DIARY FOR AUGUST.

1. Frid. ..Slavery abolished in British Empire, 1834.
3. Sun. ..8th Sunday after Trinity.
5. Tues...Atlantic cable laid, 1858.
10. Sun. ..9th Sunday after Trinity.
12. Tues...Prim. Exam. Disraeli created Lord Beaconsfield, 1877.
13. Wed...Prim. Exam. Sir Peregrine Maitland, Lieutenant-Governor, 1818.
14. Thur..Primary examinations.
17. Sun. ..10th Sunday after Trinity. General Hunter, Lieutenant-Governor, 1799.
19. Tues...1st Intermediate examination.
20. Wed...2nd Intermediate examination.
21. Thur..Long Vacation, Q.B., C.P., and Co. Courts ends. Attorney's examination.
22. Fri. ...Examination for call.
24. Sun. ..11th Sunday after Trinity.
25. Mon. ..Trinity Term begins. Convocation meets.
26. Tues...Convocation meets.
28. Thur..Rehearing term in Chancery begins.
30. Sat. ..Long Vacation in Supreme Court, Court of Appeal and Chancery ends. Convocation meets.
31. Sun. ..12th Sunday after Trinity.

CONTENTS.

Canada Law Journal.

Toronto, August, 1879.

The Lord Chief Justice of England, Sir Alexander Cockburn, has recently expressed the following opinion on the codification of the law. It is contained in a letter written by him to the Attorney-General, under date June 11th, on the subject of the proposed criminal code. The opinion of that great lawyer and accomplished scholar cannot fail to carry much weight. He writes as follows:—"I have long been, for reasons on which it is unnecessary here to dwell, a firm believer in not only the expediency and possibility, but also in the coming necessity of codification, and I have rejoiced, therefore, at the favourable reception which the proposal to codify our criminal law has received from the press as of good omen. But it would, I think, be much to be deplored if the eager desire to see the law codified, entertained by the public, of whom few have perhaps taken the trouble to study the details of the measure, and still fewer are in a position to appreciate the legal difficulties which present themselves, should lead to the adoption of a statement of the law still imperfect and incomplete. For not only would this be a misfortune as regards the work itself and administration of justice under it, but any failure in this, our first attempt at what can properly be termed a code would engender a distrust of this method of dealing with the law which would retard all further attempts at codification for an indefinite period." The letter from which the above passage is taken is to be found in the LAW JOURNAL for June 28th, ult.

Candidates for the rôle of Portia ap-

pear to be rapidly on the increase. The *Irish Law Times* for June 21st, in a passage in which our remarks apropos of Mrs. Bella Lockwood are quoted, speaks of a case of *Fogarty* v. *Howard*, which recently came before the Master of the Rolls in Ireland. Here a lady appeared in person and conducted her own suit. She found, however, according to our contemporary, that, though she assumed a statement of claim could be written as easily "as a letter," it was as difficult for her to frame a proper one, as it would be, in the words of the learned Judge, for him to plait a straw hat. She, however, it seems, escaped more easily than Mrs. Bella Lockwood. But, perhaps, would-be ladies of the Black Robe will find their most favourable field in California. Referring to the admission of Mary Josephine Young, on May 13th, to practise as attorney and counsellor-at-law in the Supreme Court of California, the *Pacific Coast Law Journal* observes: "Mrs. Young is the wife of J. N. Young, a prominent attorney at Sacramento, and she has the honour of being the first woman in this State who has obtained a license to practise law from the Supreme Court. We are informed that she passed an exceedingly satisfactory examination, and is worthily entitled to the honours thus placed upon her, without partiality or undue gallantry. The problematic question of the success of female practitioners, it seems, will soon be practically settled." Although Pericles, who, in his Funeral Speech, tells the widows of the Athenians that "great is the glory of that woman who is least spoken of among men, either for good or for ill," would scarcely have approved of the admittance of women to practise in the Law Courts, yet it is, perhaps, hard to maintain that the fair sex would be out of place in the Temple of Justice.

SIR JOHN MELLOR'S FAREWELL.

The retirement of Mr. Justice Mellor was the occasion of an interesting ceremony in the English Court of Queen's Bench on June 11th ult., when he took his leave of the bar. We read that, as the time appointed approached, the Court became extremely crowded. The front row was occupied by the leaders of the different circuits, while every corner of the court was filled by those barristers and others who could not obtain seats. All the judges were present, and the galleries were filled with the private friends of the retiring judge.

At about a quarter to four the Attorney-General, the Solicitor-General, and Sir Henry James entered the Court, and took their places, and after a pause of a few moments, the Attorney-General rose and addressed the bench in these terms: "My Lord, before the Court rises for the day, I desire to ask permission to address, on behalf of the bar, a few words to Mr. Justice Mellor." The Attorney-General then—the whole of the bar rising as a token of respect—delivered an eloquent farewell address to the learned judge. We have only space to quote his concluding remarks, in which he expressed the high appreciation which the bar had of the manner in which Sir John Mellor had discharged his judicial functions. They were as follows:—

"My Lord, in the judgment of those for whom I speak, you have set a pattern to the judges who have been your contemporaries, and to the judges who will sit in our Courts after you have gone from them, of the manner in which justice ought to be administered. In dealing with legal questions you have shown that you have sought the sources of the law, and have mastered the great principles upon which our laws are founded, and you have ever been anxious to base your decisions upon such principles, disregarding technicalities and

ingenious refinements whenever they seemed calculated to lead your mind astray from the broad track of common sense; while in the investigation of questions of fact, you have displayed the acumen of a vigorous intelligence, combined with the most admirable and praiseworthy patience. My Lord, in the performance of your duties as a judge, not only have you exhibited learning, industry and ability, not only have you shown yourself perfectly impartial and fearlessly independent, but you have in a marked and extraordinary degree proved yourself the possessor of other qualities, without which no man, however vast may be his talents, however powerful his intellect, can ever be pronounced a perfect judge. I allude, my lord, to your kindliness of heart, and to the thorough generosity of your disposition. My Lord, during the long period of your judicial career you have invariably treated the bar, not with courtesy merely, for courtesy we have a right to expect, but with a generous kindness and a delicate consideration which was more than our due, and which at times might perhaps, without injustice, have been withheld. My Lord, the members of the bar have always felt it a delight to practise before you, and they will ever remember with feelings of gratitude the manner in which you have treated them. And now I must cease to trouble you. I have no doubt that, while you are in the enjoyment of the leisure you have so fully earned and so richly deserved, many reflections will occur which will afford you satisfaction. I hope that not the least pleasurable will be the consciousness that during your judicial life you have won for yourself the esteem, the admiration, and the affection of the bar of England."

Mr. Justice Mellor, who appeared deeply affected, then replied. After remarking that when he was first appointed a member of that Court, it was associated with all its great traditions, and was presided over by the present Lord Chief Justice, "whese brilliant abilities have only been rendered more conspicuous by time,"—he proceeded to express his sense of the kindness he had received from his colleagues, and the assistance he had invariably received from the bar. He, then, continued as follows:—

"I may now say, in the presence of the bar and of all my dear friends who are around me, that the kindness I have received from every member of the judicial bench—in whatever Court—has been to me the greatest happiness, and the most pleasant assurance to me that I was not unacceptable to them. Our intercourse was not the mere formal intercourse which must take place between men in such a position, but it was kindly, friendly, uninterrupted by a single day.....In such circumstances I cannot but feel regret in being obliged to retire from association with them; but circumstances have compelled me to the conclusion that I am following the dictates of prudence, as well as serving the interests of the public in making way for another man. Mr. Attorney-General, I shall ever look back on this day with pleasure, and its memory will always be a well-spring of delight and satisfaction. I thank you for the assurance you have given me on the part of the bar; and I shall look to the future of the bar with the deepest interest, assured as I am that, so long as the functions of the bar are honourably performed, they will afford the best security for the liberties of the people."

He then, after again expressing his gratification at the remarks of the Attorney-General, bade "Farewell." The judges present then took their leave of the retiring judge, who with his colleagues, left the Court.

The English *Law Journal* of June 14th ult., whose account of the ceremony we have abridged, thus expresses itself as to Mr. Justice Mellor's career:—

"His Lordship's career was not marked by those brilliant flashes of intellectual power which have won for some of his contemporaries the admiration of the public; nor could he be regarded as a judge of great learning or great authority. But he was very assiduous, very patient and painstaking, a man of excellent good sense, a lover

of fair dealing, anxious to do right, free from passion and prejudice, and peculiarly courteous to his brethren on the bench and to the bar. By these qualities he won universal good-will, and hence it was that the leave-taking of Wednesday last was marked by signs of sincerity on all sides."

SELECTIONS.

O'Brien's Division Court Manual (2nd Edition). Willing & Williamson, Toronto, 1879.

This is a second edition of a very useful book published some ten years ago by Mr. Henry O'Brien, Barrister-at-law, on the practice of Division Courts, and which has been received as the authoritative text book on the subject ever since. The present volume is double the size of the previous one, and the Acts and rules are much more fully annotated. We notice, for example, that some three hundred additional cases have been examined and referred to by the author. A careful examination of the work enables us to say that it will not fall short of the high expectations raised concerning it. The editor has done his work well and carefully; we are glad to see that he has not unnecessarily clogged it with cases, citing the latest authorities, and those which directly bear upon the points in question. This course saves readers from the not uncommon task imposed upon them by legal authors of having to examine for themselves a number of cases, many of which do not apply, and so, by a process of elimination, to arrive at what the law on the subject really is—a duty which ought to be performed by the author. On a comparison of the two editions, we find in the last several new Acts treated of which had no existence on the statute book when the first edition came out. The principal one of these is the law of the garnishment of debts; and when we look back at the doubt and uncertainty that prevailed on the subject, when the Act first came out, some ten years ago, we are sure the profession, and those having business in the local courts, will feel thankful to find that great light has been thrown on so many doubtful points, and the practice in this branch made comparatively plain.

The law of replevin, as applied to the Division Courts, and the clauses allowing judgment to be entered by default, are also carefully treated and annotated. The Replevin Act is given in full, as well as a number of other Acts and parts of Acts which impose duties on Division Court clerks. It will be observed that the subject of *jurisdiction*—one of the most, if not the most, important in the book—is treated of at great length with evident care and circumspection, and with a very successful attempt to elucidate and reconcile the many apparently conflicting cases on the subject. The questions of prohibition, mandamus, and certiorari are treated of in a separate chapter—(a very good idea, as they are seldom approached by clerks or the general practitioner)—and are evidently handled by one quite familiar with his subject. The marginal notes will be found very useful as a means of ready reference. We feel confident that Mr. O'Brien's work will be hailed with satisfaction by clerks and other officers of Division Courts, and no less by those who either practise or do business in those courts. We see by the preface that Mr. O'Brien has been assisted in his labours by Judge Gowan and others of the most experienced of the County Court Judges, a fact which will lend large additional value to the work.—*Toronto Mail.*

The acknowledged usefulness and popularity of the first edition of this work have done much towards securing a favourable reception for the present edition. Those who are familiar with the earlier edition only, can scarcely estimate the wide scope of the present volume and the extended field covered by it. Since 1866, when the first edition was issued, much legislation has taken place in reference to Division Courts, and their jurisdiction has been very much enlarged, especially by the powers given them of garnishing debts. All the various enactments relating to these Courts were consolidated in chapter 47 of the Revised Statutes, which Mr. O'Brien has taken as the basis of the present work.

