and her portion devolved upon W., and in accordance with the above covenant passed to the younger children. W. survived his wife, and died, bequeathing shares of his personal estate to his younger children. *Held*, that said younger children's portions taken under the will of the first testator were not to be diminished by the sums received under the above covenant or under W.'s will.—*Cooper* v. *Cooper*, L. R. 8 Ch. 813.

See Appointment, 1 ; Election ; Executors and Administrators, 2 ; Illegitimate Children ; Legacy ; Lex Loci ; Marshalling Assets ; Mortgage, 3 ; Settlement, 4 ; Trust, 3, 5.

Domicile.—*See* Lex Loci.

Easement. —*See* Party-wall.

Election.

A testator gave a legacy to his widow for life or until her second marriage, charged upon part of his freehold and copyhold hereditaments, with a direction that she should occupy his mansion-house and enjoy the rents of a portion of the property. The testator then devised his real estate specifically, and gave to his trustees powers of management and leasing. His real estate consisted chiefly of customary lands, out of which his widow was entitled to freebench, but in no instance in these manors had a widow ever been admitted or her freeholds been set out by metes and bounds. *Held*, that the widow was put to her election. *Thompson* v. *Burra*, L. R. 16 Eq. 592.

Elegit.—*See* Priority, 2.

Eminent Domain,—*See* Tenant in Tail.

Equitable Mortgage.—*See* Mortgage, 2.

Equity.—*See* Arbitration, 1 ; Company, 1, 3 ; Injunction ; Railway, 1 ; Trust, 4.

Estoppel.

A tenant by the curtesy of certain estates devised the same to A. for life, remainder to B. in fee. A occupied the premises without interference by the heir entitled to the estates for more than twenty years, and then conveyed to C., who entered after A.'s death. *Held*, that B. was entitled to the estates, inasmuch as A., who had entered into and enjoyed the estates under said will, was estopped from asserting that said will was void and that she, A, had acquired title by twenty years' possession.—*Board* v. *Board*, L. R. 9. Q. B. 48.

Evidence.

1. Testimony by the maker of a promissory note given to a payee, since deceased, that the note was given merely for the purpose of securing payment of interest upon a sum advanced by the payee, even if legally admissible, should be wholly disregarded.—*Hill* v. *Wilson*, L. R. 7 Ch. 888.

2. By statute a railway company, with whose line a junction is effected, may erect signals at such junction, and the expense thereof is to be repaid by the company making the junction. Such a junction was made by the defendant with the plaintiff, who, to prove payment for signals erected, stated that a cheque had been sent the person erecting the signals ; and it was also proved that said latter person received the cheque and sent a receipt. *Held*, that said receipt was admissible in connection with the other facts to prove payment.—*Carmarthen & Cardigan Railway Co.* v. *Manchester & Milford Railway Co.*, L. R. 8 C. P. 685.

Digest of English Law Reports.

Executors and Administrators.

1. Where a person possesses himself of the assets of a testator or intestate without having administered, a bill for an account to the extent of the specific assets he has received will lie against him as executor *de son tort*, though there is no legal representative.—*Coote* v. *Whittington*, L. R. 16 Eq. 534.

2. A testatrix bequeathed £1000 to E., and legacies to other persons. By a codicil, after stating that it was her intention to give T. the residue of her estate after paying the legacies, free of all deductions in respect of probate duty or on any other account, she declared her will to be that all the legatees should contribute ratably to her funeral and testamentary expenses in full exonoration of the residue of her estate given to T., and she appointed T. and E. her executors. T., who received all the assets, in consideration of £700, part of the legacy to E., agreed to pay E. an annuity, whose life he knew to be a bad one. *Held*, that the burden was upon T. to prove that his transaction with E. was a fair one; and that the costs of suit must be paid from the residuary estate.—*In re Biel's Estate. Gray* v. *Warner*, L. R. 16 Eq. 577.

