DIARY FOR AUGUST.

1. Mon. *Lammas.*
7. SUN. *8th Sunday after Trinity.*
13. Sat.. Last day for County Clerks to certify County rates to Municipalities and Counties.
14. SUN. *9th Sunday after Trinity.*
18. Thur. Last day for setting down and giving notice for re-hearing.
21. SUN. *10th Sunday after Trinity.* Long Vacation ends.
24. Wed. *St. Bartholomew.*
25. Thur. Re-hearing Term in Chancery commences.
28. SUN. *11th Sunday after Trinity.*
29. Mon. County Court (York) Term begins.

THE

Canada Law Journal.

AUGUST, 1870.

THE DOMINION ARBITRATION.

The report of the proceedings on this important matter, which we publish in other columns, will be read with interest, not altogether for its intrinsic value as a decision upon a point which is new in this country, but more as a history of the case in its legal aspect.

As to the merits of the case, we have nothing to do, but as to the main legal point, whether the arbitration could proceed without all the arbitrators being unanimous, it is conceded that if it were merely a private arbitration there would be no room for doubt, but, as it is unquestionably of a public nature, it is contended that that fact makes all the difference and obviates the necessity of unanimity amongst the arbitrators. The majority of the authorities and those most in point are American, though there are English cases which seem to admit the principle contended for, bear out the contention.

It seems reasonable to look upon the arbitrators appointed under the provisions of the British North America Act, 1867, in the nature of a court ordained for a special purpose, and if a court, then clearly the majority rule.

It is true that the statute speaks of the "arbitrators;" but the mere use of that word does not necessarily prevent their being in reality something more than mere private arbitrators, and subject to the rule of law applicable to such; and the whole scope and tenor of the British North America Act, 1867, shews that something more was intended—and it may be remarked that even Judge Day does not appear to have expressed an opinion adverse to his co-arbitrators on this point.

We can scarcely imagine what the government of Quebec expected to take by the writ of prohibition which was issued from one of the courts of that Province, returnable next month, except it is desired to force the case to England for a final decision, and this would seem to be the object aimed at, though we doubt if that object will be attained, or if attained, that the result will be satisfactory to the promoters of the writ.

The objection that Col. Gray is a resident of Ontario, and therefore ineligible (when in fact he was a resident of New Brunswick when appointed, and moved to Ottawa to attend to his public duties), seems so feeble, not to say childish, as to betoken a weakness which cannot but damage the case of the Quebec government, both in a political and legal point of view.

The result of these proceedings will be looked for with much interest, whether viewed as a mere question of law on the point of unanimity, or on account of the large amounts at stake, the political bearing of the case, or the important constitutional questions involved.

LIABILITY FOR ACCIDENTS.

We have read with much interest a pamphlet sent to us some time since on "The Evils of the Unlimited Liability of Masters and Railway Companies for Accidents arising from the negligence of Servants, especially since Lord Campbell's Act." The paper is written by Joseph Brown, Esq., Q.C., and was read before the Social Science Association.

The view most favorable to masters and railway companies is advocated very strongly and very ably, but we cannot but feel that the zeal of the writer in the cause he upholds has led him into enunciating some opinions which can scarcely be sustained.

One evil that he complains of is—"the great number of such actions and the length of time which the trial of them occupies, to the hindrance and delay of commercial and other important business"—is certainly not felt in this country as such a hardship as requires any serious consideration.

There is however, much truth in the following remarks:—

"The great evils, however, which I have mentioned, serious as they are, are not those to which I have undertaken to call the attention of the Society. The great and crying evil belong-

ing to the class of actions in question is this—that the penalty of the act of negligence, even when it is proved ever so clearly, almost always falls on one who is perfectly innocent of any blame. A servant carelessly drives a cart over the plaintiff and breaks his leg; but the servant can't pay anything—his master can—therefore the law makes the master pay the damages. Of course the servant in ninety-nine cases out of a hundred is wholly unable to repay his master. The result is that the master is punished, and the servant who did the mischief goes scot free."

But his language is, it seems to us, extravagant when he says:—

"If a tradesman who has saved £10,000 by a life of industry and frugality, sets up a brougham, and his coachman happens in a moment of carelessness to drive over and kill a merchant who is making £2,000 a-year, the master may be mulcted of his whole fortune in damages, though he was entirely blameless."

He argues that the rule *respondeat superior* is only applicable with justice where the servant has followed his master's orders in doing the very act complained of, and that it ought never to be applied where the act done is beyond or contrary to orders; and in support of his contention he calls in the analogy of the criminal law, and cites the institutes of Menu, "the oldest system of law known to us," where it is laid down that,—

"'Where a carriage has been overturned by the unskilfulness of the driver, then, in case of any hurt, the master shall be fined 200 panas; that if the driver shall be skilful but negligent the driver alone shall be fined, and those in the carriage shall be fined each 100, if the driver be clearly unskilful.'"*

He continues: "The rule which thus approved itself to the mind of the Indian lawgiver 3,000 years ago, rests upon the immutable distinction of justice and reason, that in the one case the master is to blame, and in the other he is not. He must of necessity employ servants to do a multitude of things which he can't do himself; he does his best to employ skilful and careful servants; this is all he can do, and, when he has done it, to make him answerable for an act of carelessness of the servant is to charge him with what he neither committed nor was able to prevent or foresee.

"Let me guard myself against misunderstanding, by saying, that I am not contending for any immunity for the master in any case where he is justly chargeable with personal neglect or blame. For instance, if he makes regulations calculated to cause mischief—if he knowingly provides materials improper for the work in hand—if he does not exercise due vigilance over his labouring men, and in many other cases, he might fairly be held liable as for his own fault. What I contend against is the law which makes him suffer where he is blameless, the fault lying entirely with the servant—as it commonly does."

After arguing out the position he supports at considerable length, Mr. Brown proposes to carry out his views as to the limitation of the master's liability in this way:—

"Let it be enacted that in no case should a master be responsible in damages for the negligence of a servant beyond the amount of £200, or any other fixed sum which may be considered a sufficient penalty for keeping a servant who committed an error. If, however, the public come to see the injustice of punishing a master at all, where he has taken due care to hire an experienced servant of good character, the requisite amendment of the law would be effected by enacting as follows:—1. That no action should be brought against the master without joining the servant who did the mischief as co-defendant. 2. That the master should be entitled to acquittal on proof that he took due care in the engagement of the servant, and was personally free from any other kind of blame. 3. That the guilty servant should be compelled to pay a part of his wages weekly towards the satisfaction of the damages, with a summary remedy to enforce payment. Imprisonment might be justly added in cases of injury to life or limb.

"I submit that such a law would be far preferable to that which now subsists. To see the way in which it operates is enough to extort from one an outcry against the perversity of mankind, and the imbecility of laws to deal with it. Because men are prone to negligence, and because society requires some protection from this propensity, the law has endeavoured to give it by allowing such actions as I have described. What can be more laudable or politic in appearance? Yet the effect has been to let in a flood of fraud and perjury, imposture and injustice—such as excites a doubt whether greater mischief would arise from abolishing such actions altogether. Too often they exhibit the spectacle of a court of law laboriously doing iniquity in the name and with the forms of justice—a scene the most revolting to every right-minded man."

* "Institutes of Menu," by Sir W. Jones, p. 181, ss. 293, 294, last edition.

Thus far the Essayist's remarks are mainly confined to the liability of individuals who are obliged to employ servants. He then proceeds to discuss its connection with the liability of railway companies for accidents arising from the default of those who carry on the business, and he considers the question in two aspects—accidents to strangers and to passengers; and there is undoubtedly a distinction fairly to be drawn. He thus speaks of the exceptional nature of railway traffic:—

"Railway traffic is a business which cannot be carried on without danger nor without occasional accidents; and when an accident does occur, the damage arising from it is often so enormous as to be out of all proportion to the payment made by the injured passengers to the company, and not less out of proportion to the act of delinquency which brought about the accident. A momentary oversight by a weary signalman may cause the loss of twenty lives or damages to the amount of £50,000. The public will have trains running from twenty to fifty miles an hour; they will have excursion and luggage trains; and this cannot be done without serious accidents occasionally happening. Drivers and signalmen are only mortals; they will at times be off their guard, or weary, or drowsy, or negligent. Probably they are as careful now as they are ever likely to be. The system of punishing railway companies by enormous damages for accidents arising from the errors or neglects of drivers and other servants has been in force a great many years, without putting a stop to accidents. Whatever amount of care is exercised by railway managers in selecting good and careful servants, the latter are but men and not guardian angels without wings, at two guineas a week, as the public would have them. Is any man so green as to believe that railway traffic can ever be carried on without serious accidents? As well might we expect to navigate the ocean in future without shipwrecks. Every man who embarks in a ship for a distant voyage knows that he must risk his life in so doing, and so does every man who gets into a railway train. The two things are inseparable; the passenger voluntarily encounters the hazard, without which he can't make the journey; he becomes a partner in the risk, and must share the loss when it happens. If a man were to go up in a balloon, and were to break his leg in the descent, many people would say, 'What else could he expect?' The public can't see that this applies to a journey by railway, and yet our fathers would certainly have said the same of any man who got hurt while travelling forty miles an hour. Is it fair, therefore, to put all the loss on the railway company when an accident happens, seeing that railway travelling cannot be carried on without accidents? The law recognises this in other cases. Where a servant voluntarily takes employment under a master who carries on a dangerous trade, such as the making of gunpowder or the blasting of slate quarries, the law does not allow him any remedy against his master for accidents arising from the nature of the business, even though caused by the neglect of the other men employed in it. The reason is that, by entering into the business he voluntarily ran the risk incidental to it."*

The learned author then enlarges upon the following points: that the damages arising from railway accidents are out of all proportion to the payment received from the passenger and to the error committed by the company's servant: that no infliction of damages can compel or enable directors to do more than employ good servants, it cannot prevent or guard against the errors to which the best servants are liable; and that the enormous amounts given by way of compensation in England greatly encourage attempts at fraud and imposture on companies.