There is a careful annotation of almost every provision of the Act referred to, also of the Replevin Act, the Fence Viewers and Watercourses Act, and the Acts respecting Education and Public Schools, in so far as they relate to the jurisdiction of Division Courts. An annotated list is given of the rules of the Courts as recast and supplemented by the Board of County Court Judges. The chapter on *prohibition*, *certiorari*, and *mandamus*, in which the English and Canadian decisions are embodied, will prove most useful to the legal profession. A new and complete schedule of forms has been added, which contributes much to the value of the work. The index, usually a weak feature in Canadian law books, is excellent in all particulars. The volume, in fact, supplies a place that has long been felt, and it will prove of great assistance to Division Court clerks and practitioners. The work throughout reflects great credit upon the author, whose learning and wide experience have specially fitted him for the task he has undertaken. The volume is very neatly printed, and the publishers have spared no pains to render its appearance as attractive as possible.—*Toronto Globe.*

(The above have been selected from various notices of the second edition of Mr. Henry O'Brien's *Division Courts Manual*, which was published about the beginning of last month).

NOTES OF CASES.

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

QUEEN'S BENCH.

IN BANCO.

[June 28.

MUTTLEBURY v. KING

Mortgage—Plan—Registration.

M. was owner of the east half of a certain lot of land. In 1872, he employed one S. to draw a plan of a portion of this half-lot, comprising the Village of Moorfield, upon which plan some lots were numbered and others lettered. The land in question was marked on the plan as "The Parsonage Lot," but was neither numbered nor lettered. The plan so marked was never registered. In 1874, M. applied to B., one of the defendants, for a loan of $12,000 on the said half-lot, "reserving thereout lots numbered from 1 to 181, both inclusive, as shewn on a plan made by S. and dated 1872," and during negotiations for the loan M. left a lithographed copy of the plan in B.'s possession, but took no steps to register it. Subsequently, M. altered his plan by running a street through lots 106 to 115. and transferred the number 106 to the Parsonage Lot. The date of the plan remained as 1872, and M. then registered it in its altered state. In 1876, M. applied to the plaintiff for a loan of $600 upon "Lot 106, or the Parsonage Lot." An abstract was obtained by the plaintiff from the Registrar of the North Riding of Wellington, from which abstract the prior mortgage from M. to B. was omitted, the registrar considering that inasmuch as lots 1 to 108 inclusive were excepted from B.'s mortgage, the property in question was not affected by it. A mortgage was then made by M. to the plaintiff. In ejectment by the plaintiff against B.:

Held, That the plaintiff's title must fail (1) That no obligation was cast upon B. under the Registry Laws, or otherwise, to register the plan, which was only referred to in describing the reservations from his mortgage.

(2) That B.'s title was complete by registration of his mortgage on the Township Lot.

(3) And that if, from any cause, the exception or reservation from the property mentioned in B.'s mortgage proved abortive or ineffectual, B. was entitled to the excepted portion also.

C. Robinson, Q.C. and *A. C. Galt*, for plaintiff.

J. K. Kerr, Q.C., *contra.*

OHLEMACHER v. BROWN.

Foreign judgment—Foreign discharge in bankruptcy—Evidence.

Plaintiff sued on a foreign judgment rendered against defendant. Defendant pleaded

never indebted and never served with proceedings in foreign court. During the progress of this suit defendant obtained a discharge in bankruptcy in the District Court for the Northern District of Ohio, and at the trial obtained leave to plead the foreign discharge as a plea of *puis darrein continuance*. Defendant proved that such a discharge would release defendant of all his debts (proveable against his estate) in the United States, including the debt to plaintiff. Plaintiff's only evidence in reply was that defendant resided in Canada for two years previous to the discharge, and that he (plaintiff) had no notice of the defendant's bankruptcy in the United States, and he contended that, as the Bankruptcy Act required the bankrupt to reside, or carry on business in the State where he filed his petition, and as defendant resided in Canada, the Court in Ohio had no jurisdiction to grant a discharge, and that the one produced was therefore bad. *Held*, that the discharge in bankruptcy produced was a bar to plaintiff's action. *Held*, also, that it was not necessary for defendant to prove that all proper steps were taken to obtain the discharge, but that the discharge *prima facie* proved that every step before the discharge had been regularly taken.

J. B. Clarke, for plaintiff.
Caswell, contra.

Hayes v. Union Mutual Life Assurance Company.

Insurance—Misstatement as to age of insured—Burden of proof—Voluntary admissions separable from others.

One H. had an insurance on his life and died. The plaintiff, his administratrix, in the proofs of death, misstated the age of the insured, which misstatement, if true, would have avoided the policy. In an action on the policy defendants pleaded misrepresentation as to age of insured, and at the trial plaintiff swore that she had no grounds for making this misstatement, except that she had been misled into making it by entries in an old book in the insured's possession at the time of his death.

Held, that she was not bound by this misstatement, but could, on her own evidence, explain it away, and that the burden of proof was not so shifted as to compel her to shew the true age of the insured to be as stated in the application, but that defendants were bound to prove the misrepresentation. *Held*, also, that the conditions of the policy not requiring any proofs of age at the time of death, the plaintiff's admission as to age being voluntarily made, could be separated from the other statements in the proofs which were required by the conditions, and that defendants were not entitled to have all the statements in the proofs treated as one admission.

Bethune, Q.C., for plaintiff.
W. Mulock, contra.

Barnes v. Bellamy.

Landlord and tenant—Eviction by title paramount.

Prior to the lease of the premises for the rent of which this action was brought, the plaintiff's predecessor in title had mortgaged the same, and the assignee of the mortgagee brought ejectment against defendant, the tenant of the premises, who thereupon gave up possession. *Held*, that this amounted to an eviction, and that plaintiff could only recover the rent up to the date of the writ, which must be looked upon as the date of the eviction.

Osler, Q. C., for plaintiff.
F. B. Robertson, contra.

Bellamy v. Barnes.

Lease—Covenant for quiet enjoyment—Ejectment by title paramount.

Defendant having executed a lease of certain premises to plaintiff, containing the ordinary statutory covenant for quiet enjoyment, plaintiff was subsequently ejected by the assignee of mortgages thereon created prior to the lease, and thereupon brought an action against defendant for breach of the covenant in question; but, *Held*, that he could not recover, as the assignee of the mortgages was not a person "claiming by, from or under" defendant, but by from and under the defendant's predecessor in title.

F. B. Robertson, for plaintiff.
Osler, Q. C., *contra.*

Coleman et al. v. Moore et al.

Trust deed in favour of Church—Provision for appointment of new trustees—Ejectment—Misjoinder—Right of surviving trustee to recover. R. S. O., ch. 216.

Land was conveyed to the plaintiff Coleman and four others, as 'the trustees of the congregation of the Independent Methodist Episcopal Church," with a provision, in case of death or ceasing to be a member of the said church, for the appointment of a successor or successors. The congregation acting under the directions of what was called the "Book of Discipline," which provided for an annual election of trustees, elected annually trustees for the property in question, and at one of these elections among others elected the plaintiffs. One of the original trustees under the deed died, and all the others, except the plaintiff Coleman, ceased to be members of the Church. Subsequently, three of the defendants accepted a lease of the property from Coleman. In ejectment, *Held*, that the co-plaintiffs of Coleman had been improperly joined in the action, for that having been elected trustees under the "Book of Discipline" and not under the provisions of the trust deed in place of trustees dying or ceasing to be members of the church, they were illegally elected and never became trustees, and their names were therefore ordered to be struck out of the record. *Held*, also, that Coleman was entitled to recover against the defendants, who entered under the lease from him, as they could not deny his title, and there was sufficient evidence of a disclaimer on their part, so as to dispense with a notice to quit. *Held*, also, that if the deed did not create the grantees, by virtue of R. S.O. ch. 216, a corporation, and they were to be regarded merely as natural persons, the legal estate was in Coleman and the other three surviving grantees under the deed, and Coleman was entitled to recover an undivided fourth part of the land; but that if the grantees were created a corporation, then the legal estate was in the corporation or in the trustees in a corporate capacity, and Coleman was the only corporator, the other four having either died or ceased to be corporators by reason of their having ceased to be members of the Church.

Objection having been made on the argument for the first time, that the action should have been brought in the corporate name, or at any rate under the designation in the deed, the court allowed the record to be amended in this respect and discharged the rule to set aside the plaintiff's verdict.

Irving, Q. C., for plaintiffs.

Bethune, Q. C., *contra*.

Robinet v. Pickering.

Dower—Report of Commissioners binding. R. S. O. ch. 55.

The husband of demandant, being possessed of the land in question, a 100 acre lot, conveyed it to S., 20 acres being at the time cleared. After alienation, some 70 acres more were cleared by the purchaser and his assigns. Defendant having admitted demandant's claim, the sheriff appointed commissioners who awarded demandant 7 acres of the cleared and 4 of the uncleared land. The land in question and in the neighbourhood had greatly increased in value, by reason of clearing, fencing, and buildings erected upon it, but no portion of the buildings was awarded to demandant. It appeared that the commissioners had considered the clearing of land a permanent improvement under sec. 35, subs. 3, ch. 55, R. S. O., but that they did not award any portion of the land cleared by the purchaser to demandant. *Held*, that the report of the commissioners was binding, as it was right on its face, and as it did not state how they had arrived at their award, the question of permanent improvements could not be discussed, and the court refused to refer the matter back, or to make any inquiry of the commissioners.

McMichael, Q. C., & *C. McMichael*, for plaintiff.

Fleming, contra.

Regina v. Clarke.

Conviction for selling liquor without license—Appeal to judge without jury instead of sessions. R. S. O. ch. 75, & ch. 181, secs. 51, 71. 40 Vic. ch. 27, D.

Defendant was convicted for selling li-

quor without license under R. S. O., ch. 181, s. 51, and appealed to the Sessions, which dismissed the appeal on the ground that under sec. 71, it should have been made to the county judge in chambers, without a jury. *Held*, refusing an application for a mandamus to compel the Sessions to try appeal, on the ground that sec. 71, of R. S. O., ch. 181, was *ultra vires* the Ontario legislature, that R. S. O. ch. 75 and ch. 181, sec. 71, constituted the County Judge, sitting in chambers without a jury, a Court of Appeal in such cases, within the meaning of 40 Vic. ch. 27, D.