3. The plaintiffs supplied goods to an innkeeper, who subsequently died without having paid for the goods. His administratrix carried on the business and held the goods for fifteen months, when she became bankrupt. *Held*, that the plaintiffs had lost their claim as against the creditors of the administratrix.—*Kitchen* v. *Ibbetson*, L. R. 17 Eq. 46.

4 An executrix and sole legatee of a testator opened an account with a bank as "executrix of G.," the testator. Having overdrawn her account, she deposited with the bank a picture belonging to the testator's estate as security for present and future advances. Before said account was opened a decree had been made in a creditors' suit for the administration of the testator's estate, but no receiver was appointed nor an injunction granted to prevent the executrix from dealing with the assets. The bank had no notice of said suit. *Held*, that the pledge of the picture was valid.—*Berry* v. *Gibbons*, L. R. 8 Ch. 747.

False Representation.

The plaintiff brought an action against the defendant for advertising that he had a certain farm to let, when in fact he had no authority to let the same, in consequence of which the plaintiff incurred expense to no purpose, in ascertaining the value of the farm with a view to leasing it. *Held*, that the above advertisement amounted to a false representation, upon which an action would lie.—*Richardson* v. *Silvester*, L. R. 9 Q. B. 34.

Foreign Contract.—*See* Jurisdiction.

Fraud.

Condonation of fraud. See *Moxon* v. *Payne*, L. R. 8 Ch. 881.

Frauds, Statute of.

The defendant verbally promised the mother of his illegitmate children to give her £300 per annum so long as she should maintain the children. The plaintiff brought an action to recover two years' unpaid arrears. *Held*, that said agreement need not be in writing under the Statute of Frauds, § 4.—*Knowlman* v. *Bluett*, L. R. 9 Ex. 1.

See Contract, 2; Insurance, 4; Landlord and Tenant.

Fraudulent Preference.—*See* Bankruptcy, 1.

Freebench.—*See* Election.

Freight.

T. accepted bills of exchange against a bill of lading of a cargo of rice. By the bill of lading the rice was to be delivered to T. or his assigns; "freight for the said goods, £4 per ton of 20 cwt. net delivered, with primage and average accustomed." The shipper of the rice was also the owner of the vessel. While the vessel was on the voyage, said shipper and owner obtained advances from C., to whom he assigned the freight of the vessel on said voyage as security. *Held*, that C. was entitled to freight as above; and that under the bill of lading the rice was deliverable only on the freight being paid.—*Weguelin* v. *Cellier*, L. R. 6 H. L. 286.

See Bill of Lading.

Guarantee.

1. A guarantee was given, determinable on six months' notice. The guarantor died, leaving the debtor on whose behalf the guarantee was given his executor. The creditor, with knowledge of the death of the guarantor, and that he left but little personal estate, made further advances to the above debtor. *Held*, that the advances made subsequent to the death of the guarantor could not be satisfied out of the real estate of the guarantor. *Semble*, that the guarantee was not determined by the death of the guarantor.—*Harriss* v. *Fawcett*, L. R. 8 Ch. 866; s. c. L. R. 15 Eq. 311; 8 Am. Law Rev. 100.

2. The plaintiffs declined to sell certain goods to D. without an engagement by the defendants to become responsible for their value. The defendants telegraphed agreeing to be answerable for said goods, and also sent a letter, in which they said, "Having every confidence in D., he has but to call on us for a cheque and have it with pleasure for any account he may have with you; and when to the contrary we will write you." *Held*, that said letter was a continuing guarantee.—*Nottingham Hide Co.* v. *Bottrill*, L. R. 8 C. P. 694.

Husband and Wife.—*See* Action; Legacy, 9.

Illegitimate Children.

The testator's daughter had married the husband of her deceased sister. The testator devised estates "to my son-in-law J. C.," and "to my daughter M., wife of said J. C.," and also "to the children or child of my said daughter M. C." The testator's daughter had two children by J. C. living at the date of the will. *Held*, that said illegitimate children of M. C. were sufficiently designated

in the will and took under the devise.—*Hill* v. *Crook*, L. R. 6 H. L. 265 : s. c. L. R. 6 Ch. 311 ; 6 Am. Law Rev. 91.