This very able pamphlet concludes by a suggestion that,—

"Some special tribunal ought to be established for the cognizance of all railway accidents—such, for example, as exists in the Admiralty Court, where the judge is assisted by experienced nautical men as assessors. A court composed of one of the judges, with two experienced medical men as assessors, having powers to make private examinations of the claimant, would surely be much better able to detect fraud and imposture and to probe suspicious claims to the bottom than a jury. The experience which they would acquire in dealing with fictitious or fraudulent claims would often prevent the court from being made the tool of rogues. Such a court might exercise with discretion, and ought to be armed with inquisitorial powers. Whatever odious terms may be applied to such a tribunal by popular outcry, every lawyer who has been in the secrets of these cases, knows by experience that all the existing powers of courts of law are wholly inadequate to ferret out, expose and punish the infamous cheats which are daily practised by fraudulent claimants. When one sees, as in a recent case, a man claiming £2,000,

* Judgment in *Hutchinson* v. *York Railway Company*, 5 Exch. 343.

and recovering a verdict for £5, one is led to wish that the courts would return to the old practice of amercing '*pro falso clamore suo.*' I have reason to believe, and I say it with disgust, that I have more than once been made the unwitting instrument of cheating railway companies; and no counsel who has been concerned in these cases is free from the same unpleasant suspicion.

"One and the same tribunal ought also to hear and determine all claims arising out of the same accident. This alone would do something to moderate the excessive damages often given by juries, each of whom only hear one case, and are not allowed to take notice of the numerous other large claims behind. It would also diminish the expense arising from so many different actions.

"I venture another suggestion. In very many claims for personal injuries by accidents, the amount of damages chiefly depends on whether the injury will be permanent, or whether nature will not remedy it in a few months. On this point it constantly turns whether the damages should be £500 or £2,000. At present the jury have to decide it on conflicting medical opinions, before sufficient time has elapsed to test the permanence of the injury. The verdict is probably for the larger sum, and very soon after the plaintiff will be seen about and as well as if he had never been hurt. It is astonishing what miraculous cures are wrought by a verdict for large damages! I suggest that in all such cases the court ought to have power to adjourn the inquiry for a time in order to test the supposed permanence of the injury upon such terms as might be just. This might sometimes prevent a company from being compelled to pay five times the real amount of damage."

THE SUPREME COURT OF CANADA.

We give below *in extenso* the amended Bill on this subject as introduced during the last session of the Dominion Parliament.

This Bill, though altered from that first brought before the House, cannot yet be said to be complete, and we understand that some changes will be made in it before it is again brought forward. Our readers will, however, be glad in the meantime to be in a position to make themselves familiar with the Bill as it stands, and if the careful consideration of this most important and difficult subject results in any useful suggestions, so much the better:

An Act to establish a Supreme Court for Canada.

Note.—The clauses and words in brackets [ ] are to originate in Committee of the Whole.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. There is hereby constituted and established, a Court of Common Law and Equity, in and for the Dominion of Canada, which shall be called "The Supreme Court of Canada."

2. The said Court shall be a Court of Record.

THE JUDGES.

3. The Court shall consist of a Chief Justice and six Puisne Judges, any five of whom, in the absence of the others of them, may lawfully hold the Court in Term.

4. Her Majesty may appoint, by Letters Patent under the Great Seal of Canada, one person, who is or has been, a Judge of one of the Superior Courts in either of the Provinces of Ontario, Quebec, Nova Scotia, or New Brunswick, or who is a Barrister or Advocate of at least fifteen years' standing at the Bar of any of the said Provinces, to be Chief Justice of the Court, and six persons who are or have been Judges of one of the said Superior Courts, or who are Barristers or Advocates of at least ten years' standing at the Bar of any of the said Provinces, to be Puisne Judges of the Court; and vacancies in any of the said offices shall, from time to time, be filled in like manner.

5. The Chief Justice of the Court shall have rank and precedence over all other Judges in the Dominion, or in any of the Provinces thereof; and the Puisne Judges of the Court shall also take precedence over all other Judges in the Dominion, or in any of the Provinces, except the Chief Justices in the several Provinces and the Chancellor of Upper Canada, and as between themselves according to seniority of appointment.

6. The Judges to be appointed under this Act shall reside at the City of Ottawa or within . . . . miles thereof, and shall hold their offices during good behaviour; but the Governor General may remove any Judge upon the address of the Senate and House of Commons.

7. [The salary of the Chief Justice of the said Court shall be ——— dollars per annum, and that of each of the Puisne Judges ——— dollars per annum, and so *pro ratâ* for any less period than a year during which they shall respectively hold the office, and shall be payable out of the Consolidated Revenue Fund of Canada, next after any sums already charged thereon.]

8. [Whenever any Judge of the said Court has held such office for fifteen years or upwards, or has held such office and the office of Judge of one or more of the Superior Courts

of Law or Equity, or of the Court of Vice Admiralty, in any Province in Canada, for periods amounting together to fifteen years or upwards, or becomes afflicted with some permanent infirmity disabling him from the due execution of his office, then if such Judge resigns his office, Her Majesty may by Letters Patent under the Great Seal of Canada, reciting such fact, grant him an annuity equal to two-thirds of the salary attached to the office he held at the time of his resignation, and to commence from the date thereof, and to be paid out of the Consolidated Revenue Fund of Canada, and payable *pro ratâ* for any less period than a year.]

9. Every Judge to be appointed in pursuance of this Act, shall, previously to his executing the duties of his office, take the following Oath:

"I, ————, do solemnly and sincerely promise, and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me, as Chief Justice (*or* as one of the Judges) of the Supreme Court of Canada."

10. The Oath shall be administered to the Chief Justice by the Governor in Council, and to the Puisne Judges in open Court by the Chief Justice.

11. No Judge to be appointed under this Act shall hold any other Office either under the Government of Canada, or under the Government of any Province of Canada.

APPELLATE JURISDICTION.

12. The Supreme Court shall have, hold, and exercise, an appellate civil and criminal jurisdiction within and throughout Canada.

13. Unless it is otherwise provided, or the context manifestly requires another construction, the following words and expressions, when used in this Act, shall have the meaning hereby assigned to them respectively:—The word, "Judgment," when used with reference to the Court appealed from, includes any judgment, rule, order, decree, decretal order, or sentence; and when used with reference to the Supreme Court it includes any judgment or order of that Court: The word "Appeal" includes any appeal or proceeding in error to set aside or alter any judgment of the Court appealed from on a point of law, as well as an Appeal founded on the facts, or on the facts and law of any case: The expression "the Court appealed from," means the Court from which the appeal has been brought directly to the Supreme Court, whether such Court be a Court of original jurisdiction, or a Court of Error and Appeal.

14. Subject to the limitations hereinafter made,—an Appeal shall lie to the Supreme Court from all final judgments of the Court of Error and Appeal in the Province of Ontario, of the Court of Queen's Bench in the Province of Quebec, of the Supreme Court in either of the Provinces of Nova Scotia and New Brunswick, and of any other Superior Court of last resort, now or hereafter established in any Province of Canada,—and from any preliminary or interlocutory judgment which would carry execution by ordering something to be done which could not be remedied by the final Judgment, or whereby the matter in contestation may be in part decided, or whereby the final hearing and judgment would be unnecessarily delayed.

15. An appeal shall also lie directly to the Supreme Court from all judgments in civil matters of any of the courts of superior jurisdiction in any of the Provinces, by consent of parties.

16. Five Judges of the Supreme Court shall constitute a quorum for the purpose of hearing and determining cases in Appeal: Provided that no judgment of the Court appealed from shall be affirmed or reversed without the concurrence of at least four Judges of the Supreme Court; except that where the number of Judges concurring is less than four, and either party desires to appeal to Her Majesty in Council, the judgment of the majority of the judges present at its delivery may, by consent of parties, be considered the judgment of the Court for the purpose of allowing such appeal, but for no other purpose whatever.