Blackstock, for the applicant.

Fenton, contra.

Burnham v. Hall, Sheriff.

Action for not arresting under attachment—Tender by Sheriff under attachment—Pleading.

Held, that an action lies against a sheriff for not arresting an attorney against whom an attachment has issued for not handing over, pursuant to order, all deeds, books, papers, &c., in his custody belonging to plaintiff; and that a plea, which stated that on delivery of the attachment to defendant, the attorney delivered to him all deeds, &c., to be by defendant delivered to plaintiff, in pursuance of the order for contempt on which the attachment issued, and that long before the return day, defendant tendered them to plaintiff's attorney who refused to accept them, and that defendant was at all times ready to deliver them to plaintiff, was bad; for that, besides being hardly an answer to one of the counts of the declaration, which was for falsely returning that the attorney could not be found, a statement that the attorney delivered to defendant all deeds, &c., in his custody, might be true as to those then in his hands, and yet not as to all within the scope of the order and attachment; but that plaintiff was entitled to have the body in Court and to get discovery of all deeds, &c.

H. Cameron, Q. C., for plaintiff.

C. Robinson, Q. C., *contra*

McDonald v. McDonald et al.

Deed—Delivery—Purchase for value without notice—Registry laws.

One M. prepared a deed of the land in question, professing to be executed in plaintiff's favour, and delivered by him and requested one C. to witness his execution of it, which C. did. He then sent for one V. and procured C. to swear to the affidavit of execution before V. in the usual form for registry. Subsequently, in a moment of anger, M. tore up the deed, the pieces of which plaintiff subsequently collected and stitched together.

Held, that the deed was executed and delivered, so as to vest the land in plaintiff.

After tearing up the deed, M. willed one half of the land to his nephew, and the remaining half to others, and the nephew conveyed the whole lot to a purchaser for value, without notice, both will and deed to this purchaser being registered before the plaintiff's deed. *Held*, that the registration of the will and of the conveyance, prevailed over plaintiff's unregistered deed, as to the moiety conveyed by the nephew; but that plaintiff's deed having been subsequently registered and no conveyance appearing to have been executed or registered of the other moiety devised, plaintiff was entitled to hold this moiety under the deed from M.

H. J. Scott, for plaintiff.

Ferguson, Q. C., *contra.*

The Corporation of Chatham v. Corporation of Sombra.

Drainage Works—R. S. O. ch. 174, ss. 535, 539, 540.

Where drainage works have been proceeded with under R. S. O., ch. 174, sec. 535, *et seq.*, report made, appealed from and arbitration held, the township to be benefitted must pass a by-law under sec. 250, to raise the sum awarded against them, and cannot refuse payment until the work is completed.

There is no remedy provided by the Act for the case of improperly or insufficiently executed drainage work.

McMichael, Q. C., for plaintiffs.

Falconbridge, contra.

Hewitt v. Ontario Copper Lightning Rod Company.

Master and servant—Enticing servant to desert employment—Measure of damages.

Plaintiff sued defendants for enticing and procuring certain servants of plaintiff to desert his service. The evidence at the trial established that the parties in question were in plaintiff's service, and with the exception of one of them that they were induced by defendant's manager to leave the same: *Held*, following *Lumley* v. *Gye*, 2 E. & B., 216, that plaintiff was entitled to recover, and that the measure of damages was not confined to the loss of services, but that they were justified in giving ample compensation for all damages resulting from the wrongful act.

Plaintiff while objecting to one of the parties going, said he did not know that he would trouble him if he did leave, but he did not consent to his so doing. *Held*, that this did not in law amount to a permission to leave his service.

Hardy, Q. C., for plaintiff.
Osler, Q. C., *contra*.

In Re Thomas Haisley and Margaret Lundy and others, executrix and executors of Wm. Lundy.

Landlord and Tenant—Covenant to pay for building — Construction of — Assignee of chose in action. R. S. O., ch. 116, s. 7.

Lessor covenanted with lessee that he would at the expiration of the term, pay said lessee, his heirs or assigns, a valuation for his buildings on the land demised; *Held*, Cameron, J., dissenting, that the covenant was neither wholly spent in the event of destruction by fire of the building then in existence, nor necessarily limited to the then value of the existing building, but that the increased value at the expiration of the term could be claimed against the landlord.

Held, also, affirming the judgment of Wilson, C. J., that the assignee of the term, and of all claims under the covenants in the lease, could sue in his own name the covenantor's executors, under R. S. O., ch. 116, sec. 7, as the assignee of a chose in action.

Bethune, Q. C., and *Dixon* for plaintiff.
Robinson, Q.C., *contra*.

Moore v. Kuntz.

Action for goods bargained and sold—Period of credit not expired.

An action for goods bargained and sold cannot be brought until the period of credit has expired.

Osler, Q.C., and *Bowlby*, for plaintiff.
Durand, *contra*.

Hagarty v. Great Wes. Railway Co.

Action for false imprisonment—Reasonable and probable cause.

A spike having been found driven in between the rails on defendants' line of railway, plaintiff was suspected of being the guilty party, and was accordingly arrested. The evidence against him was that he had been seen, on the day the act was believed to have been committed, lounging about the railway bridge and track, early in the afternoon, for two or three hours, and that one of his boots corresponded with the footmarks about the place. The plaintiff having been acquitted, brought an action against the defendants, and the jury having found in his favour and awarded him damages, the court considering the insufficient nature of the evidence against him, declined to interfere with their verdict.

Bethune, Q. C., for plaintiff.
Irving, Q. C., *contra*.

Picken v. Victoria Railway Company.

Interpleader — Attaching orders — Adverse claims.

In an action brought by an assignee in insolvency on an undisputed claim due insolvent, defendants applied for interpleader as between the assignee and several creditors of insolvent, who had taken garnishment proceedings anterior to the insolvency.

Held, that defendants should have had these proceedings disposed of in the courts in which they originated, instead of making this application, which was therefore refused.

Aylesworth, for plaintiff.
Mulock, *Ritchie*, *Holman and Bull*, contra.

Donaldson v. Smith.

Sale of goods—Implied warranty of title.

R., a merchant at M., having obtained advances from a bank there on a quantity of brandy held by him, employed H., a broker in T., to procure advances for him on the same brandy, in order to enable him to pay off the bank. Application was made to the defendant, and after defendant had had the brandy tested by three merchants, of whom L., of the firm of L. & C., was one, he made advances upon, or rather indorsed R.'s paper to a certain extent on account of it. In order that the brandy might be tested it was sent to T., and, when the bank had been satisfied, the brandy was stored in defendant's name. Before the advance, R. & H., and, after the advance, defendant attempted to sell the brandy, which was finally disposed of to L. & C., who afterwards went into insolvency, plaintiff becoming their assignee.

L. & C. insisted that they bought the brandy from the defendant, claiming, as owners, the right to sell it. It was afterwards seized and confiscated for non-payment of duties.

L. & C. were compelled to give up the brandy in their possession, and to refund the moneys they had received from other parties to whom they had sold portions of it.

Plaintiff, as assignee of L. & C., sued the defendant on the implied warranty of title, and defendant denied that he ever sold as owner, contending that his true position as pledgee was well known to L. & C., as also H., and that H., and not he, negotiated the sale.

On this point the evidence was very contradictory, H. having made out and delivered bought and sold notes, as between R. and L. & C., as also an invoice between the same parties after the quantity of brandy had been determined, and he received a commission from R. on the sale.

Defendant, who had received a commission for indorsing R.'s paper, also received from him a commission for guaranteeing and indorsing L. & C.'s paper.

Defendant collected the money as it became due, retired the notes of R. indorsed by himself as they matured, and remitted the balance, after deducting his commission, to R.

There was no express warranty of title.

Held, that a sale by a person professing to be the owner, and being able to transfer possession, was an implied warranty of title.

Held, also, Armour, J., dissenting, that in this case the true position of defendant was known to all parties; that L. & C. knew that the brandy belonged to R., and that defendant only had it in pledge, and that therefore they did not buy it on the warranty or on the faith of defendant's being the owner; that they knew what title defendant had, and that in fact he had all the title he professed to have; and that his negotiating the sale, if he did so, as alleged, did not, with the knowledge L. & C. had of his true position, involve a warranty of title in himself or a representation of ownership.

Per Armour, J.—The verbal evidence shewed that defendant had claimed and asserted absolute ownership, and was therefore liable for a breach of warranty of title, and if L. & C. knew his true position, what he did was a warranty of title to them whether he was owner or not.

Masson v. Robertson et al.

Award under railway act—Action on bond for purchase money—Evidence—Notice of award—Adding plea.

A railway requiring the immediate possession of plaintiff's land, defendants gave their bond to the plaintiff for the purchase money thereof, conditioned to be void upon payment or deposit in Court, under the provisions of the Railway Act, of the amount of the purchase money to be ascertained by arbitration proceedings then pending under said Act, within one month from the making of the award.

Held.—(1) That an award having in fact been made, its merits could not be tried in an action upon the bond.

(2) That the award was not necessarily vitiated by reason of the arbitrators having allowed compensation for increased risk of loss by fire.

(3.) That in such an action the defendants could not examine one of the arbitra-

tors to show of what items the amount of the award was composed.

(4.) That it is not necessary before bringing such an action that a month should elapse after a written notice from one of the arbitrators to the defendants, of the making of the award, as sub-sec. 19, sec. 20, cap. 165, R. S. O. applies merely to the right of appeal from the award.

No suggestion being made as to any defect in title, and the plaintiff's counsel offering at once to deliver a conveyance of the lands to the company, the Court refused to allow a plea to be added, denying a tender of conveyance before action.

Marsh, for plaintiff.

H. Cameron, Q.C., *contra*.

Graham v. Crozier.

Libel—Privileged communication.

Defendant wrote to R. who was M.P. for the county in which the parties resided, requesting him to have plaintiff, a postmaster, removed from office, as his "roguery" was unbearable in the locality, and stating that he (defendant) could not trust his bank-book through the Post Office lest plaintiff should go to the bank and draw or keep the money: that he had sent a declaration to the Post Office Department at Ottawa to have him removed; and demanding to know what the country would "turn to" if the government kept such men in office; and that if people could not send their money through the Post Office, they had better rise in rebellion at once. Defendant then wound up his letter with a demand upon R., as their representative, to have the "scoundrel" removed: that he had broken up seven or eight money-letters and used the money for his own purpose.

Held, that the judge at the trial had rightly ruled that the occasion of writing the letter was not privileged; and that, on the authority of *Frier* v *Kinnersley*, 15 C. B. N. S. 430, the violence of the language excluded it from the rule of privileged communications.

J. K. Kerr, Q.C., for plaintiff.

McMichael, Q.C., *contra*.