See Devise, 5 ; Settlement, 1.

Indenture.—*See* Amalgamation.

Infant.—*See* Company, 5.

Injunction.

By the terms of a contract whereby the defendant agreed to furnish the plaintiff's house, the defendant was to obtain an architect's approval in writing before any money was payable. The defendant brought an action at law for a larger sum than the architect approved, and the plaintiff brought this bill to restrain the action. *Held*, that there was a good defence at law to the action, and no equity to sustain the bill—*Baron de Worms*, v. *Mellier*, L. R. 16 Eq. 554.

See Arbitration, 1 ; Company, 3 ; Jurisdiction ; Trade-mark.

Insolvency.—*See* Legacy, 5 ; Lien, 2.

Insurance.

1. The A. Insurance Company sold its business to the B. Insurance Company in October, 1868, the B. company to undertake the liabilities upon existing policies, and, if required, to issue new policies in exchange. The A. company was to be wound up voluntarily, and its assets were to be collected by the B. company and distributed among the creditors of the A. company. E., the assignee of a policy in the A. company on the life of another party, after the date of said sale paid the annual premium to the A. company, who received the same as agent of the B. company, as authorized by the latter. On December 31, E. sent the policy to the B. company for endorsement, and on Jan. 21, 1869, the insured died. In March, the B. company resolved to pay E.'s claim, and a memorandum under seal was endorsed on the policy, declaring that the capital of the B. company should alone be liable for the sum insured by the policy, and that E.'s claim was admitted payable. In June, the B. company cancelled the the contract of sale of October, 1868, in consequence of the A. company having failed to comply with its terms, and in November an order was made for winding up the B. company. *Held*, that there was a good consideration for said memorandum, and a complete novation of said contract of insurance, and that E. was entitled to recover from the B. company the sum due under the policy.—*In re United Ports and General Insurance Co., Evens' Claim*, L. R. 16 Eq. 354.

2. The plaintiffs, cotton brokers in London, received advice from B. that he had shipped cotton to them and had drawn upon them at six months' sight for £3000 on account of that shipment, and the plaintiffs (according to their custom) declared the cotton valued at £5000 upon an open policy "as well in their own names as for and in the name or names of all and every person or persons to whom the same doth, may, or shall appertain in part or in all" with the defendant, May 23, intending to insure B. and themselves. The plaintiffs accepted the bills "against shipping documents" for said cotton May 21. The cotton was lost at sea June 11. The plaintiffs afterward paid said bills and received the bills of lading for said cotton. *Held*, that the plaintiffs were entitled to recover said £3000, being the amount of their advances ; and *held* (by Bovill, C. J., and Denman, J.), that the plaintiffs were entitled to recover said £5000, being the whole amount insured. (Keating and Brett, JJ., *contra*). —*Elsworth* v. *Alliance Marine Insurance Co.*, L. R. 8 C. P. 596.

3. The plaintiff insured silks "at and from Japan and [or] Shanghai to Marseilles and [or] Leghorn and [or] London *via* Marseilles and [or] Southampton, and whilst remaining there for transit . . . and in the good ship called the———steamers or steamer per overland, or *via* Suez Canal." The perils insured against included arrests, restraints, and detainments of all kings, princes, and people of what nation, condition or quality soever, and all other perils, losses, and misfortunes that shall come to the detriment of said goods. The policy contained a memorandum that it was agreed that said goods should be shipped by the M. or certain other steamers, only. Goods were never in the ordinary course of business carried to London *via* Marseilles except by the M. steamers, which stopped at Marseilles, and the M. steamer company always sent such goods overland through France and thence to London, and this was well known among underwriters. Said silks were transmitted by the M. steamers from Shanghai to Marseilles, and thence through France *via* Paris. In Paris the goods were detained in consequence of the city being besieged and surrounded by the Germans. After the silks had been detained a month the plaintiff gave notice of abandonment to the underwriter. *Held*, that the policy covered the whole journey from Shanghai to London, including the overland transit through France ; and that said detention in Paris was in consequence of a "restraint of princes," and that the plaintiff was entitled to abandon and recover as for a total loss.—*Rodocanachi* v. *Elliott*, L. R. 8 C. P. 649.