17. The Supreme Court, for the purpose of hearing and determining appeals and of exercising such original jurisdiction as is hereinafter directed to be exercised by the Court sitting in Term, shall hold two terms in each year, at the City of Ottawa, one of such terms beginning on the third Monday in January, and the other beginning on the third Monday in June, in each year, and each of such terms shall continue for the space of twenty days, subject to the provision in the next following section.

18. The Supreme Court may continue the said terms beyond the said twenty days, or adjourn the same from time to time, and meet again at the time appointed, for the transaction of business; and any sittings held in pursuance of such continuance or adjournment shall be deemed part of the term, and the Court may then do whatever it could do during the said twenty days.

19. The Supreme Court shall have power to quash proceedings in cases brought before it, in which an appeal does not lie, or where such proceedings are taken against good faith, or in which proceedings in Error may be quashed according to the law and practice of the Court of Exchequer Chamber in England.

20. The Supreme Court shall have power to dismiss an appeal, or to give the judgment, and to award the process or other proceedings, which the Court whose judgment is appealed from ought to have given or awarded; and the Court, in its discretion, may make any order with respect to the payment of costs in in the Court appealed from, or in the Court below it (if any) in which the cause originated,

and also of the appeal, and as well when the judgment appealed from is reversed, as when it is affirmed.

21. Proceedings in the Supreme Court in Appeal shall, when not otherwise provided for by this Act, or by the general rules and orders to be made in pursuance hereof, be as nearly as possible in conformity with the present practice of the Judicial Committee of Her Majesty's Privy Council in England.

22. An appellant may discontinue his proceedings by giving to the respondent, and filing in the office of the Registrar, a notice entitled in the Court and cause and signed by the appellant, his attorney or solicitor, stating that he discontinues such proceedings, and thereupon any Judge of the Court in chambers may direct judgment to be entered, as of course, dismissing the appeal, with costs, and and the respondent shall be at once entitled to the costs of, and occasioned by, the proceedings in appeal.

23. A respondent may consent to the reversal of the judgment appealed from, by giving to the appellant a notice entitled in the Court and cause, and signed by the respondent, his attorney or solicitor, stating that he consents to the reversal of the judgment, and thereupon the Court shall pronounce judgment of reversal, as of course.

24. The judgment of the Supreme Court in Appeal, shall be certified by the Registrar, to the proper officer of the Court appealed from, and all subsequent proceedings may be taken thereupon as if the judgment had been given or pronounced in the Court last mentioned.

25. In case an appellant unduly delays to prosecute his appeal, or fails to bring on the appeal to be heard at the first term of the Supreme Court, after the appeal is ripe for hearing, the respondent may, on notice to the appellant move the Court, or a Judge thereof in Chambers, for the dismissal of the appeal, and such order shall thereupon be made as to the Court or Judge seems just.

26. An appeal shall lie to the Supreme Court from a judgment upon a special case, unless the parties agree to the contrary; and the proceeding for bringing a special case before the Court shall, as nearly as possible, be the same as in the case of a special verdict, and the Court shall draw any inferences of fact from the facts stated in the special case which the Court appealed from ought to have drawn.

27. No appeal shall be allowed in any case, unless notice thereof be given in writing to the opposite party, or his attorney or solicitor, within twenty days after the judgment complained of, or within such further time as the Court appealed from, or a Judge thereof may allow.

28. No appeal shall be allowed, unless within twenty days after such notice shall have been given, or within such further time as the Court appealed from, or a Judge thereof may allow, the appellant files with the proper officer of the said Court, a memorandum or statement in writing of theg rounds of appeal.

29. Provided always, that the Supreme Court, or any Judge thereof, may allow an appeal under special circumstances, notwithstanding that the notice of appeal may not have been given, or the memorandum or statement of the grounds of appeal filed, within the time or in the manner hereinbefore provided; but in such case, the Court or Judge shall impose such terms as to security or otherwise, as may seem proper.

30. No appeal shall be allowed until the appellant has given proper security to the extent of five hundred dollars to the satisfaction of the Court from whose judgment he is about to appeal, or a Judge thereof, that he will effectually prosecute his appeal and pay such costs and damages as may be awarded, in case the judgment appealed from be affirmed.

31. Upon the perfecting of such security, execution shall be stayed in the original cause, except in the following cases:—

1. If the judgment appealed from directs an assignment, or delivery of documents, or personal property, the execution of the judgment shall not be stayed until the things directed to be assigned or delivered have been brought into the Court appealed from, or placed in the custody of such officer or receiver as the said Court may appoint, nor until security has been given to the satisfaction of the said Court, or of a Judge thereof, in such sum as the said Court or Judge may direct, that the Appellant will obey the judgment of the Supreme Court:—

2. If the judgment appealed from directs the execution of a conveyance or any other instrument, the execution of the judgment shall not be stayed until the instrument has been executed and deposited with the proper officer of the Court appealed from, to abide the judgment of the Supreme Court.

3. Provided that, if the Court appealed from be itself a Court of Appeal, and such assignment or conveyance, document, instrument, or property, or thing, has been deposited in the custody of the proper officer of the Court in which the cause originated, the appellant's consent that it shall so remain to abide the judgment of the Supreme Court, or of any appeal from it to the Queen in Council, shall be binding on him, and be deemed a compliance with the foregoing requirements of this section.

4. If the judgment appealed from directs the sale or delivery of possession of real or immoveable property or chattels real or immoveable, the execution of the judgment shall not be stayed until security has been entered into, to the satisfaction of the Court appealed from, or a Judge thereof, and in snch sum as last mentioned Court or Judge may direct, that during the possession of the property by the appellant, he will not commit, or suffer to be committed, any waste on the property, and that if the judgment appealed from be affirmed,

he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof; and also, in case the judgment is for the sale of property, and the payment of a deficiency arising upon the sale, that the appellant will pay the deficiency.

5. If the judgment appealed from directs the payment of money, either as a debt, or for damages or costs, execution thereon shall not be stayed until the appellant has given security to the satisfaction of the Court appealed from, or of a Judge thereof, that if the judgment, or any part thereof, be affirmed, the appellant will pay the amount thereby directed to be paid, or the part thereof as to which the judgment may be affirmed, if it be affirmed only as to part, and all damages awarded against the appellant on appeal.

32. If the judgment appealed from directs the delivery of perishable property, the Court appealed from, or a Judge thereof, may order the property to be sold, and the proceeds to be paid into Court, to abide the judgment in appeal.

33. When, on an appeal against any judgment, the Supreme Court affirms such judgment, interest shall be allowed for such time as execution has been delayed by the appeal.

34. When the security has been perfected and allowed, any Judge of the Court appealed from, may issue his fiat to the Sheriff to whom any execution on the judgment has issued, to stay the execution, and the execution shall be thereby stayed, whether a levy has been made under it or not.

35. If at the time of the receipt by the Sheriff of the fiat, or of a copy thereof, the money has been made or received by him, but not paid over to the party who issued the execution, the party appealing may demand back from the Sheriff the amount made or received under the execution, or so much thereof as is in his hands not paid over, and in default of payment by the Sheriff, upon such demand, the appellant may recover the same from him in an action for money had and received, or by means of an order or rule of the Court appealed from.

36. In the case of the death of one of several appellants pending the appeal to the Supreme Court, a suggestion may be filed of his death, and the proceedings may thereupon be continued at the suit of, and against the surviving appellant, as if he were the sole appellant, and such suggestion, if untrue, may be set aside on motion made to the Supreme Court, or a Judge thereof in chambers.

37. In case of the death of a sole appellant, or of all the appellants, the legal representative of the sole appellant, or of the last surviving appellant, may, by leave of the Supreme Court, or a Judge thereof, file a suggestion of the death, and that he is such legal representative, and the proceedings may thereupon be continued at the suit of, and against such legal representative, as the appellant; and if no such suggestion be made, the respondent may proceed to an affirmance of the judgment, according to the practice of the Court, or take such other proceedings as he may be entitled to, and such suggestion, if untrue, may be set aside on motion by the Court, or a Judge thereof.

38. In the case of the death of one of several respondents, a suggestion may be filed of such death, and the proceedings may be continued against the surviving respondent, and such suggestion, if untrue, may be set aside on motion by the Supreme Court, or a Judge thereof.

39. In the case of the death of a sole respondent, or of all the respondents, the appellant may proceed, upon giving one month's notice of the appeal, and of his intention to continue the same, to the representative of the deceased party, or if no such notice can be given, then upon such notice to the parties interested, as a Judge of the Supreme Court may direct.

Appeal to the Queen in Council.

40. If any final judgment of the Supreme Court be given for, or in respect of any sum or matter at issue of or above the amount or value of *five hundred pounds sterling*, or if such judgment involves directly or indirectly, any claim, demand, or question to, or respecting property or any civil right, amounting to, or above the value of five hundred pounds sterling, any party feeling aggrieved by such judgment, may within *fourteen* days next after it is given, apply to the Supreme Court by motion or petition, for leave to appeal therefrom to Her Majesty in Her Privy Council.