COMMON PLEAS.

IN BANCO.

[June 27.

Ontario Lightning Rod Company v. Hewitt.

Libel—Damages.

In an action of libel, the libels complained of were contained in certain publications issued by the defendant, which stated that the plaintiffs, who were manufacturers of lightning rods, were charging therefor from 37 cents to 42½ cents per foot, whereas the defendant could furnish the same, and even better, from 7 cents to 10 cents per foot, and that, in so doing, the defendant, who had a thorough knowledge of the lightning rod business, felt it to be an imposition practised on the public; and the declaration averred that, in consequence of the alleged libels, the plaintiffs were greatly injured in their credit and reputation as a trading and manufacturing company, and lost many customers, and were otherwise greatly injured in their business. It appeared that the plaintiffs, for the prices charged, not only furnished the rods, but put them up, while the evidence shewed, and the jury expressly found that the statement made by the defendant, and intended to convey the impression that for the prices stated by him, he could furnish the article in the same manner as the plaintiffs, was untrue, and was made with the intent to injure the plaintiffs in their business.

Held, that the action was maintainable.

In this case the jury found the damages sustained by said plaintiffs were $4,000.

Held, that the damages were excessive, and a new trial was ordered, unless the plaintiffs consented to reduce the damages to $1,000.

McCarthy, Q. C., and *Osler*, Q. C., for the plaintiffs.

Robinson, Q. C., and *Wilkes* (Brantford), for the defendant.

O'Neil v. Ottawa Agricultural Insurance Company.

Insurance—Title—Ownership—Incumbrances—Distance of buildings—Number of stoves.

To an action on a policy of insurance the

defendants set up that, in the application for insurance, the insured, in answer to the question in the application, did he own the land in his own right, or if not, who did, said "Yes, in fee simple." It appeared that he had a deed in fee simple for the land, but had not at the time paid the price thereof.

Held, that the answer was not untrue.

A further defence set up was that, contrary to a condition of the policy, when the insured's interest in the property was other than the entire unconditional and sole ownership thereof for his use and benefit, it must be so represented to the company in the application, otherwise the policy would be void, and it was alleged that other persons were jointly interested in the property, and that he did not declare the same, whereby the policy was void. In the application the insured was not asked to state the above facts, although in the application the insured consented to be bound by the conditions of the policy.

Held, that to allow defendants to set up this defence would be a fraud on the plaintiff, and plaintiff was allowed to reply fraud, unless the defendants consented to have the plea struck out from the record.

A further defence set up was that by one of the conditions of the policy, if the insured's interest in the property should be changed in any manner, whether by act of the parties or by operation of law, the policy should be void, and that after the issuing of the policy the insured mortgaged the property, whereby the insured's interest became changed, and the policy thereby avoided.

Held, that this plea, which was proved, constituted a good defence.

The defendants also set up the omission to state on diagram the existence of two buildings within 500 feet of insured premises.

Held, that the diagram was part of the application which was required to be true, and the omission therefore constituted a good defence.

Held, also, that the statement in the diagram of a building being 190 feet, instead of 178 feet, was so slight a difference as to be immaterial, and the jury having found in plaintiff's favour, the Court would not interfere.

Held, also, that an untrue answer in the application as to the number of stoves in the insured premises, namely, that there was only one, whereas there were two, avoided the policy.

The policy in this case was issued on 2nd May, 1876, being before the coming into force of the Fire Policy Act of 1876. *Held*, that the policy did not come within the Act; and that even if it was after the Lieutenant-Governor's proclamation provided for by the Act of 1875, (but of this there was no evidence), it would only enable the Court to say what conditions were just and reasonable.

McCarthy, Q. C., for the plaintiff.

W. Mulock, for the defendants.

Page v. Austin.

Sci. fa.—Transfer of stock as collateral security—Necessity for entries on books of company.

This was an action of *sci. fa.* by plaintiff, a judgment creditor of the Ontario Wood Pavement Company, incorporated under 27 & 28 Vict. ch. 23, where an execution against them had been returned *nulla bona*, against the defendant as a shareholder of the company on his unpaid stock. It appeared that one A., who had subscribed for stock in the company, transferred the stock to defendant as collateral security for a debt which A. owed him, but the deed of transfer was on its face absolute, and there was nothing in the books of the company to shew it was otherwise.

Held, that defendant was liable; that the fact of defendant not being the absolute owner should have appeared on the books of the company.

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

Maclennan, Q. C., for the defendant.

Anderson et al. v. Matthews.

Negligence — New trial for smallness of damages.

Action against defendant by plaintiffs, husband and wife, for damages sustained by them by the upsetting of a buggy, in which the plaintiffs were driving, by reason

of its coming in contact with a large stone, negligently left by the defendant on the public highway. In the first two counts of the declaration, the female plaintiff claimed damages for personal injuries sustained by her, and in the last two counts the husband sued for the loss of the comfort and services of his wife, expenses incurred in nursing and attendance, and for injuries to the horse and buggy. The evidence shewed that the wife was very seriously injured, and that the buggy was injured to the amount of $30.00, and that he incurred the losses and expenses set out in the declaration. The jury found the following verdict :—Verdict for plaintiffs on 1st and 2nd counts, with $130 damages. No damages on the last two counts.

The Court refused to grant a new trial alone for the smallness of damages on the first two counts, but being of opinion that there must be a new trial on the last two counts, as the husband was clearly entitled to damages thereunder, and as no additional expense would thereby be incurred, the new trial was granted on the whole case.

H. J. Scott for the plaintiff.

McCarthy, Q. C., for the defendant.

FITCH v. MCCRIMMON ET AL.

Partnership and individual debts—Appropriation of payments.

The defendants, McC. & McL. had been partners, and had purchased goods from the plaintiff to the amount of $442.85 ; afterwards they dissolved partnership, the defendant McC. continuing the business and taking over the assets, which included a considerable portion of the said goods. He made further purchases from the plaintiff, and from time to time paid him sums of money, and the question was as to the appropriation of these payments. The defendant McL. contended that they should be applied in payment of the balance due on the partnership debt, and the plaintiff to McC.'s individual debt. The jury found a verdict for the defendant.

A new trial was granted to enable the defendant, McL., to explain the transaction between McC. and himself, McC. having stated that McL. expressly agreed to assume the payment of the debt now sued for.

J. A. Paterson for the plaintiff.

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

HUNTSMAN v. LYND.

Ejectment—Patent from the Crown—General and particular description—Falsa demonstratio.

Ejectment to recover a piece of land claimed by the plaintiff as part of the south half of lot 23, in the 10th concession of the Township of Clinton, as being included in the patent from the Crown of this lot. The defendant claimed that this portion had never been so granted, but was ungranted land lying between the western boundary of lot 23 and the township line. According to the plans in the Crown Lands Department, and other evidence produced, lot 23 appeared to extend to the township line, and there was no evidence of any work on the ground inconsistent therewith ; it also appeared that the Government had never made any claim to this land as ungranted land, but had always assumed it to have been included in the patent of lot 23. In the patent there was a general grant of the lot as lot 23, and also by metes and bounds.

Held, that the general grant, which would accord with the plans, &c., must govern, and that the particular description, which was inconsistent therewith, must be rejected as *falsa demonstratio*.

McClive for the plaintiff.

Bethune, Q. C., for the defendant.

CRANDELL QUI TAM v. NOTT.

Qui tam action—Verdict against evidence—New trial—Property qualification—Reception of evidence—Misdirection.

In a *qui tam* action against defendant for acting as a justice of the peace without sufficient property qualification, where the jury find in favour of the defendant, a new trial will not be granted because the verdict is against the weight of evidence.

In a *rule nisi* for a new trial for the reception of improper evidence, it is not sufficient merely to state that improper evidence has been received, but the evidence ob-

jected to must be specified. In this case, however, no such objection appeared to have been taken at the trial.

The defendant was called as a witness, and gave evidence as to the value of the property, and the learned judge, in charging the jury, told them, in referring thereto, that the owner of property was generally the best judge of its value.

Held, no misdirection.

The defendant had deeded certain property to his wife, but of which he claimed to be in reality the owner, and to have always had possession, and to have been assessed therefor, and in receipt of the rents and profits, and that it had only been granted to the wife for a purpose; but there was no declaration of trust in favour of the husband.

Semble, that the defendant could not qualify thereon.

It was objected that certain other property on which the defendant qualified was owned by defendant and his son, but held under the circumstances as set out in the case that the objection was not tenable.

Bigelow for the plaintiff.

A. G. M. Spragge for the defendant.

Haldan v. Great Western Railway Company.

Railway—Accident—Negligence—Nonsuit.

The plaintiff, who was late for a train, attempted to get on to it as it was moving out of the station, and for such purpose was running along the platform by the side of the train, holding on to the iron railing of one of the cars, and after he had gone a certain distance, and as he was attempting to jump on to the car, he struck against a baggage truck which was on the platform, and was thrown under the train, and received an injury to his leg which rendered amputation necessary. In an action by plaintiff against defendants for the damages he had sustained.

Held, on the evidence more fully set out on the case, that the defendants were not liable.

Donovan for the plaintiff.

McMichael, Q. C., for the defendants.

McCall v. Higgins.

Temporary bridge over highway—Sufficiency of—Misdirection.

The defendants were contractors with the Dominion Government for the performance of certain work on the Welland Canal, a Government work. In the execution of the contract it became necessary to cut away the public road, and the contract provided that before such public road was cut away, or in any way disturbed, the contractors must provide another and satisfactory means for public travel, and defendants were to be held liable for performing everything connected with the crossing in such a condition that it could safely be used, The defendants erected a bridge over the road so cut away, but, as the plaintiff contended, not sufficient for the purpose, in consequence of which, the plaintiff was injured. The learned judge, at the trial, told the jury that the defendants were only bound to provide a temporary structure of the like nature which a municipality would be warranted in putting up while a permanent bridge, which had been carried away, was being put up and rebuilt.

Held, that there was misdirection, and a new trial must be granted; that the jury should have been told that, although such temporary bridge need not be constructed with the same care and finish as a permanent bridge, yet equally therewith it must answer its intended purpose, and, if substituted for a highway, must be constructed and maintained so as to be a safe and strong roadway for the public travel, and the jury must be asked whether at the time of the accident it was of that character.

J. A. Miller for the plaintiff.

Bethune, Q. C., for the defendant.

Gibbs v. Dominion Bank.

Warehouse receipt—continuing security—Term—Money had and received.