4. An insurance company in Liverpool employed E. as their agent in London to accept risks and receive premiums there. The plaintiff employed P. to effect insurance for him, and P. prepared a slip, which was initialed by E. for said company, and transmitted the same day to Liverpool. The company received the slip, and held it for some time, and in the meantime E. received a cheque payable to the company's order for the amount due the company for premium and stamp duty, and by virtue of his authority indorsed the cheque and received the money. The goods insured were lost by the perils insured against, and the company refused to execute a policy. *Held* (by Quain and Archibald, J J.), that no action would lie ; (by Blackburn, J.) that accepting the initial slip amounted to a contract to either properly and diligently prepare a policy, or to return the slip, and without delay inform the plaintiff

that the company would not execute a policy. *Fisher* v. *Liverpool Marine Insurance Co.*, L. R. 8 Q. B. 469.

Interest.—*See* Legacy, 1, 2.

Jurisdiction.

A ship-owner at Hamburg agreed to sell a vessel to H., an Englishman, resident and domiciled at Hamburg, possession to be given upon the delivery of the cargo after arrival from the voyage in which the vessel was then engaged, and deductions to be made for damage above wear and tear. The master of the vessel, who was authorized to complete the sale, arrived in England and discharged his cargo, but refused to there deliver the vessel to H. unless paid the full price, and refused to allow a survey to enable H. to ascertain what damage the vessel might have sustained. H. filed a bill for specific performance, and for restraining the vessel from leaving port, and served a copy of the bill upon said master. *Held*, that the service was sufficient, and that the court had jurisdiction, and would restrain the vessel from removing from said port. Injunction granted.—*Hart* v. *Herwig*, L. R. 8 Ch. 860.

See Arbitration, 1.

Jury.—*See* Contract, 5.

Landlord and Tenant.

The defendant, before leasing an estate, promised B. that he would kill down the game upon the estate, and would not let the game during the lease. B. took the lease, but the lessor then let the game, and did not kill it down. B.'s crops were in consequence damaged by the game. B. also lost sheep, which were poisoned by browsing upon yew-trees, the branches of which extended over the lessor's fence so as to be within reach, and other sheep, by their feeding upon yew-tree clippings, thrown by the lessor's gardener upon B.'s land; he also lost cattle by their getting at yew-trees upon the lessor's land by reason of the insufficient fence upon the lessor's land. After this the lessor died. *Held*, that B. was entitled to recover for the damage to his crops caused by the defendant's failure to keep his collateral agreement to kill down the game; that he could not recover for the loss of his sheep, as for that injury B. had only a personal action, if any, which died with the lessor, and that he could not recover for the loss of the cattle, as there was no obligation upon the lessor to maintain a fence between his and his lessee's land.—*Erskine* v. *Adeane*, L. R. 8 Ch. 756.

Lapse.—*See* Devise, 5; Legacy, 8.

Lease.

The owner of a ten-year lease agreed in writing to let the property to K., and not to give him notice to quit so long as he paid the rent when due, having previously verbally agreed to let the premises to K. for any term of years not exceeding his own. A railroad company contracted to purchase K.'s interest in the premises, which he described as any term at tenant's option, but not beyond said owner's term. The company subsequently denied that K. had proved title as alleged. *Held*, that K. had an interest in said premises, and was entitled to the purchase-money.—*In re King's Leasehold Estates. Ex parte East of London Railway Co.*, L. R. 16 Eq. 521.

See Charge; Lex Loci.

[*To be continued.*]

REVIEWS.

An Epitome of Leading Common Law Cases, with some short Notes thereon, chiefly intended as a guide to "Smith's Leading Cases." Second edition. By John Indermaur, Solicitor, Clifford's Inn, and Prizeman Michaelmas Term, 1872. London: Stevens & Haynes, Bell Yard, Temple Bar.