41. Such appeal shall not be allowed, until the appellant has given security to the Supreme Court, or a Judge thereof, in a sum not exceeding *five hundred pounds sterling*, for the prosecution of the appeal and the payment of all such costs as may be awarded by Her Majesty, or by the Judicial Committee of Her Majesty's Privy Council, to the respondent: and the Supreme Court may either direct that its judgment so appealed from shall be carried into effect, or that upon the perfecting of such security as aforesaid, the execution of such judgment shall be suspended, subject to like conditions as are provided in section *thirty-one* with respect to appeals to the Supreme, or such of them as is or are applicable to the case, and security being given, as thereby required, to the satisfaction of the Supreme Court or a Judge thereof, that the appellant will obey the judgment of Her Majesty in Her Privy Council; and if such security be perfected within *three months* from the date of the motion or petition in appeal, then, but not otherwise, the Supreme Court shall allow the appeal.

42. The Supreme Court may, also, on the petition of any party feeling aggrieved by any preliminary or interlocutory judgment of the Court in any such case as is mentioned in

section *forty*, under which anything would be done which could not remedied by the final judgment, or whereby the matter in contestation would be in part decided, or the final hearing and judgment unnecessarily delayed, grant permission to such party to appeal against the same to Her Majesty in Her Privy Council, subject to the same conditions, provisions, and limitations as are hereinbefore made respecting appeals from final judgments.

43. Nothing in this Act shall extend or be construed to extend to take away or abridge the undoubted right of Her Majesty, upon the humble petition at any time of any party feeling aggrieved by any judgment of the Supreme Court, in any case in which it may appear to Her Majesty that some constitutional question, or some matter of great public interest, or some right, the value of which cannot be estimated in money, is involved, or in which for any other reason Her Majesty may be so advised, to admit the appeal of ssch party therefrom, upon such terms, securities, limitations, restrictions, and regulations as Her Majesty may think fit, or to reverse, correct, or vary such judgment as to Her Majesty may seem meet; but except in cases where an appeal is allowed by this section, or the three sections next preceding it, the judgment of the Supreme Court shall be final and conclusive.

CRIMINAL APPEALS.

44. A person convicted of treason, felony, or misdemeanour, before any Court of Oyer and Terminer or Gaol Delivery, or in the Court of Queen's Bench in the Province of Quebec on its Crown side, whose conviction has been affirmed by any Superior Court, or in the Province of Quebec by the Court of Queen's Bench on its appeal side, may appeal to the Supreme Court against the affirmation, and the said Court shall make such rule or order therein, either in affirmance of the conviction, or for granting a new trial, or otherwise, as the justice of the case requires, and for such rule or order into effect, anything in the eightieth section of the Act, 32 and 33 Victoria, chapter twenty-nine, to the contrary notwithstanding: Provided that no such Appeal shall be allowed where the Court affirming the conviction is unanimous, nor unless notice of Appeal in writing has been served on the Attorney General, within *twenty* days after such affirmance.

45. Unless the Appeal is brought on for hearing by the appellant at the first term of the Supreme Court, after such affirmance, the Appeal shall be held to have been abandoned, unless otherwise ordered by the Supreme Court.

46. The judgment of the Supreme Court, in such cases, shall be final and conclusive.

SPECIAL CASE ON CONSTITUTIONAL MATTERS.

47. The Governor in Council, may direct a special case to be laid before the Supreme Court sitting in term, in which special case there may be set forth any Act passed by the Legislature of any Province of the Dominion of Canada, and thereupon there may be stated, for the opinion of the said Supreme Court, such questions as to the constitutionality of the said Act, or of any provision or provisions thereof, as the Governor in Council may order.

48. The Supreme Court shall, after hearing counsel for the Dominion of Canada, and for the Province whose Act may be in question (if the respective Governments of the Dominion and the Province think fit to appear,) and also after hearing counsel for any person or persons whose interests may be affected by the said Act, and who may desire to be heard touching the questions submitted for the opinion of the Court, and who shall have obtained leave to appear and be so heard on application to a Judge of the said Court in chambers, certify their opinions upon the said special case to the Governor in Council.

ORIGINAL JURISDICTION.

50. The Supreme Court shall have original jurisdiction in Canada, in all cases in which it shall be sought to enforce any law of Canada relating to the revenue, including actions, suits and proceedings, by way of information, to enforce penalties, and proceedings by way of information *in rem*; or in which demand shall be made or relief sought in respect of any matter which might in England be the subject of a suit or action in the Court of Exchequer on its Revenue side, by or against the Crown or the officers of the Crown.

51. The Supreme Court and any judge thereof shall have original concurrent jurisdiction to issue the Writ of Habeas Corpus *ad subjiciendum*, to bring up the body of any person in custody within Canada, in pursuance of any treaty with any foreign State or Government for the extradition of criminals, or in pursuance of any Act of the United Kingdom, or of the Parliament of Canada, to carry out the provisions of any such treaty, and on the return of such writ to make such order as to the remand or discharge of the prisoner, as may seem meet.

52. At the term of the Court there shall be had in cases within its original jurisdiction;

1. Such proceedings in suits at common law as may be had before Courts of common law sitting in banc;
2. The re-hearing of causes, petitions, and motions in equity causes which may have already been heard before a single Judge.

53. In any proceedings within the original jurisdiction of the Supreme Court, one of the Judges of the said Court may sit either at the City of Ottawa, or at any other place or places appointed by the Court, and at such time or times as may be prescribed by the Court, to try issues in fact, and hear causes in equity, in actions or suits originally brought or instituted in the Supreme Court.

54. A single Judge of the Supreme Court

may in cases within its original jurisdiction, sit in Court out of Term, and may hear and determine motions, petitions, and all other interlocutory applications in equity suits, and dispose of matters of practice not cognizable by a Judge sitting in chambers, in actions at common law.

55. The procedure in suits and actions within the original jurisdiction of the Court, shall, unless otherwise herein provided or until otherwise provided by general rules made in pursuance of this Act, be regulated by the present practice and procedure of Her Majesty's Court of Exchequer at Westminster.

56. Issues of fact, on the common law side of the Court. shall be tried according to the laws of the Province in which the cause of action arose.

57. The process of the Supreme Court shall run throughout the Dominion, shall be tested in the name of the Chief Justice and shall be directed to the Sheriff of the County, or other judicial division into which any of the said Provinces may be divided, in which such process is to be executed; and the Sheriffs of the said respective Counties or divisions shall be deemed and taken to be, ex-officio officers of the Court, and shall perform the duties and functions of Sheriffs in connection with the Court; and in any case where the Sheriff may be disqualified, process shall be directed to any Coroner of the County, or other judicial division.

58. [The Sheriffs and Coroners shall receive and take to their own use, such fees as the Judges of the Supreme Court shall, by general order, fix, and determine.]

59. For the trial of any issues of fact by a jury, a judge of the Supreme Court may order a writ of *venire facias* to be issued, directed to the Sheriff or Coroner, as the case may be, commanding him to summon a panel of thirty-six jurors according to the jury laws of the Province where the issues are to be tried, to attend at the time and place in such writ named, and the Sheriff or Coroner shall execute and return the said writ as directed thereby.

GENERAL PROVISIONS.

60. There shall be a Registrar of the Supreme Court, who shall reside and keep his office at the City of Ottawa.

65. [The Registrar shall be appointed by an instrument under the Great Seal of Canada and shall hold office during pleasure, and shall be paid a salary at the rate of dollars per annum.]

62. [All fees payable to the Registrar under the provisions of this Act shall be paid by means of stamps, which shall be issued for that purpose by the Minister of Inland Revenue, who shall regulate the sale thereof, and the proceeds of the sale of such stamps shall be paid to the Receiver General, and form part of the Consolidated Revenue Fund of Canada.]

63. The Judges of the Court may appoint such persons as they may think fit, being barristers-at-law or advocates, of not less than three years' standing, to be masters, referees, and examiners in suits in equity depending in the Court, to whom reference may be ordered, and who may take evidence in causes in equity depending therein.

64. [The said masters, referees, and examiners shall receive and take to their own use such fees as the Court may, by general orders direct.]

65. A fit and proper person, being a Barrister or Advocate of at least five years' standing, may be appointed by the Governor, to hold office during pleasure, as the Reporter of the Court, who shall, subject to the direction of the Judges of the Court, report the decisions thereof, and publish such reports [and such reporter shall be paid a salary at the rate of dollars per annum, out of the Consolidated Revenue Fund of Canada]

66. All persons authorized to take affidavits in any of the Superior Courts of any Province in Canada, may take affidavits in such Province, to be used in the Supreme Court.

67. All persons being barristers or advocates in any of the said provinces, shall be admitted by the Supreme Court sitting in term, to practice as barristers and counsel at the bar of the Court, and before the Judges thereof, upon [paying such fees as the Court shall, by its general rules or orders, fix and determine], and, upon signing a roll, to be kept in the custody of the Registrar of the Court, amongst the records thereof, to be called "The Barristers' Roll."