The defendants advanced $2,250 on the security of a warehouse receipt for grain purchased by a firm of grain buyers, F. & McL., who were in reality purchasing for the plaintiffs, though, so far as appeared, on their own behalf. F. & McL. subsequently paid $1,920, which they received from

plaintiffs, into the bank on account of this advance, leaving a balance of $330 still due. The defendants were notified by plaintiffs that they were the owners of the grain, but in disregard of such notice, sold the grain, contending that the warehouse receipt was a continuing security for F. & McL.'s general indebtedness to the bank, which then exceeded $2,250. The plaintiff having brought trover,

Held, that the evidence shewed that the warehouse receipt was not such continuing security, but was only to be security for the amount actually advanced upon it, and that trover would lie for selling more grain than was sufficient to satisfy the amount so due the bank; that in any event an action for money had and received would lie, and that an amendment, if it was necessary, adding such a count would now be allowed.

McMichael, Q. C., for the plaintiffs.

Robinson, Q. C., and *W. Mulock* for the defendants.

MAY v. STANDARD INSURANCE COMPANY.

Insurance—Seizure of goods—Avoidance of policy—Reasonable conditions.

A condition of a policy of insurance provided that if the property insured should be levied upon or taken in possession or custody under any legal process, or the title be disputed in any proceeding at law or in equity, the policy should cease to be binding on the company. The insured property, which consisted of goods and chattels, was mortgaged by K., the assured, to the plaintiff. An execution against goods issued against K., who was in actual possession of the goods, under which the sheriff made a seizure, but on obtaining a bond from K. for their re-delivery he withdrew from possession.

Held, that that part of the condition, which provided for the goods being levied on or taken under execution, &c., was just and reasonable, and that what took place here constituted a valid seizure within the meaning of the condition.

Semble, that the latter part of the condition, which referred to title being disputed, &c., was unjust and unreasonable.

McMichael, Q. C., for the plaintiff.

Bethune, Q. C., for the defendants.

DUNBAR v. LARKIN.

Contract—Damages.

A contract was entered into between the plaintiff and defendant, whereby it was agreed that if defendant should obtain from the Department of Public Works the contract for doing the work on section one of the Welland Canal enlargement, the defendant was to have certain dredging connected therewith at prices agreed upon. The plaintiff bound himself to perform the work, and upon the faith thereof, the defendant put in a tender for the contract. The defendant obtained the contract, though not at the tender prices, but on his agreeing to take it at the prices named in the lowest tender. The defendant then refused to give plaintiff the contract for the dredging, but gave it to another at prices less than the plaintiff was to have, and he entered upon the performance of the work, and had performed a large portion thereof. In an action by plaintiff against defendant for breach of the contract,

Held, that the defendant was liable.

Held, also, that the plaintiff was not bound to wait until the completion of the entire contract before he could sue for damages; and that on the evidence, set out in the case, the damages were ascertainable, which in this case the majority of the Court found to be $5,000.

Per WILSON, C. J., dissenting as to the amount of damages, that they should be $25,000.

Ferguson, Q. C., for the plaintiff.

Robinson, Q. C., and *J. A. Miller* (St. Catharines), for the defendant.

ANGLIN v. NICKLE ET AL.

Railway—Land taken for railway purposes—Action on bond to pay amount awarded—What covered by bond—Freehold and leasehold lands—Description—Costs—Execution by two of three arbitrators—Sufficiency—Tender of conveyance—Necessity for.

This was an action on a bond, given by the defendants to the plaintiff which, after reciting the fact of a notice having been served on the plaintiff by the Kingston and Pembroke Railway Company, requiring

certain lands of the plaintiff therein fully specified for the purposes of the railway and offering a named sum as compensation which the plaintiff had refused, was conditioned for the payment of the sum which should be found due plaintiff by the award to be made under the Railway Act of 1868, for damage sustained by plaintiff and compensation due him by reason of the railway company taking and retaining possession of his land, and for interest and costs lawfully payable to the plaintiff. The plaintiff was awarded a certain sum for his freehold land, and also an annual sum for his leasehold interest.

Held, that the bond would cover the first named sum, but not, under the circumstances of the case, the latter.

Held also, that the amount awarded in this case was less than the amount tendered in the notice served, and therefore defendants were entitled to deduct from the compensation awarded the costs of the reference and award.

In the award the freehold land of the plaintiff was described "as the freehold portion of his land taken."

Held, that this was a sufficient description as it could be identified by the notice, and also by the plan filed.

The reference was before three arbitrators and the award was executed by two only of them. It appeared that, at a meeting of the arbitrators, a rough sketch of the award was prepared and read over to them and was agreed to by two and dissented from by the third, and on the next day without any further meeting of the arbitrators, the formal award on the terms of the draft was drawn up and executed by the two assenting arbitrators.

Held, that under sec. 17 of the Act of 1868, the award was invalid; and *semble* it was so apart from that Act.

Held also, that before suing for the compensation awarded, plaintiff should have tendered a conveyance or should have averred his readiness and willingness to do so.

Macdonald (of Kingston) for the plaintiff.
Robinson, Q. C., for the defendants.

Evans v. Ross.

Insolvency—Action to recover goods sold contrary to secs. 133, 134, *of the Insolvent Act.*

This was an action by plaintiff as assignee in insolvency of W. & Co. to recover certain goods alleged to have been sold or transferred to defendant contrary to secs. 133 and 134 of the Insolvent Act. It appeared that defendant, who was a retail merchant at Port Hope, accepted, for the accommodation of W. & Co., wholesale merchants, at Montreal, a draft for $810.00 at 30 days, which became due on November 18th, 1877, and was protested for non-payment, and on 20th November defendant received notice of dishonour. On that day the defendant went to Montreal, and on the following day procured goods from W. & Co. consisting of two parcels, one of which was of the value of $853.00, and were sold at 6 months' credit. It was arranged that for these goods defendant was either to give his note at 6 months, which W. & Co. were to discount and take up the draft, or they were to allow defendant a discount of 8 per cent. on the goods, and he was to take up the draft himself. The defendant accepted the latter terms and paid the draft. On November 23rd, W. & Co. made an assignment under the provisions of the Insolvent Act to the plaintiff. The jury found that the defendant purchased the goods in good faith, and in the ordinary course of business, and not merely for the purpose of getting his acceptance paid; that he did not know or have probable cause for believing W. & Co. were unable to meet their engagements; and that defendant did not by his purchase obtain an unjust preference.

Held, under these circumstances, the plaintiff could not recover.

Robinson, Q. C., for the plaintiff.
Bethune, Q. C., for the defendant.

Board of Education of Paris v. Citizens Insurance Co. and Investment Co.

Guarantee Co.—Bond of—Liability for default of plaintiffs' treasurer—Payment out of moneys—Auditors—Appropriation of payments.

Action on a guarantee policy for $2,000 against loss or damage by the fraud or dis-

honesty of one D., the plaintiffs' secretary and treasurer, alleging that D. had received certain moneys of the plaintiffs, and fraudulently and dishonestly appropriated the same to his own use. The policy was granted on the faith of the truth of the answers to the questions contained in the guarantee proposal, by one of which it was stated that all moneys would be drawn out from the bank where they were deposited, only by the authority of the Board of Education. The course of dealing here was for the Board to give D. orders for the payment of all accounts, and D. then drew his own cheques for the amounts, the order not being attached thereto nor were they countersigned by any of the board, and there was nothing to prevent D. drawing out as he did the moneys for his own purposes.

Held, that the terms of the guarantee in this respect had not been complied with.

Another of the answers stated that D's cash and securities would be examined and verified by the auditors as required by the statute. It appeared that Paris was not an incorporated town withdrawn from the county.

Held, that the audit should have been by the county auditors, and not by the town auditors as was the case here, and therefore that, in this respect also, the guarantee had not been complied with.

Held also, that the evidence shewed that there had been no proper audit in fact.

There was also a question raised in this case as to the amount of default for which defendants could be liable, and as to the appropriation of certain payments made by D.

Robinson, Q. C., for the plaintiffs.

Fleming (of Brampton) for the defendants.

VACATION COURT.

Vashan v. Corporation of East Hawkesbury.

Municipal corporation—By-law closing up road—Application to quash—Proof of by-law—Private way—Notice—Compensation—Councillor—Interest of.

On an application to quash a township by-law closing up a road, the applicant's affidavit stated that he applied to the township clerk for a certified copy of the by-law, and that in compliance therewith he received the following: "By-law, No. 188, for stopping up and closing the road, &c. Passed 3rd December, 1877;" and after giving its enacting clause stated, "verified—a true copy."

M. Maneely,
Township Clerk.
[Township Seal.

"Made at, &c., this 17th day of Jan., 1878."

Held, by *Osler*, J., that there was sufficient proof of the by-law under sec. 322 of the Municipal Act.

One of the objections was that the road was a private way over one C's farm, and therefore not within the jurisdiction of the council.

Held, that this objection was not now open to the applicant, as it appeared that he had himself treated it as a public highway, and had had C. convicted several times for obstructing it as such.

Another objection was the want of notice, and due publication of the intention to pass the by-law.

Held, on the evidence that this objection was not tenable.

Held, also, following *McArthur* and *Corporation of Southwold*, 3 App. 298, that the deprivation of the use of the road to the applicant, if the by-law had that effect, was a subject for compensation, which need not be provided for in the by-law.

The only persons really interested in the maintenance or closing up of this road were the applicant and C., who was instrumental in having the by-law passed. The township council consisted of five members, of whom C. was one, the concurrent votes of three of whom was necessary to the passing of a by-law. In this case the by-law received three votes, but one of such votes was C.'s.

Held, that the by-law could not be upheld, for that C.'s interest in its passage, which was apart from that of the public, disentitled him from voting.

McMichael, Q.C., for the applicant.

Robinson, Q.C., *contra*.

Hall v. Lamin.

Insolvency—Dissolution of partnership—Subsequent insolvency of continuing partner—Proof of claim of retiring partner—Equitable debt.

Under articles of partnership made between W. and McC. the stock and other partnership property were, on the dissolution thereof, to be divided between the parties in proportion to the amount of capital respectively contributed by them, as appearing by the last stock-taking, less the amount afterwards withdrawn. The partnership was subsequently dissolved, and it was agreed that all the partnership assets should become vested in W., who should collect the debts and pay the liabilities of the firm, and an account should be taken to ascertain the amount payable by either to the other, and in pursuance of such agreement W. conveyed to McC. all his interest in the assets, and was discharged from all the liabilities of the firm. W. had an account taken by an accountant, under which he claimed that a balance was due him, but this was not done in McC.'s presence, and was not admitted by him to be correct, and in fact there was no settlement between the partners. McC. continued to carry on the business on his own behalf, and while so doing became insolvent, and entered into a composition with his creditors, one-half of such composition being secured by a bond given by the defendant to the plaintiff, the assignee in insolvency. The plaintiff claimed that W. was entitled to rank upon the estate for the balance alleged to be due him, and brought an action on the bond for the amount of the composition thereby secured as regards W.'s claim.

Held, by *Osler*, J. that the plaintiff was entitled to recover; that W.'s claim was an equitable debt capable of being ascertained by the Court, and was therefore one for which W. was entitled to rank upon the estate.