This is at once an abridgement of and index to "Smith's Leading Cases."

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The idea of such a publication is a good one. The result has been that a second edition has been called for in little more than a year from the first edition. Some of the notes in this edition have been enlarged, but only one principal case has been added, and that is *Hadley* v. *Buxendale*, 9 Ex., 341, on the subject of "Damages." Reference is made to *Lumley* v. *Gye*, 22 L. J., N. S., Q. B., 463; *Cary* v. *Thames Iron Works Co.*, L. R., 3 Q. B., 186, and other well-known cases.

The whole volume is only 80 pages. The book is indeed *multum in parvo*, and its utility is proved by its success. A book like this is in truth "a labour-saving machine," and in this age, when time is money, must be readily patronized by barristers, solicitors and students-at-law.

FLOTSAM AND JETSAM.

We clip the following from one of our country newspapers:

"In pursuance of the statutes and in accordance with the by-law in such case made and provided, public fairs will be held [among other places] at Ballicroy, on the first *Tuesday* of January, April, July and October, except said fair day fall on *Sunday*, then on the *Monday* following." (*Sic.*)

While it is impossible not to admire the piety which prompted the addition of the proviso, it must be admitted that a superfluity of caution is displayed. Whether this perspicuity as to time is owing to the combined wisdom of our legislators, or whether the peculiarity arises, as the name of the locality would seem to imply, from an Irish atmosphere redolent of "bulls," we are not informed.

The *Albany Law Journal* states that "a committee of the House of Commons having been appointed to investigate the charges preferred against Dr. Kenealy, counsel for the Tichborne Claimant, Mr. Whalley, M.P., demands that a similar committee be appointed to investigate charges against Mr. Hawkins, Q.C., prosecuting attorney." Our cotemporary has apparently a mania on the Tichborne question, and loses no opportunity of airing its spleen against Chief Justice Cockburn, his associates, the counsel for the Crown and the Jury, for the parts they took in the punishment of an unmitigated scoundrel. The mode of dealing with professional matters in England, is a matter upon which the *Journal* is apparently profoundly ignorant, and it seems to prefer that blissful state.

A return to the House of Commons, in England, shows the amount expended upon the prosecution in the case of *Regina* v. *Castro, otherwise Orton, otherwise Tichborne*, and the probable amount still remaining to be paid out of the vote of Parliament for "this service." The probable cost of the trial is stated at 55,315*l.* 17*s.* 1*d.*, of which 49,815*l.* 17*s.* 1*d.* had been paid up to the 11th ult., and on May 11, 5,500*l.* remained unpaid. In 1872-3 counsel's fees were 1,146*l.* 16*s*, 6*d.*, and in 1873-4 counsel's fees were 22,495*l.* 18*s.* 4*d.* The jury were paid 3,780*l*, and the shorthand writers 3,493*l.* 3*s.* The other expenses were witnesses, agents, &c., and law stationers and printing. Of the sum to be paid, 4,000*l.* is for the Australian and Chili witnesses. It also appears from the preamble of the Tichborne and Doughty Estates Bill, which has been read a first time in the House of Lords, that the expenses of the litigation occasioned by the Claimant's proceedings, and payable by the present baronet, or, in the event of his death during minority, by the family out of the estates, have amounted already to nearly 92,000*l.*