68. All persons being attorneys, solicitors, or proctors, in the Superior Courts of any of the said Provinces, shall be admitted to practice as attorneys, solicitors, and proctors in the Supreme Court, upon taking such oath, [and paying such fees], as shall, by the Court, be prescribed and fixed, and upon signing a roll, to be kept in the custody of the Registrar of the Court amongst the records thereof, to be called "The Roll of Attorneys and Solicitors."

69. The Judges of the Supreme Court, or any five or more of them, of whom the Chief Justice shall be one, may from time to time, make general rules and orders for regulating, as well the original as the appellate procedure of the Court, and for the effectual execution of this Act, and of the intention and object thereof, and for fixing the fees and costs to be taxed, and allowed to, and received and taken by, the practitioners and officers of the Court, and may, from time to time, alter, and amend any of such rules or orders, and make other rules or orders instead thereof.

70. The foregoing enactments of this Act shall come into force respectively, upon a day or days to be named by the Governor, in a Proclamation or Proclamations to be issued for that purpose; provided that the same day or different days may be named in any such Proclamation for the coming into force of these

of the said enactments which relate to the original jurisdiction of the Supreme Court, and of those which relate to its appellate jurisdiction and other matters: And the provisions respecting appeals to the Supreme Court, shall apply to judgments rendered before the days so appointed for the coming into force of the enactments relative to the appellate jurisdiction of the Court, provided the twenty days after the judgment, limited by section *twenty seven*, for giving notice of appeal have not elapsed, and that such notice is given within the said twenty days:—or, provided an appeal to the Queen in Council has been allowed, and that before the record in the cause has been transmitted to the Registrar of Her Majesty's Privy Council, and while it would be still competent to the appellant so to transmit the same, as having complied with all the preliminary requirements of the law within the periods limited for each, the appellant gives to the respondent, and files in the Court appealed from, a notice that he intends to appeal to the Supreme Court, and complies afterwards with all the requirements of this Act, reckoning such notice as the notice of appeal to the Supreme Court, mentioned in section *twenty seven*: and the security (if any) given by the appellant with reference to the appeal to the Queen in Council, shall in such case become void.

71. This Act may be cited as "The Supreme Court Act."

SELECTIONS.

THE MARRIAGE LAWS

OF VARIOUS COUNTRIES, AS AFFECTING THE PROPERTY OF MARRIED WOMEN.*

By the Hon. Wm. Beach Lawrence.

Marriage, according to Grotius and Blackstone, was always a matter *juris gentium*, and with the intercourse now existing between the different portions of the civilized world, and especially between the people of a common descent on the two sides of the Atlantic, every incident connected with it is of general interest. And no citizen of any country marrying abroad or coming to reside abroad after marriage can well know to what extent the laws of other countries on this subject may not be applicable to him.

Important, however, as the protection of the rights of property of married women is, the questions which concern her matrimonial status are of paramount consideration. Marriage, though a contract, is a contract *sui generis*, and among its peculiarities is that it is impossible by rescinding it, after it has been once consummated, to restore one of the parties to the condition which existed before the contract was entered into. The Common Law of Europe, and which is still the law of Scotland, by regarding every promise of marriage between persons of the age of puberty, followed by consummation, as constituting an irrevocable contract, protected the feebler sex against the stronger, and was the ægis of woman's honor.

The decision rendered by your House of Lords in 1843, declaring a person ordained by a bishop to have been essential by the Common Law of England to the validity of a marriage, it is unnecessary to say created the most profound amazement in the United States. As our law of marriage has no other basis than the law of England as it existed before the time of Lord Hardwicke's Act, if the interposition of a clergyman ordained by a bishop was necessary with you it could not, in the absence of any statutory regulations, have been less obligatory with us.

It is unnecessary to inquire as to the soundness of the decision in the *Queen* v. *Millis*, rendered by a divided vote of the House of Lords, and against which the eminent judge of the Ecclesiastical Court, Dr. Lushington, on the earliest occasion, so earnestly protested. Neither the solemnization by a priest, as contended for by the English Common Law judges, nor the decree of the Council of Trent requiring the presence of the curate and two witnesses to the verification of a marriage between Catholics, impose any additional restrictions on the parties in the contracting of marriage. On the contrary, the Council of Trent, whose professed object it was to establish a system which would prevent for the future scandals arising from the repudiation, by persons belonging to the Church, of clandestine marriages of which the proofs were wanting, refused to declare invalid marriages contracted without the ecclesiastical benediction. At the same time they anathematized all who should say that the marriage of children without the consent of their parents was null.

Constituted as human nature is, every restriction on marriage must operate to induce illicit connections, and such connections, as a general rule, must be based on a sacrifice of the middle and lower classes to the licentiousness of the higher. As it was well expressed by Sir James Mackintosh, the whole legislation of Europe on the subject of marriage has been a contest of patrimony against matrimony, though, viewed in this light, it is not a little extraordinary that the authors of the Code Napoleon, who had just proclaimed the equality of all citizens, should have referred as an authority for their articles on marriage to the edict of Henry II. of 1556, and to the ordinance of Louis XIII., which were professedly intended to prevent *mésalliances*. If the object of the Code had been to make lawful marriage an exceptional institution and concubinage the normal rule, no more effective

*The above is an authentic report of the speech made by Mr. Lawrence, in the discussion on the Married Women's Property Bill, at the Bristol Congress of the Social Science Association in October last.—*Ed. Law Magazine.*

enactments could well have been devised than the restricttons which it imposes. The provisions of the Roman law as to parental authority are exaggerated, and while the criminal condemned to the '*travaux forcés*' is deprived of all other civil rights, he retains an absolute veto over the marriage of his children to an age beyond that of legal majority for other purposes, and is entitled to '*actes respectueux*' from them at every age, the absence of which would expose the marriage to be nullified, and which in any event create unjustifiable delay.

The rule early introduced into Germany, which prohibited marriages of members of sovereign houses even with the higher nobility, extended, till modified by the improved legislation of the new confederacy, to all intermarriages between different classes of the community. The laws of many of the German States, more just than the French Code, seem to have contemplated the natural result of a system which imposed innumerable artificial impediments to marriage, and in the Codes of Prussia and Saxony the '*Verlobniss*' forms a separate chapter. Though such connections were terminable without legal proceedings, provision is made for the legitimacy of the children born under them, and in Prussia there is a complete code respecting what the '*Allgemeines Landrecht*' terms marriages of the left hand.

In England legislation against *mésalliances* only goes back about a century. It dates from Lord Hardwicke's Act, as it was called, passed in 1753. For a long time previous, almost every year, Bills to prevent clandestine marriages, that is to say, to protect the aristocracy against the improvident marriages of their prodigal heirs, passed the House of Lords but failed in the Commons. Lord Hardwicke's Act not only prohibited any suit before an Ecclesiastical Court to compel the celebration *in facie ecclesiæ* of a marriage contracted either *per verba de præsenti* or *per verba de futuro*, but the rule as to the consent of parents, which the Canon Law had never required, was rigorously applied. Moreover an omission of the minutest forms was fatal. Unlike the French judges, who are vested with discretionary power in the case of omission of the preliminary requirements of the Code to look at the motives, whether the object was clandestinity, or the omission of the formalities was accidental, the reports of the English Courts will show cases where marriages, which had lasted twenty-five years, and in one case nearly forty, were annulled after the birth of children for omissions in the formalities prescribed for obtaining a license, though the license itself was perfectly regular and no suggestion of clandestinity existed. In several cases the judges expressed their regret in being compelled to adjudicate according to the letter of the law, nor was it till 1822 that Lord Hardwicke's Act received any modification. Many of the most stringent provisions of that law no longer exist, but under the Acts of 4 Geo. IV. c. 76 (1823), & 6 and 7 Will. IV. c. 85 (1836), which constitute the present marriage laws of England, though a marriage is not invalid because a license is issued under a wrong name, any mistake of name, however slight, renders void a marriage celebrated after the publication of banns.

It is said, in the report of the Royal Commission made last year, that in all these forms of English marriages, the marriage may be invalidated by a non-compliance with any requirements of the law. For instance, if the place where the marriage is celebrated is not properly consecrated or set apart, or if the marriage is effected in some other locality than where the banns have been called, or if any other error affecting time or place is made by the parties, that entirely invalidates the marriage, although, upon other grounds, there there may be no objections whatever to it.

I will not dilate further on what may be deemed only matter introductory to the subject to the present discussion. Accustomed to the jurisprudence of a country where no formal ceremony, civil or religious, is requisite to constitute a valid marriage, and every intendment is made in favor of legitimacy, it is difficult for me to comprehend a system of legislation which, for the mere object, moreover usually ineffectual, of preventing improvident marriages of spendthrift heirs, would sacrifice female virtue to family pride. It was, indeed, with no little astonishment that I read the following remarks, made in a debate in the House of Commons during the last session of Parliament:—'Suppose.' it was said, 'any gentleman in this House visited at a house in Scotland where a young lady happened to be staying, and that he and the young lady took a walk together, and, in the course of the walk, he took a piece of paper out of his pocket, on which they wrote down a mutual promise to marry, though the piece of paper might be simply put back again into his pocket, and though nobody might be there at the time, and if the persons afterwards lived in a certain way together, that would be a valid marriage, although nobody might know of the fact of the marriage for years afterwards.' It seems to me that, so far from this statement aiding the cause for which it was intended, it conclusively establishes the propriety of the Scotch law of marriage. I am very sure that there is no tribunal in my country that would not, under the facts as stated, pronounce the sentence of a valid marriage; nor is there a legislature in any state of America which would enact such a system of marriage laws as would enable the parties, if they desired it, to escape from the relation thus contracted, whether or not it was evidenced either by a priest or civil officer.