Watson, for plaintiff.

J. K. Kerr, Q.C., for the defendant.

CHANCERY.

Proudfoot, V. C.] [May 28.

Courcier v. Courcier.

Infant—Joint tenant—Ouster—Rents and profits.

The general rule in equity that an infant is entitled to treat a person who takes possession of his estate as his bailiff or agent applied in a case where the party in possession was a tenant in common with the infant, although there had never been any ouster or exclusion of the infant, or any denial of his title.

Proudfoot, V. C.] [May 28.

Lucas v. Hamilton.

Trust deed—Power of appointment.

T. C. K., by a deed of 7th April, 1870, conveyed lands to two trustees to and for the sole and absolute use of his wife, C. E. K., for and during the term of her natural life, to and for her own separate use and benefit, or to the use of such person or persons and for such estates and interests as she, notwithstanding her coverture, should by any deed or writing under her hand and seal, or by her last will, appoint. By a deed made two years afterwards, T.C.K. conveyed other lands to the same trustees, upon the same trusts as were set forth in the former deed. One of the trustees having died, and the other having removed from this Province, C.E.K., professing to be acting in pursuance of the power contained in the first-mentioned deed, by a deed made in 1877, appointed the plaintiffs trustees of the lands mentioned in the second deed, to hold upon the trusts of the deed of 1870. By a deed poll made in July, 1878, C.E.K., after reciting these several conveyances appointed the premises by the deed secondly above conveyed to the plaintiffs, upon trust to permit C.E.K. to use, &c., the said lands for life, or until she should require the trustees to sell, and after her death, without such requisition to sell, to permit T.C.K. to use and enjoy the same premises for his life, and, on his request, to sell, &c., and upon the death of T.C.K. and C.E.K. upon trust for their children in such proportions

as C. E. K. should appoint, &c. T. C. K. died.

Held, that under these conveyances the plaintiffs could, on the request of C.E.K., make a good title to the lands in question in fee.

The manner in which deeds had been drawn was such as to invite inquiry as to the power of trustees to convey; and, therefore, although the Court had not any doubt of the effect and operation of the conveyances, it refused, on an investigation of title under the Vendor and Purchaser's Act, to give to either any costs of the inquiry.

CHANCERY CHAMBERS.

Referee.] [June 3.
Proudfoot, V. C.] [June 9.

Re Solicitors.

Sale under power in mortgage—Solicitors' costs—Taxation by subsequent encumbrancer.

First mortgagees sold under a power in their mortgage and paid their solicitor's cost of sale. A subsequent encumbrancer obtained from the Referee, on motion, an order for the taxation of the solicitor's costs.

This order was reversed by Proudfoot, V.C., on appeal, and the objection that the order should have been obtained by petition, not notice of motion, was disallowed.

Referee.] [June 11.
Blake, V.C.] [June 19.

Gzowski v. Beaty.

Deposit for sale—Who entitled to—Subsequent encumbrancer.

A first mortgagee filed his bill for foreclosure, and the official assignee of the insolvent defendant's estate paid into Court $150 to secure a sale. After the sale, the Referee made an order for payment out to the assignee of this deposit.

Bain, for the Imperial Bank, a subsequent encumbrancer, appealed from the order of the Referee, and contended that deposit should be paid to the latter.

McDonald, contra.

Creelman, for the plaintiff.

Blake, V. C., allowed appeal with costs.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR AUGUST, SEPTEMBER, AND OCTOBER, 1878.

Absolute Gift.—See Will, 2.

Acceptance.—See Bills and Notes; Company, 2.

Acquiescence.—See Waste.

Action of Ejectment.—See Limitations, Statute of, 1.

Alimentary Fund.—See Trust, 2.

Amalgamation.—See Company, 1.

Arrestment, See Trust, 2.

Assignment.

1. M., being in debt, assigned all his property to the defendant, and mortgaged some leasehold property to him to enable him to borrow money, all for the purpose of paying off and settling with M.'s creditors, among whom was the plaintiff. The defendant realized large sums from the property, and paid some of the debts, but not the plaintiff's. The plaintiff claimed an account, and that M.'s estate should be administered by the Court, and his and the other debts paid. There was no allegation that plaintiff had had notice of the assignment by M. to the defendant. Demurrer allowed. *Gerard* v. *Lauderdale* (2 Russ. & My. 45) and *Acton* v. *Woodgate* (2 My. & K. 492) approved. *Dictum* of Knight Bruce, V. C., in *Wilding* v. *Richards* (1 Coll. 655), disallowed. *Johns* v. *James*, 8 Ch. D. 744.

2. One G. contracted to build the defendant a ship for £1,375, payment to be made in instalments. G. was short of means, and the defendant made advances to him to enable him to continue the work, so that on October 27, when, by the contract, G. should have been paid only £500, he had been advanced £1,015. On that date G. gave an order to the plaintiff, to whom he owed a large sum, upon the defendant, to pay the plaintiff £100 out of the money "due or to become due" from the defendant to G. The plaintiff gave due notice of this order to the defendant; and the latter acknowledged it, but refused to be bound by it, and continued to make advances to G. up to the full contract price. Without these advances, G. would have been unable to complete his contract with the defendant. The Judi-

cature Act, 1873, § 25, sub-s. 6, provides that a written assignment of a *chose in action* shall be valid, if due written notice be given thereof to the person liable thereon. *Held*, that the assignment was good and binding on the defendant, and he must pay the plaintiff the £100, although he had already paid it to G.—*Brice* v. *Bannister*, 3 Q. B. D. 569.

Bankruptcy.—See Custom.

Bequest.—See Devise; Trust, 3; Will, 1.

Bill of Lading.—See Bills and Notes, 3.

Charter-party, 2.

Bills and Notes.

1. The defendant gave H. his acceptance to an accommodation bill, by writing his name across a paper bearing a bill-stamp, and handing it to him. H. turned out not to need the accommodation, and returned the blank to defendant as he had received it. Defendant threw it into an unlocked drawer in a writing desk in his chambers, to which his clerk and other persons had access, and it was stolen, and the plaintiff received it *bona fide* for value, with the name of one C. regularly filled in. *Held*, that the defendant was not liable on the bill. Estoppel, negligence, and the proximate or effective cause of the fraud discussed.—*Baxendale* v. *Bennett*, 3 Q. B. D. 525.

2. A bill of exchange was drawn in England on a party in Spain, payable to defendant in Spain three months after date. The plaintiff purchased the bill in London from the defendant, who indorsed it to him there. Plaintiff indorsed it to one M., and forwarded it to him in Spain. M. indorsed it to C., and C. indorsed it to O., all in Spain. The bill was presented in Spain May 1, and dishonoured; and notice of the refusal to accept was sent to the plaintiff by M. May 13, and received May 26. Plaintiff gave notice to the defendant May 26. In Spain, no notice of non-acceptance is essential. *Held*, that the plaintiff could recover.—*Horne* v. *Rouquette*, 3 Q. B. D. 514.

3. The plaintiff, a merchant in London, procured a loan of £15,000 of the defendant bank, on the security of a cargo of goods in transit to Monte Video, and of six bills of exchange drawn by him on S., the consignee of the goods in Monte Video, and accepted by the latter. Two of these bills having been paid and two dishonoured, the defendant bank, through its branch in Monte Video, proposed to sell the goods at once, when the plaintiff wrote to the defendant not to sell, and sent his check for £2,500, as additional security, adding that, when the bills were paid, "you will, of course, refund us the £2,500." The defendant drew the check, and, the other two bills having been dishonoured, the defendant took proceedings against S., as a result of which the goods were, with the plaintiff's consent, sold, and the bills, without the plaintiff's knowledge, delivered up to S. cancelled. The proceeds of the goods were insufficient, even with the £2,500, to satisfy the claim. *Held*, that the plaintiff could not recover the £2,500 from the defendant.—*Yglesias* v. *The Mercantile Bank of the River Plate*, 3 C. P. D. 330; c. 3 C. P. D. 60; 12 Am, Law. Rev. 723.

Breach of Trust.—See Trust, 3.

Burden of Proof.—See Insurance, 3.

Cause.—See Negligence.

Charity.—See Will, 4.

Charter-party.

1. A charter-party contained this clause: "Demurrage, if any, at the rate of 20*s.* per hour, except in case of any hands striking work, frosts or floods, revolutions or wars, which may hinder the loading or discharge of the vessel. Dispatch money 10*s.* per hour on any time saved in loading and for discharging." "Steamers are to load and discharge by night as well as by day. *Held*, that, in estimating dispatch money, nine days saved in loading and discharging should be reckoned at twenty-four hours each, and not at twelve.—*Laing* v. *Holloway*, 3 Q. B. D. 437.

2. By a charter-party between the plaintiff and B., it was stipulated that fourteen working days were to be allowed for loading and unloading at the port of discharge, and ten days on demurrage over and above the loading and unloading days, at £35 per day. A full cargo of grain was taken on board, a part of it consigned to the defendants, and lying at the bottom of the hold. The bill of lading endorsed to the defendants contained the words, to be delivered to order, "on paying freight for the said goods, and all other conditions as per charter-party." The consignees of the grain lying above that of defendants failed to get their grain out in season, so that three days' demurrage accrued before defendants' grain was out. *Held*, that the defendants were liable.—*Porteus* v. *Watney*, 3 Q. B. D. 634.

See Freight.

Chose in Action.—See Assignment, 2.

Codicil.—See Devise ; Will 6.

Common Informer.—See Corporation.

Condition.—See Legislation ; Limitations, Statute of, 2.

Consideration.

B. lent L. £1,328, to enable L. to settle betting debts already incurred, and took two promissory notes. L. went into bankruptcy. *Held*, that the claim could be proved, the debt not being for an "illegal consideration," by virtue of being for money "knowingly lent or advanced for gaming or betting," within the meaning of 5 & 6 Will. IV. c. 41, § 1.—*Ex parte Pyke. In re Lister*, 8 Ch. D. 754.

See Contract, 1, 2.

Construction.—See Landlord and Tenant ; Statute ; Will. 1, 5, 6.

Consul.—See Jurisdiction.

Contract.

1. The plaintiff was in a position of trust towards the E. railway company, having been employed by it to give advice as to repairing some ships. The defendants agreed to pay the plaintiff a commission, partly for superintending the repairs, which had been awarded to them, and partly as the jury found, for using his influence with the E. company to get their bid accepted. The jury also found that the agreement with the defendants was calculated to bias his mind ; but that it in fact did not, and that his advice was equally for the benefit of the company, and that the company was ignorant of the agreement. *Held*, that the consideration of the contract for a commission was corrupt, and the plaintiff could not recover.—*Harrington* v. *Victoria Graving Dock Co.*, 3 Q. B. D., 549.