As a Judge, Lord Avonmore had one great fault: He was apt to take up a first impression of a cause, and it was very difficult afterwards to obliterate it. Curran, who often suffered by the Judge's habit of anticipation, once took the following method of rebuking him for it. They were to meet at dinner, and Curran, contrary to his usual custom, came in late, and appeared to be in a state of the deepest agitation. "Why, Mr. Curran, you have kept us a full hour waiting dinner for you," grumbled out Lord Avonmore. "Oh, my dear Lord, I regret it much: you must know it seldom happens, but I've just been witness to a most melancholy occurrence." "My God! you seem terribly moved by it—take a glass of wine. What was it?—what was it?"—"I will tell you, my Lord, the moment I can collect myself. I had been detained at Court—in the Court of Chancery—your Lordship knows the Chancellor sits late." "I do, I do—but, *go on.*" "Well, my Lord, I was hurrying here as fast as ever I could—I did not even change my dress—I hope I shall be excused for coming in my boots?" "Poh, poh—never mind your boots: the point—come at once to the point of the story." "Oh, I will, my good Lord, in a moment. I walked here—I would not even wait to get the carriage ready—it would have taken time, you know. Now there is a market exactly in the road by which I had to pass—your Lordship may recollect the market—do you?" "To be sure I do—*go on*, Curran—*go on* with the story." "I am very glad your Lordship recollects the market, for I totally forgot the name of it—the name—the name—" "What the devil signifies the name of it, Sir—it's the Castle Market." "Your Lordship is perfectly right, it is called the Castle Market. Well, I was passing through that very identical Castle Market, when I observed a butcher preparing to kill a calf. He had a huge knife in his hand—it was as sharp as a razor. The calf was standing beside him—he drew the knife to plunge it into the animal. Just as he was in the act of doing so, a little boy about four years old—his only son—the loveliest little baby I ever saw—ran suddenly across his path, and he killed—" "The child! the child! the child!" vociferated Lord Avonmore. "No, my Lord, *the calf*," continued Curran very coolly; "he killed the calf, but—*your Lordship is in the habit of anticipating.*"

NEW TARIFF OF FEES TO DIVISION COURT OFFICERS.

SCHEDULE OF CLERK'S FEES.

	$ cts.
Receiving claim, numbering and entering in Procedure Book	0 15
Issuing Summons with necessary notices or warnings thereon, or Judgment Summons where claim does not exceed $20	0 30
where claim exceeds $20 and does not exceed $60	0 40
where claim exceeds $60	0 50
Copy of Process, of claim, or set off or other paper required for service or transmission to Judge, each	0 20
Summons to witness, with any number of names thereon	0 10
For every copy to serve	0 5
Receiving and entering Bailiff's return to process or Judge's order	0 10
Entering notice of set off, plea of payment, or other defence, requiring notice to the Plaintiff, or notice of admission as to payment	0 20
Taking Confession of Judgment	0 10
Drawing every necessary affidavit and administering oath	0 25
Every notice required to be given by Clerk to any party to a cause or proceeding, or to the Judge in respect to the same, and mailing	0 10
Entering every Judgment, or order made at the hearing, or final order made by the Judge, or final judgment entered by the Clerk	0 40
Summons for each juryman, when called by the parties	0 10
(Only 25c. in all to be allowed for a Judge's Jury.)	
Order of Reference, attaching order, or other order drawn and entered by the Clerk	0 15
Transcript of Judgment (under secs. 139 or 142)	0 25
Every Writ of Execution, Warrant of Attachment or Warrant for arrest of delinquent	0 40
Every Bond, when necessary, including affidavit of Justification	0 50
For necessary entries in the debt attachment book in each case (in all)	0 20
Transmitting papers for service to another Division or to Judge, on application to to him, including necessary entries, but not postages	0 20
Receiving papers from another Division for service, entering same, handing to the Bailiff, receiving his return, and transmitting same, (if return made promptly, not otherwise,)	0 30
Search by a person not party to the suit or proceeding to be paid by the applicant, 10c.; search by party to the suit or proceeding where same is over one year old	0 10
(No fee is chargeable for a search to a party to the suit or proceeding, if the same is not over one year old.)	

SCHEDULE OF BAILIFF'S FEES.