Having alluded to the English law of marriage, I ought not to leave this branch of my subject without referring to the recommenda-

tions of the Royal Commission. Though, for the reasons incidentally suggested, I cannot but think that the rights of the weaker sex require the return, pure and simple, to the old common law, very much I believe would be gained by providing, as is proposed, that no marriage celebrated by a minister of religion duly authorised or by a civil officer shall be declared void, for a non-observance of the conditions prescribed for the prevention of clandestine, illegal marriages; and that the preliminary conditions relative to residence, consent of parents, declarations required from the parties, shall only be directory.

Where marriage takes place in foreign countries, and especially between persons of different nationalities, important questions of international law present themselves, about which the jurisprudence of England and America is not in accordanee with that of the continent. While all agree that the law of the place of celebration must be observed, the French and other countries, where the rule of the personal status prevails, subject their citizens to their own laws, when contracting marriage abroad. Frenchmen, who have not lost their nationality, have two conditions to perform: they must make the publications in their *commune*, and obtain the consent of their parents. Neither the English nor American law pays any regard to these exterritorial requirements; and the consequence is, that cases exist where parties have been validly married in England or the United States, whose marriages are null in their own country.

The impediments thrown in the way of marriages abroad have induced the passage of Acts of Parliament, authorising marriages at embassies and consulates, the validity of which, as derogating from the sovereignty of the country where they are solemnised, is considered by the Royal Commission as doubtful. It would seem that this is a matter which requires a conventional arrangement, and so far as the United States and England are respectively concerned, it naturally falls within the scope of legislation required by the arrangements recently entered into by them, in regard to naturalisation and its incidents.

Though publicists are pretty generally agreed that it is the law of the husband's domicile or the matrimonical domicile, and not the law of the place of the celebration of the marriage, which, in the absence of any express contract, is to govern the respective rights of the parties, at least as to personal property, there is no general accordance between them as to the effect of a change of domicile after marriage.

In Story's time, it would appear that no case had arisen in the English courts upon the point, as to what rule ought to govern in cases of matrimonial property where there is no express nuptial contract, and there had been a change of domicile. He refers to a case (*Sawer* v. *Shute*, 1 Anstr. 63) where the Court of Chancery adopted the law of the actual domicile, though to the prejudice of the equitable provision which that tribunal was in the habit of making in favor of married women domiciled in England.

The actual domicile is the law of Louisiana now confirmed by Statute, as to all property acquired after removal into the state. And Judge Redfield, the commentator of Story, Story, contends for it as the suitable rule in all cases. He admits, however, that the Court of Appeals of New York by a divided vote had decided otherwise, holding that the rights of property between married persons continue to be governed, notwithstanding a change of domicile, by the law of the place where the marriage was celebrated, and which was also at the time the place of the domicile of the husband. This is in accordance with the French rule.

There are two systems of law applicable, on the continent of Europe, to the rights of married persons, in neither of which is the individuality of the wife suppressed, as by the English Common Law, and though in many cases the husband exercises the administration during marriage, the wife's rights of property under one form or other are retained, and the law affords her protection against the improvidence of the husband.

On the continent where the question of woman's rights arises, it is necessary to decide between the dotal *régime*, which is sometimes purely Roman, and sometimes undergoes very extensive modifications, and the community of goods which is of German origin, and which also exists under various forms. Nowhere are these systems obligatory, except in the absence of express contracts, which in some countries may be made even after marriage. The right to such marriage contracts is entirely in accordance with the express terms of the law, and not, as in England and America, in apparent evasion of it.

By the Roman law, on which the modern dotal system is founded, the husband had the sole management of the dowry given by the father to a daughter on the occasion of her marriage, but as a general rule the husband's right to it ceased at the dissolution of the marriage, and it was restored to the wife or her family. Moreover the constitution of a dowry was in no wise essential to the validity of the marriage, and all the property not comprehended in the dowry was paraphernal, of which the wife remained proprietor and over which the husband possessed no rights. By the French law there is the most entire liberty of arranging the interests of the parties by contract, subject only to the condition that it shall not interfere with the general policy of France, and particularly as respects the law of succession. No provision can be made favoring primogeniture or affecting the equality of descent among children. Not only may special stipulations be made, but the parties may in general declare whether they will marry under the law of community, the law

of dowry (the general features of which as they existed in the Roman law we have described), or the law of the separation of property, the Code providing the consequences to result from the adoption of any one of these systems.

Nor is it necessary to adopt one of them in its entirety, but they may be modified or blended to suit the views of the parties. In the absence, however, of any declaration the law of community, which may therefore be deemed the Common Law of France, governs. "Under this law, the husband and wife become joint owners of all the personal property which they possess at the time of the marriage, as well as of all such property as they may acquire during the marriage, by succession, or even by gift, unless the donor express the contrary. They are also joint owners of all the real property purchased during the marriage; but such real property as is acquired by succession or gift, unless the donor declares otherwise, does not fall into the community. The husband has the sole management of the property of the community, and may sell or charge it without the concurrence of the wife; he has also the management of all the property of the wife which is excluded from the community, but he cannot alienate such of her real property as is excluded, without her consent; nor can he alienate by will the property that is included, beyond the share of it to which he will be entitled on the dissolution of the community. At the death of either of the parties, an account is taken of the properties and of the liabilities of the community, and the surplus is divided equally between the survivor and the representatives of the deceased."

Under the dotal system, "the husband has, during the marriage, the management of all the property in dowry, but he cannot, either alone or conjointly with the wife, alienate or charge any of the real property, unless provision has been made for this purpose in the marriage contract. The wife may, however, under certain conditions, make provisions thereout for the children of the marriage, or of a former marriage, and the Court will also permit the property in dowry to be sold, in certain cases, such as for releasing the husband from prison, &c. The wife has the management and enjoyment of such part of her property as has not been settled in dowry, but she cannot alienate nor sue, in respect to this property, without the consent of her husband; or, in the event of his refusal, without the permission of the Court."

Where the parties stipulate by their marriage contract that they will be separate in property, the wife retains the entire management and enjoyment of her property, both real and personal. Each of the parties contribute towards the expenses according to the terms of the contract; if it is silent in this respect, the wife contributes a third of her income, though the Court may, in certain cases, order a larger contribution. The wife cannot, by virtue of any stipulation, alienate her real property without the special consent of her husband, or of the Court, in case of his refusal; and any general authority for this purpose given to the wife, either by the marriage contract or subsequently is void. The community may be confined to mere gains, leaving each party his own property, or there may be universal community which will include real estate as well as personal. The mere declaration that the parties marry without community does not constitute the separation of property so called, in which last case, as we have seen, the wife has the separate control of her property in all respects, except that she cannot dispose of any real estate without her husband's consent. In a marriage declared to be without community, the wife has not the right of administering her property, or receiving the income, which goes to the husband to support the expenses of the marriage; the husband retains the administration of the property, movable and immovable, during his life, with the right of receiving all the personal property brought as her *dot*, or which accrues to her during marriage, subject to the restoration after the dissolution of the marriage or judgment of separation of goods.

In the Spanish law the community is confined to the acquests, and each party retains his or her own property, and is liable for his or her own debts. However, where there is no inventory made at the time of the marriage, and there is no other means of distinguishing what belongs to each party, the movables are considered as acquests, and subject to the rule of the community. If under the Spanish law the woman renounces the community before the celebration of the marriage, she is married under a rule equivalent to the rule of the separation of property and not of the French *régime* without community. The Spanish jurisprudence admits of a system similar to the French *régime* without community, *i.e.* a *régime* in which the wife has neither the advantages of community, nor those of the separation of property. But for this purpose it is requisite that such a *régime* be expressly stipulated in the marriage contract. The following are its consequences upon property. The wife has no share in the acquests, neither has she the administration of her separate property, whilst in the absence of such stipulation she would retain that administration, as in the French system of separation of property.

The wife's dowry may be given her either by her parents or by third parties, and either before or during coverture. Parents are bound to furnish a dowry equal to the "*legitime*" (the portion the party would by law be entitled to in the parents' fortune in case of succession), deducting therefrom the property the bride may possess in her own right. The obligation does not exist if she marries without their consent. All the property the

wife acquires during coverture as gift, legacy, or succession, is joined to the dowry. The husband is the responsible usufructuary of of the dowry. He has the admistration of all personal property. but he has to give legal security for its value. Neither the husband, nor wife, nor the two acting together, can charge or mortgage the real estate forming part of the dowry, unless by authorization of a tribunal, and jointly. The husband is bound to supply the deficiency created thereby in the dowry as soon as he is able to do so.