2. In October, 1869, the plaintiff made an arrangement with the agent of the defendant to supply the latter with coal-waggons on certain terms. After the agreement was made, the plaintiff agreed to give the agent a gratuity for each waggon supplied. This was done, as the plaintiff said, with a view to future business. In December, before this agreement was executed, it was supplanted by another between the same parties, which proved much less favourable to the defendant than the other would have been. Pollock, B., directed the jury that a commission to an agent, though improper, was not necessarily fraudulent ; and, in order to affect the contract, it must have been intended by the giver to corrupt the agent, and the latter must have been influenced by it. On a rule *nisi*, a new trial was ordered for misdirection If a party with whom an agent is negotiating for another agrees to give, or does give, the agent a secret gratuity, and that gratuity influences the agent's mind, directly or indirectly, the contract is vitiated. The direction of Pollock, B., did not make it clear that, though the gratuity was given with reference to the first contract only, it might yet have influenced the agent with reference to the second.—*Smith* v. *Sorby*, 3 Q. B. D. 552. Note.

3. H. wrote to W., offering his entire freehold for £37,500, or a portion of it for £34,-500, and in a postscript added, that he reserved the right to the new materials used in rebuilding a house on the land, and the fixtures. W. replied, accepting the terms, and agreeing to pay the £37,500, "subject to the title being approved by our solicitors." Subsequently W. insisted that he must be allowed to pay in instalments. This was agreed to. Subsequently W.'s solicitor left with H.'s solicitor a written agreement of the terms of payment, headed "Proposal by H. for purchase of the M. estate." This was verbally accepted, and H. was to have his counsel prepare a formal contract ; but none was ever made. H. subsequently declined to perform, and W. brought suit for specific performance. *Held*, that the two letters did not form a complete contract ; the phrase, "subject to the title being approved by our solicitors," being a new and material term not accepted by the other party. It amounted to something more than merely what the law would imply.—*Hussey* v. *Horne-Payne*, 8 Ch. D. 670.

Conversion.—See Innkeeper.

Copyright.—See Trade-mark.

Corporation.

A corporation cannot recover a penalty, under a statute which provides that a penalty is recoverable "by the person or persons who shall inform and sue for the same."—*The Guardians of the Poor, &c.* v. *Franklin.*

Co-Trustee.—See Trust, 1, 3.

Covenant.—See Landlord and Tenant.

Creditor.—See Assignment, 1.

Custom.

By agreement, dated August 21, 1877, B. hired a piano of H. for £15 a year, payable monthly. At the end of three years, if the

payments had been all made, the piano was to become the property of B. But if he failed to pay a monthly instalment, or if B. became bankrupt, or insolvent, or died within the three years, H. should have the right to take the property at once, without paying any thing on account of what had been paid. December 11, 1877, B. filed a petition in bankruptcy, and H. removed the piano; but it was claimed by the trustee. There was no special mark on the piano indicating that it was B.'s. There was conclusive evidence of the existence of a custom to let pianos in this manner. *Held*, on the strength of the custom, that the piano was the property of H., and the trustee had no claim to it.—*In re Blanshard. Ex parte Hattersley*, 8 Ch. 601.

Debt.—See Assignment, 2.

Delay.—See Bills and Notes.

Demurrage.—See Charter-party, 2.

Deviation.—See Insurance, 1.

Devise.

P. devised freehold in D. upon trust, and bequeathed £3,000 to his trustees to purchase land in D. for the same trust. In a codicil, he revoked the devise of the freeholds, without more. *Held*, that the bequest of £3,000 for the purpose named was not affected by the codicil.—*Bridges* v. *Strachen*, 8 Ch. D. 558.

See Will, 1, 7.

Director.—See Company, 1, 2, 3.

Discretion.—See Trust, 3.

Divisibility.—See Fraud.

Divorce.—See Jurisdiction.

Domestic Relations.—See Husband and Wife.

Equitable Estate.—See Will, 1, 7.

Estoppel.—See Bills and Notes, 1.

Evidence.—See Company, 2; Limitations, Statute of, 2.

Exchange, Bills of.—See Bills and Notes.

Executor.—See Will, 4.

Executory Gift.—See Will, 7.

Extrinsic Evidence.—See Will, 5.

Falsa Demonstratio.—See Will, 5.

Fee.—See Will, 7.

Fraud.

Contracts which may be impeached on the ground of fraud are void, but not voidable only at the option of the party who is or may be injured by the fraud, subject to the condition that the other party, if the contract be disaffirmed, can be remitted to his former state. Otherwise resort must be had to an action for damages. Divisability of a contract for dissolution of partnership considered.—*Urquhart* v. *Macpherson*, 3 App. Cas. 831.

See Contract, 2.

Gaming Debt.—See Consideration; Statute.

General Average.—See Insurance, 2.

Highway.—See Negligence.

Husband and Wife.

1. The defendant and his wife separated by mutual consent, and agreed upon the sum which the wife should receive so long as the children taken by her were under twenty-one. She found the sum insufficient to support herself and them, and pledged the husband's credit for necessaries. *Held*, that the husband was not bound.—*Eastland* v. *Burchell*, 3 Q. B. D. 432.

2. A wilful wrongful refusal of marital intercourse on the part of the wife is not in itself sufficient ground for a declaration of nullity. The Court proceeds on the ground of impotence, and if after a reasonable time the wife still resists all intercourse, the Court will infer that impotence is the cause, and, if satisfied of *bona fides*, will decree nullity of the marriage.—*S.* v. *A.*, otherwise *S.*, 3 P. D. 72.

3. In a suit by the wife for restitution of conjugal rights, a compromise was agreed to. The petitioner then refused to sign the memorandum of the compromise, and had the suit set down for hearing. *Held*, that she must be held to the agreement which she had made.—*Stanes* v. *Stanes*, 3 P. D. 42.

See Jurisdiction.

Impotence. See Husband and Wife, 2.

Indictment.—See Libel, 3.

Indorser.—See Bills and Notes, 2.

Injunction.

Injunction to restrain a lessee from tearing down old buildings, and putting up new in their place, refused on the ground that, if there was technical waste, it was meliorating waste.—*Doherty* v. *Allman*, 3 App. Cas. 709.

See Libel, 2.

Innkeeper.

B. went to an inn as an ordinary guest in September, 1876, and in November following, a pair of horses, harness, and a waggon came to the inn as B's personal property, and not on

livery. B. told the innkeeper he had bought them of the plaintiff. B. left in January, 1877, owing £109 for his own board and £22 10s. for the horses'. It turned out that B. had bought the property from the plaintiff upon the terms that, if it was not paid for, it should be returned free of cost. B. never paid for it; and he was afterwards convicted of fraud in obtaining it. The innkeeper refused to surrender the property to the plaintiff on an offer of £20 for the board of the horses; but he sold the horses by auction for £73, and kept the harness and waggon, and claimed to apply the whole under his lien towards paying the whole claim held by him against B. *Held*, that his lien on the whole property was a general one for the whole debt of B., and not merely for the board of the horses; but that the lien on the horse was lost by the sale, and the innkeeper was guilty of a tortious conversion thereby, and the plaintiff could recover the price received —*Mulliner* v. *Florence*, 3 Q. B. D. 484.

INSURANCE.

1. A policy on steam-pumps sent out from A. in the wrecking steamer S., to raise the foundered steamer X., at D., ran thus: "At and from A. to the X. steamer, ashore in the neighbourhood of D., and whilst there engaged at the wreck, and until again returned to A., . . . the risk beginning from the loading on board the S. upon the said ship and or wreck, including all risk of craft, and for boats to and from the vessel and whilst at the wreck, each being treated as separately insured." The wreck was raised; but on the way to B., whither by reason of bad weather it was found necessary to steer, it foundered with the pumps on board. *Held*, that the policy did not cover the loss.—*Wingate* v. *Foster*, 3 Q. B. D. 582.

2. The defendant was underwriter for £1,200 on plaintiff's ship, valued in the policy at £2,600. The cost of repairing certain damages by sea was, after deducting one-third new for old and some particular average charges, £3,178 11s. 7d., and the salvage and general average charges paid by the plaintiff were £515. The value of the ship when damaged was £998; after repairs, £7,000; which last sum was, even after deducting the cost of certain new work not charged against the underwriters, much more than the original value of the ship. The policy contained a suing and labouring clause. *Held*, that the defendant must pay the whole £1,200 on account of loss, and the expense of repairs, and also a proportion of the £515 under the suing and labouring clause.—*Lohre* v. *Aitchison*, 3 Q. B. D. 558; s. c. 2 Q. B. D. 501; 12 Am. Law Rev. 309.

3. A ship arrived at R., April 25, in a sea worthy condition. She left there June 4, with a cargo, encountered heavy gales between the 9th and the 15th, and made so much water that it was thought best to put back to R. On the way she got aground, but was gotten off, and arrived at R. June 20. She was found very much strained and worm-eaten, and with her copper off badly; and July 15, she was pronounced unseaworthy. In an action on a policy of insurance, the question was whether she became unseaworthy after she left R., or became so while lying at R., between April 25 and June 4. The judge charged the jury that, though the *onus* of proving unseaworthiness at the commencement of the voyage is generally on those asserting it; yet, when a ship becomes unseaworthy shortly after leaving port, the burden is changed, and the presumption is that she was unseaworthy at the start, and that the present was such a case. *Held*, a misdirection. *Watson* v. *Clark* (1 Dow., 336, 344), construed.—*Pickup* v. *The Thames & Mersey Insurance Co.*, 3 Q. B. D. 594.

INVESTMENT.—See TRUST, 1.

JURY.—See LIBEL, 2.

LANDLORD AND TENANT.

In a lease for twenty-one years, the defendant, the lessee, covenanted to pay the rent without any deduction, except land tax and landlord's tax; also to pay and discharge all manner of "taxes, rates, charges, assessments, and impositions whatever (except as aforesaid), then, or at any time or times during the term to be charged, assessed, or imposed in the premises thereby demised, or in respect thereof, or of the said rent as aforesaid, by authority of Parliament, or otherwise howsoever." The officers under the Public Health Act, 1875, notified the lessor to abate a nuisance on the leased premises by building a drain and deodorizing a cesspool. The lessor called upon the lessee to do it, and he refused. Thereupon, in order to avoid summary proceedings, the lessor did the work, paying therefor £25. *Held*, that the lessee was not called upon, under his covenant, to pay the amount.—*Tidswell* v. *Whitworth* (L. R. 2 C. P. 326) and *Thompson* v. *Lapworth* (L. R. 3 C. P. 149) referred to.—*Rawlins* v. *Briggs*, 3 C. P. 368.

See Surety.

Lease.—See Customs; Landlord and Tenant; Limitations, Statute of, 1; Surety; Waste.

Legacy.—See Will.

Legislation.

Where plenary powers of legislation exist as to particular subjects, they may be well exercised, either absolutely or conditionally. It may be declared that a statute shall apply, if and when a certain executive officer shall think best to order that it shall apply.—*The Queen* v. *Burah*, 3 App. Case, 889.