Service of Summons, order, or other process, on each person (except Summons to witness, and Summons to juryman,) where claim does not exceed $20	0 20
where claim exceeds $20 and does not exceed $60	0 30
where claim exceeds $60	0 40
Service of Summons on witness or juryman, or service of notice	0 10
Taking confession of judgment, and attending to prove	0 10
Enforcing every writ of execution, warrant of attachment, or warrant against the body, each, where claim does not exceed $20	0 40
where claim exceeds $20 and does not exceed $60	0 60
where claim exceeds $60	0 80
(Executing Summons in replevin, including service on defendant, same charge.)	
Every mile necessarily travelled to serve summons or process, or other necessary papers, or in going to seize on a writ of execution, where money made or case settled after levy	0 11
(In no case is mileage to be allowed for a greater distance than from the Clerk's office to the place of service or seizure.)	
Mileage to arrest delinquent under a warrant to be at 11 cents per mile; but for carrying delinquent to prison, including all expenses and assistance, per mile	0 20
Every schedule of property seized, attached or replevied, including affidavit of appraisal, when necessary, not exceeding $20	0 30
Exceeding $20 and not exceeding $60	0 50
Exceeding $60	0 75
Every Bond, when necessary, including affidavit of justification	0 50
Every Notice of Sale not exceeding three, under execution or under attachment, each	0 15

There shall be allowed to the Bailiff, for removing or retaining property seized under execution or attached, reasonable and necessary disbursements and allowances, to be first settled by the Clerk, subject to appeal to the Judge.

There shall be allowed to the Bailiff five per cent. upon the amount realized from the sale of property under any execution, but such per centage not to apply to any overplus thereon.

Dated at Toronto, this 26th day of June, 1874.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Easter Term, 37th Victoria.

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

Joseph Egbert Terhune.
Peter McGill Barker.
Charles Egerton Ryerson.
Alfred Servos Ball.
Charles Edgar Barber.
Frank D. Moore.
Harruel Madden Deroche.
Clarence Widmer Ball.
E. George Patterson.
George Levack B. Fraser.

These gentlemen are called in the order in which they entered the Society and not in the order of merit.

Joseph James Gormully, Esq., of the Middle Temple, England, Barrister-at-Law, was admitted into the Society and called to the degree of Barrister-at-Law.

The following gentlemen obtained Certificates of Fitness as Attorneys, namely:

Joseph James Gormully.
E. George Patterson.
Thomas Horace McGuire.
Charles Egerton Ryerson.
David Robertson.
George Levack B. Fraser.
A. Basil Klein.
Alfred Trevos Ball.
Josiah R. Metcalf.
Arthur Lyndhurst Colville.
Clarence Widmer Ball.
D. Ellis McMillan.

And on Tuesday, the 19th of May, 1874, the following gentlemen were admitted into the Society as Students-at-Law and Articled Clerks:

Graduates.

George Robert Grasett.
John Maxwell.
William Seton Gordon.
James Craig.

Junior Class.

Frank Fitzgerald.
Duncan Dennis Riordan.
David Haldane Fletcher.
Isaac Campbell.
Jas. W. Holmes.
Nicholas DuBois Beck.
Arthur Beatty.
John Sandfield McDonald.
John Arthur Patrick McMahon.
William James Lavery.
John Lewis.
Andrew Halley Hunter.
John Jacob Wheeler Stone.
John Gibson Currell.
Maxfield Sheppard.
George Albert Fletcher Andrews.
Walter James Read.
Thomas William Phillips.
Nathaniel Mills.
John Malcolm Munro.
John Joseph Blake.
Wm. Edgar Stevens.
Charles Egerton Macdonald.
Colin Scott Rankin.
Charles Michael Foley.
John Greeley Kelly.
John Ross McColl, and
Ernest Joseph Beaumont as an articled clerk.

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

That a graduate in the Faculty of Arts in any University in Her Majesty's Dominion, empowered to grant such degrees, shall be entitled to admission upon giving a Term's notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

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

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

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

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

That the books for the final examination for students-at-law shall be as follows:—

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

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

That the subjects for the final examination of Articled Clerks shall be as follows:—Leith's Blackstone, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

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

1*st year*.—Stephen's Blackstone, Vol. i., Stephen on Pleading. Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. S. c. 12, C. S. U. C. c. 43.

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

3*rd year*.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, chaps. 10, 11 and 12.

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

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

J. HILLYARD CAMERON,
Treasurer.