The new Italian Code differs essentially from that of France on this subject. It has established two *régimes*, the dotal and that of the community. They are both conventional, and there does not exist any legal *régime*. In the silence of the parties, the law does not assume the adoption of either. If there is no special contract of marriage, or if the contract does not adopt either the dotal *régime* or that of the community, the property of the wife is governed by the paraphernal rule, which is identical with the French, except that the law declares that the parties shall contribute to the household charges in proportion to their respective fortunes, while in the French law the woman contributes one-third.

The Common Law of Germany, as well as the Codes of Prussia and of Saxony, fully recognises the free right of the parties to make what contracts of marriage they please, with the same restrictions as those imposed by the French Code, of not interfering with the State policy, and these nuptial contracts may be made as well during the marriage as before. The parties may, by their contract, dispose reciprocally in favor of each other of any portion of their successions, saving the reserved rights of heirs, and these dispositions are irrevocable. They may, contrary to what the French Code permits, declare their marriage to be according to any of the local laws, customs, or statutes. The dotal *régime* has prevailed in the greater part of Germany, and is that of the Austrian Code, as it is also of the Bavarian. But the principle of community is the law in a great part of what constitutes the Prussian States.

The legal community varies in the different countries where the law of the community prevails. It is universal and comprehends all the property, real and personal, in many of the States. All the laws accord to the widow, as long as she does not marry, certain rights in the property of her husband, either for her life or in full property. The wife may alienate her real estate without the special consent of her husband, unless the local law subjects her to marital authority. The dotal character of the property belonging to the wife is not presumed. The husband must prove that the dotal property is not paraphernal. If the *dot* is in danger, the wife may claim against third parties the restitution. The wife or her heirs have a general mortgage upon the property of the husband for the restoration of the dower, and they have a legal mortgage upon the property of the husband for the restoration of the paraphernal property.

In Prussia, by marriage the administration of the property of the wife is confided to the husband, except so far as it is reserved to her by the law or by matrimonial conventions. What property each party contributes towards the expenses of the establishment is under the administration of the husband, but in the property reserved to the wife is included everything that relates to her personal use, the nuptial gift (morgengabe) and whatever is embraced therein, and she has the administration, usufruct, and free disposition of her reserved fortune. The savings made by a married woman from her reserved fortune belong to her. The immovables and capital inscribed in her name, and which she has acquired from an industry separate from that of her husband, form a part of the general contribution (apport), unless she carries on a commerce exclusively with her reserved means, and there is a stipulation to the contrary. The authorisation of the husband for her to sue in a court of justice, when the matter relates to her reserved fortune, is unnecessary. The husband exercises all the rights and duties of a life owner over the property of the wife not reserved, but he cannot alienate it or charge it, nor dispose of the capital inscribed in her name, without the consent of the wife. But there are cases—as those of indispensable repairs—where the tribunals will interpose if the wife refuses. The husband has the disposal of the personal property set apart for the maintenance of the family, but he cannot dispose of the reserved personal property. The wife cannot take away from the husband the administration of her portion of the property set apart for the common support, unless she provides for his support and that of the children in a manner conformable to their condition. When the debts of the wife were made before marriage, her creditors can pursue their claims against her person and all her property, but if these debts have been concealed from the husband, and reduce the contribution for the common support, he may have recourse to her reserved fortune. Community of goods does not exist among the parties, except when established by provincial law. The parties may at all times make mutual contracts of inheritance respecting their successions, and revoke them, but the wife must in this case be assisted by counsel. The dower consists of a pension allowed to the wife by the husband for her support during her widowhood. The wife has a right to the personal property belonging to the household establishment, which includes her outfit entire, the furniture for ordinary use, provisions, &c. The half of the hereditary portion, fixed by the law, to the surviving husband or wife, is regarded in the same light as the shares of the heirs, &c., and subjected to the same rules. Before the division of the property of the hus-

band or wife, the survivor resumes possession of his or her own property.

In Saxony, the general rule, where there is no contract, is that the husband has the usufruct and administration over the fortune which the wife possesses at the conclusion of the marriage, or acquires during marriage. He is responsible for fraud or negligence. There are provisions respecting the *dot*, which is the aggregate of what is given or promised by parents or third parties, as the portion to be applied on behalf of the wife to the common support of the family. There is an obligation on the part of the parents to furnish to the future wife a portion conformable to their fortune, and to the position of the husband. The obligation to furnish a *dot*, however, does not exist if the daughter has a sufficient fortune of her own, or if she marries without consent. With respect to what the wife acquires for services, which have no reference to the affairs of the family or to her husband's position, she has the property of it, but the husband has the administration and use. If the wife has given such acquests to the husband to be employed for the purposes of the family, or has herself employed them in that way, she cannot, after the dissolution of the marriage, reclaim them. In order to be valid against a third party, the usufructuary title of the husband need not be registered. If the property of the wife is delivered to the husband with a statement of its value, he is responsible for it, and must replace it according to the indicted value. Neither of the parties is obliged to fulfil, out of his own property, the engagements of the other. All the engagements of the wife, validly contracted before or during marriage, must be discharged out of her own fortune, though it is only in certain cases that her reserved fortune is liable for those contracted during marriage. In case, by a bad administration, the husband puts in danger the fortune contributed by the wife for the common support, she may ask that the administration be given to her; and, in case of bankruptcy, the wife may reclaim her fortune according to the inventory. The right of the husband to the administration and use of the fortune, which the wife brings to the common support of the family, expires with the dissolution of the marriage. The husband is required, immediately after the dissolution of the marriage, to restore according to the regulations regarding the usufruct, the fortune which the wife had brought to the marriage. Contracts, by which the consequences resulting from marriage are determined or changed, may be made before or during marriage. If the wife has reserved with the consent of the husband the free disposition of her fortune or of a part of it, or if a third party, who has given a fortune to the wife, has decided that the wife shall have the free disposition of it, the wife may, in the absence of any other clause, dispose, without the co-operation of the husband, of the property thus reserved, administer it, and use it in any way for her own purposes. If the husband and wife agree to admit the general community of the goods, all the fortune which they both possessed at the conclusion of the marriage, or which has been acquired since, becomes, if no other stipulation exists, common, without any other form, from the time of the conclusion of the contract; and if the contract was concluded before the marriage, from the time of the marriage. The mere acceptance of the community of property confers a right to the inscription in the registers of landed estate or of mortgages of the things and rights, the acquisition of which ordinarily requires such an inscription.

The Austrian Code of 1811 is one of the best systems of jurisprudence in Europe. It applied, till the recent legislative separation of Hungary from the Cis Leithan provinces, to the whole empire. The regulations as to the obligations of the parents to furnish a *dot* are similar to those of the Saxon Code. The dower or nuptial gift is what the husband or a third party gives to a bride as a supplement to the *dot*. She has not the enjoyment of it during marriage, and only acquires the property in case she survives her husband. No dowry in the nature of a wife's *dot* is due to the wife, but as the future wife has a right to a *dot* upon the fortune of her parents, so the parents of the future husband ought to provide him an establishment proportionate to their fortune. The *morgengabe* is the present which the future husband promises to give to his wife the morrow of the marriage. When it has been stipulated, it is presumed in case of doubt that it has been given within the three first years of the marriage. The marriage does not of itself establish a community of goods between the husband and wife. It should be stipulated by contract; the form and extent are determined by the Code. In default of express stipulation, each of the married parties preserves his rights of property and of the increase of the acquests during marriage. There is no commuuity between the parties. The husband is presumed to be the administrator of the property of the wife, if she makes no objection. The husband is in this respect considered as the responsible mandatory of the fund or capital only; but he is not required to render an account of the income received during marriage. Unless there are stipulations to the contrary, his accounts are considered to be liquidated to the day when his administration ceases. The administration of the wife's fortune may, in case of danger for the *dot*, be taken from the husband, even although it had been granted to him by express contract. The widow is entitled to a dower from the time of the death of the husband, which should be paid to her quarterly, in advance. The widow who marries again loses her dower. The validity or nullity of gifts between the husband and wife are regulated by the general rules relating to

gifts (donations). The husband and wife may make dispositions in favour of heirs, or make themselves mutually heirs to one another. They may conclude an agreement respecting the succession by which they reciprocally promise and accept the gift of their fortune. To these agreements respecting succession between husband and wife the disposition relative to contracts in general are applicable. Many of the provisions of the Code apply to the dissolution of Marriage by divorce.—*Law Magazine.*

ONTARIO REPORTS.

CANADA REPORTS.

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

In the matter of the Arbitration between the Provinces of Ontario and Quebec, in the Dominion of Canada.

The British North America Act, 1867—Resignation of one arbitrator — Unanimity of arbitrators not necessary— Arbitration on public matters—Writ of prohibition from court of one Province.

Held, that as "The British North America Act, 1867," confers powers to the arbitrators appointed thereunder of a public nature, such powers may be exercised by the majority, and a joint award is therefore unnecessary.