Letters.—See Contract, 3.

Libel.

1. Three persons made an application to a magistrate for a summons against the plaintiff, in respect of a matter of wages. The proceedings were public, and the magistrate dismissed the application for want of jurisdiction. The defendants afterwards published a fair report of the proceedings in their respective newspapers, for which the plaintiffs brought libel suits against them. *Held*, that the publication was privileged.—*Usill* v. *Hales*. *Same* v. *Brearley*. *Same* v. *Clarke*, 3 C. P. D. 319.

2. A court may enjoin the publication of what a jury has found to be a libel on the plaintiff, if the publication will injure the plaintiff's business; *aliter*, if a jury has not passed upon the question whether the publication is a libel.—*Saxby* v. *Easterbrooke*, 3 C. P. D. 339.

3. An indictment for an obscene publication is bad, even after the verdict of guilty, if it fails to set out the words relied upon as obscene, and sets out the titles of the work only.—*Bradlaugh* v. *The Queen*, 3 Q. B. D. 607; s. c. 2 Q. B. D. 569; 12 Am. Law Rev. 313.

Lien.—See Innkeeper.

Limitations, Statute of.

1. In 1783 a lease was granted for ninety-nine years, and there was enjoyment under the lease until 1876, when an action was brought for possession on the ground that the lease was void, under 13 Eliz. c. 10. *Held*, that the lease was not void but voidable, and, as an action of ejectment might have been begun at once, the Statute of Limitations began to run at the time of the lease, and not from the date of the action.—*Governors of Magdalen Hospital* v. *Knotts*, 8 Ch. D. 709; s. c. 5 Ch. D. 175; 12 Am. Law Rev. 105.

2. Defendant owed plaintiffs a large debt, incurred in 1865, and, in answer to a demand, wrote them a letter in May, 1874, in which he said: "Believe me, that I never lose out of my sight my obligations towards you, and that I shall be glad, as soon as my position becomes somewhat better, to begin again and continue with my instalments." It appears that, in 1874, defendant's condition was bettered by £14, but was no better in any other year. *Held*, that if there was a promise, it was a conditional one, and there was not sufficient evidence that the condition had happened to take the case out of the statute.—*Meyerhoff* v. *Froehlich*, 3 C. P. D. 333.

Lis Pendens.—See Trust, 2.

Marine Insurance.—See Insurance, 1, 2, 3.

Married Woman.—See Husband and Wife; Jurisdiction.

Master.—See Shipping and Admiralty.

Mines.—See Waste.

Misdescription.—See Will, 5.

Misdirection.—See Insurance, 3.

Mortgage.—See Freight; Waste.

Negligence.

The defendant left a steam-plough, with a house-van attached, on the grass by the side of the "metalled" or travelled part of the road, the engine being taken away. He was in the habit of travelling from place to place with it, and had left it there, as it was engaged near by for the next day. The plaintiff's testator drove by in the evening in his cart with a mare which, though without his knowledge, was a kicker. The mare shied at the van, got the off-wheel on the foot-path, began to kick, kicked the dasher to pieces, ran, got her leg over the shaft, fell, and pitched the driver out and kicked him in the knee, so that he afterwards died. The jury found that the van was left where it stood "unreasonably" and "negligently," that the accident was "due to the van being where it was, and to the inherent vice of the mare combined," and that there was no contributory negligence on the part of the deceased. *Held*, that the plaintiff was entitled to recover, on the ground of the negligence of the defendant, and that this act was the real cause of the accident.—*Harris* v. *Mobbs*, 3 Ex. D. 268.

See Bills and Notes, 1.

Notice.—See Assignment, 1; Bills and Notes, 2; Surety.

(*To be continued.*)

REVIEWS.

A Manual of the General Principles of Law as Stated in Blackstone and other Writers. With a Law Glossary. By M. E. Dunlap, Counsellor-at-Law, St. Louis. F. H. Thomas & Co., 1879.

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The amount of information it contains is marvellous when one looks at the outside of it. We strongly recommend all those who have anything to do with maritime law to get it at once.

FLOTSAM AND JETSAM.

Animals *ferœ naturæ* are as a class known to be mischievous, and whoever keeps them in places of public resort is liable for injuries committed by them to one not himself in fault. Whoever keeps a dangerous animal with knowledge of its dangerous propensities is liable to one injured thereby, without proof of any negligence or default in the securing or taking care of the animal. The defendant in error was attacked and injured by a buck while in a park owned by the plaintiffs in error, and into which the public were invited and freely admitted. The buck, with other deer, was at large in the park; there was no evidence that the buck had attacked others, but the company had a notice posted in the park to "Beware of the buck;" there was expert evidence that bucks were dangerous in the fall of the year, at which season the injury was received. *Held*, that the plaintiffs in error were liable.—*The Congress and Empire Spring Co.* v. *Edgar*.

A respectably dressed woman applied to Mr. De Rutzen at the Marylebone police court on Thursday for his assistance. She said she was being continually mesmerized and magnetized by her husband and his servants, and her bodily substance was being taken away by it. They could mesmerize her at a distance, and she was dying miserably by it. Mr. De Rutzen said he was afraid it was not a matter of which he could take cognizance. The applicant: If death ensues is not that enough? Death will ensue in a day or two, or in a week or two. I am being gradually murdered by my husband and his two English servants. It ought to be written down. Anybody who has an interest in another person's death might do this. Will you write down my complaint and summon my husband and his two servants? Mr. De Rutzen said that he could not do that. The applicant (vehemently): You have the power. It is a failure of justice. It is real murder. It is just the same as pointing a pistol

at a person's head. That woman who died in Kent died in this way. She was slowly mesmerized to her death. I am gradually dying, and the substance of my body is being taken away. I have had thirteen doctors during the year. Mr. De Rutzen suggested that he should send an officer to the house. The applicant: Cannot you have my husband before you, and question him about it? Mr. De Rutzen said that he could not. The applicant: You are an English magistrate, and you connive at private murder! Good morning. She then left the Court.—*Pall Mall Budget, June 27th ult.*

It is doubtful if the history of criminal law can furnish a parallel to the crime for which Dye and Anderson were hanged at Sacramento last week. Dye was public administrator of Sacramento county, and in conjunction with Anderson and one Lawton, plotted the murder of several wealthy old residents of that county, supposed to be without heirs and intestate, in order that he might possess himself of their estates through the manipulations of his office. Killing a man in order to administer upon his estate is certainly a novelty. The scheme failed in execution in one instance, and through the discovery of a will or of heirs in others. At length the conspirators actually murdered one Tullis, who was thought to answer the requirements, but who turned out, like most men of property, to have heirs, namely, an afflicted brother and nephew waiting for his money. The discovery of the crime was equally singular. It was ascertained that the murderers had used a boat to go to the victim's residence, and on the boat, evidently a new one, were found pencilled figures and computations which proved to be the computation of the amount of lumber necessary to construct such a boat. Inquiry among the lumber-yards soon exposed the recent purchase of the exact kind and quality of lumber by the guilty parties, and Dye soon confessed. It is to be hoped that the new Constitution of California has made the office in question a salaried one, rather than dependent as formerly solely on the fees and perquisites derivable from the estates administered, and thus taken away such a fearful inducement to official diligence.—*Albany Law Journal.*

Prosecution of Offences Bill.—On Tuesday, May 27th ult., in the House of Lords, the Lord Chancellor, in moving the second reading of this bill, which had come up from the Commons, explained to their lordships that the measure had resulted from the recommendations of a royal commission. It was the opinion of those most conversant with the subject that in the administration of our criminal law there was no necessity for a general and thorough change; but some of the most eminent of the witnesses examined by the commission thought that some change was required. The object of this bill was to meet exceptional cases—such as large commercial frauds, in which private persons could not be expected to undertake the expense of prosecutions. The bill proposed that the Secretary of State should appoint an officer, who would be called the director of public prosecutions. It would be the duty of the latter, under the Secretary of State and the Attorney-General, to carry out prosecutions undertaken by the Government. Regulations would be made by the Attorney-General, with the approval of the Secretary of State, as to the exceptional cases in which prosecutions would be undertaken, and as to the mode in which the director of public prosecutions would give advice. The director of public prosecutions would be in the position of an Under-Secretary of State. Solicitors would be appointed for the assizes; and there would be a staff in the director's department, the number of which would depend on the work to be done. It would not be large at first. For the first time the law officers would have an office in London, and there would be a continuity of rules in their department. The noble and learned earl concluded by moving the second reading.—*The Law Journal, May* 31, 1879.

Law Society of Upper Canada.

OSGOODE HALL,

EASTER TERM, 42ND VICTORIÆ.

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

Thomas Stinson Jarvis.
Thomas Taylor Rolph.
Louis Adolphe Olivier.
Malcolm Græme Cameron.
George Edgar Millar.
Nicholas Dubois Beck.
Walter J. Breakenridge Read.
Emerson Coatsworth, Jr.
John Morrow.
James Carman Ross.
Alphonse Basil Klein.
Edward George Ponton.

The names are given in the order in which they appear on the Roll, and not in the order of merit.

And the following gentlemen were admitted as Students-at-Law and Articled Clerks :—

Graduates.

John Dickinson, B.A.
John McLaurin, B.A.
Antoine P. E. Panet, B.L.

Matriculants.

Charles Reginald Atkinson.
John McCullough.
George William Ross.

Articled Clerks as of Hilary Term.

William Barr.
Edward Utton Sayers.
John Angus McDougal.
James A. Scott.
William Grayson.
John Lawson.
Francis Henry Butler.

Articled Clerk as of Easter Term.

Andrew Joseph Clark.

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

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

All other candidates for admission as articled clerks or students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

Articled Clerks.

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

Students-at-Law.

Classics.

1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.

1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog. I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1880 { Xenophon, Anabasis. B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

Paper on Latin Grammar, on which special stress will be laid.

Mathematics.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical analysis of a selected poem :—
1879.—Paradise Lost, Bb. I. and II.
1880.—Elegy in a Country Churchyard and The Traveller.
1881.—Lady of the Lake, with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek.

FRENCH.

A Paper on Grammar.
Translation from English into French Prose—
1878 and 1880 } Souvestre, Un philosophe sous les toits.
1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

or GERMAN.

A Paper on Grammar.
Musaeus, Stumme Liebe.
1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.
1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer. / Die Kraniche des Ibycus.

A student of any University in this Province who shall present a certificate of having passed, within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk (as the case may be), upon giving the prescribed notice and paying the prescribed fee.

INTERMEDIATE EXAMINATIONS.

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

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

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

SCHOLARSHIPS.

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

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

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

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

The Law Society Matriculation Examinations for the admission of students-at-law in the Junior Class and articled clerks will be held in January and November of each year *only*.