The jurisdiction of the courts of one of the litigant Provinces to interfere to stay the proceedings on the arbitration, by writ of prohibition considered, and *held* that there is none.

[Ottawa and Montreal, February—July; Toronto, Aug., 1870.]

The British North America Act, 1867, section 142, enacts that "The division and adjustment of the debts, credits, liabilities, properties, and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada, and the selection of the arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec."

Under the provisions of this enactment the following persons were appointed arbitrators: The Hon. D. L. Macpherson for the Province of Ontario, The Hon. C. D. Day for the Province of Quebec, and the Hon. J. H. Gray, a resident of the Province of New Brunswick, for the Dominion of Canada.

The arbitrators had several meetings, being attended by Hon. J. H. Cameron, Q.C., as counsel for the Province of Ontario (assisted by Hon. John Sandfield Macdonald, Q.C., Attorney-General for Ontario, and Hon. E. B. Wood, Treasurer of Ontario), and by T. Ritchie, Q.C., Esq., as counsel for the Province of Quebec (assisted by Hon. Geo. Irvine, Q.C., Solicitor General for Quebec.)

On the 28th May the arbitrators met to give a preliminary decision to form a basis for the preparation of their final award. The arbitrators disagreed however as to this basis, Mr. Macpherson and Col. Gray agreeing, and Judge Day dissenting.

This preliminary award of the majority, though not delivered for some time after the above date, was as follows:—

"The Arbitrators, under the B. N. A. Act, 1867, having carefully considered the statements made, and the propositions submitted by and on the behalf of the Provinces of Ontario and Quebec, and having heard counsel at length thereupon, do award and adjudge as follows:

1st. That the Imperial Act of Union, 3rd and 4th Victoria, chap. 35, did not create in fact or in law any partnership between Upper and Lower Canada, nor any such relations as arise from a state of co-partnership between individuals.

2nd. That the Arbitrators have no power or authority to enter upon any inquiry into the relative state of the debts and credits of the Provinces of Upper and Lower Canada respectively, at the time of their Union, in 1841, into the Province of Canada.

3rd. That the division and adjustment between Ontario and Quebec of the surplus debt beyond $62,500,000, for which under the 112th section of the "B. N. A. Act, 1867," Ontario and Quebec are conjointly liable to Canada, shall be based upon the origin of the several items of the debts incurred by the creation of the assets mentioned in the 4th Schedule to that Act, and shall be apportioned and borne separately by Ontario or Quebec, as the same may be adjudged to have originated for the local benefit of either; and where the debt has been incurred in the creation of an asset for the common benefit of both Provinces, and shall be so adjudged, such debt shall be divided and borne equally by both.

4th. That where the debt under consideration shall not come within the purview of the 4th Schedule,—whether the same shall or shall not have left an asset,—reference shall be had to its origin, under the same rule as in last preceding section laid down.

5. That the assets enumerated in the 4th schedule of the B. N. A. Act, 1867, and declared by the 113th section to be the property of Ontario and Quebec conjointly, shall be divided and adjusted, and appropriated or allowed for, upon the same basis.

6th. That the expenditure made by creation of each of the said assets shall be taken as the value thereof; and where no asset has been left, the amount paid shall be taken as the debt incurred, the arbitrators having no right to enter into or adjudicate upon the policy or advantages of expenditures or debts incurred by authority of, and passed upon by Parliament.

7th. It is therefore ordered, that in accordance with the above decision, the counsel for the said Provinces of Ontario and Quebec do proceed with their respective cases.

Judge Day dissented from this judgment in the following words:—

The undersigned arbitrator dissents from the foregoing decision of the Honourable D. L. Macpherson and the Honourable J. H. Gray, two of the arbitrators appointed under the B. N. A. Act, 1867.—

Because the said decision purports to be founded on propositions which, in the opinion of the undersigned, are erroneous in fact and in

law, and inconsistent with the just rights of the Province of Quebec;

Because the relation of the Provinces of Upper and Lower Canada, created by the Union of 1841, ought to be regarded as an association in the nature of a universal partnership, and the rules for the division and adjustment of the debts and assets of Upper and Lower Canada under the authority of the said Act ought to be those which govern such associations in so far as they can be made to apply in the present case;

Because the state of indebtedness of each of the Provinces of Upper and Lower Canada at the time of the Union of 1841 ought to be taken into consideration by the Arbitrators, with a view to charge the Provinces of Ontario and Quebec respectively with the debt due by each of the Provinces of Upper and Lower Canada at that time; and the remainder of the surplus debt of the late Province of Canada ought to be equally divided between the said Provinces of Ontario and Quebec;

Because the assets specified in Schedule No. 4, and all other assets to be divided under the authority of the said Act, ought to be divided equally according to their value;

And thereupon the undersigned presents an award and judgment based upon his foregoing propositions, and upon the reasons assigned in this printed opinion—in the terms following:—

The arbitrators under the British North America Act, 1867, having seen and examined the propositions submitted on the part of the Provinces on Ontario and Quebec respectively for the division and adjustment of the debts and assets of Upper Canada and Lower Canada under the authority of the said Act, and having heard counsel for the said Provinces respectively upon each of the said propositions, after due consideration thereof, are of opinion that the propositions submitted in behalf of the Province of Ontario do not, nor does either of them, furnish any legal or sufficient rule or just basis for such division and adjustment; and they do award and adjudge that the said division and adjustment ought to be made according to the rules which govern the partition of the debts and property of associations known as universal partnerships in so far as such rule can be made to apply; and the arbitrators having also heard counsel for the Provinces of Ontario and Quebec respectively upon the objection made in behalf of the former Province to the 'jurisdiction and authority' of the arbitrators to inquire into the state of debts or credits of the Provinces of Upper and Lower Canada prior to the Union of 1841, or to deal in any way with either the debt or credit with which either Province came into the Union at that time, and duly considered the same, are of opinion that the said objection is unfounded, and that they have authority, and are bound by the provisions of the said Act, to inquire into the state of the debts and credits of the Provinces of Upper Canada and Lower Canada existing at the time of the Union of 1841, and so to deal with them as may be necessary for a just, lawful and complete division and adjustment of the debts and assets of the said Provinces. And thereupon it is ordered that the counsel for the Provinces of Ontario and Quebec do proceed, in accordance with the foregoing judgment, to submit such statements in support of their respective claims as they may deem expedient."

The above judgments were by the three arbitrators ordered to be entered in the minute book, and to be communicated to the counsel for the two Provinces respectively.

About the 16th June the arbitrators severally received from the government of Quebec a minute of Council of that Government, expressing the opinion of the law officers of the Crown of Quebec, "that it was essential to the validity of any decision by the arbitrators, that their judgment should be unanimously concurred in."

The publication of the decision was therefore postponed until the action of the arbitrators could be determined on this point at their next meeting, which was to take place at Montreal on the first Tuesday in July, though the arbitrator for Ontario demanded that the counsel of both governments should have the decision communicated to them in obedience to the order made.

On the first day of this meeting, in July, at Montreal, the fact of the receipt of this communication from the government of Quebec was announced. A demand was then made on behalf of the government of Quebec that counsel should be forthwith heard on the question of unanimity, and after denial by the counsel for Ontario of the right of the government of Quebec to make any communication to the arbitrators, which was not at the same time made to the counsel or government of Ontario, and a demand made that the decision arrived at should be first declared, the question was submitted, and the arbitrators decided by a majority that Quebec should be heard on the point of unanimity.

The question was therefore argued at length before the arbitrators by

George Irvine, Q. C. (Solicitor General for Quebec), and *Ritchie*, Q.C., for the Province of Quebec:—

The decision of the arbitrators, to be valid, must be the unanimous judgment of the three arbitrators, for by the 142nd section of the British North America Act three arbitrators are appointed, and no provision is contained that the award of the majority shall be binding, and the submission being to three, each must join in the award. Anterior to the Imperial Act the precise terms contained in the 142nd section had been virtually agreed upon between the Provinces: (see the 16th Resolution of the Quebec Conference, as it passed in the Parliament of the late Province of Canada); and the English law must interpret the Imperial statute so far as it can be interpreted: Watson on arbitration, 64; Caldwell on arbitration, 202; Paley on agency, 117.

The Canadian Interpretation Act, which provides that when a power is delegated to three or more persons, the decision of the majority shall be valid, does not apply to the Imperial Act, but is confined to the Canadian statutes, and no such clause is to be found in any Imperial statute.

J. Hillyard Cameron, Q.C., and *Hon. E B. Wood* (Treasurer of Ontario), for the Province of Ontario, *contra*:—

In cases of private arbitration, unless there is a power reserved to the majority, the award must be unanimous. That is the rule of the common law, although not of the French law,

which makes the arbitrators a Court where the majority may decide. It is not pretended that at common law when the submission is to three arbitrators with no reservation of power to the majority two can execute a valid award in matters of ordinary private arbitration; but such is not the law in matters of a public nature. The Interpretation Act has a powerful bearing on the interpretation of the 142nd clause (see the 129th clause of the British North America Act). The Dominion Parliament are given power to deal with the public debt and property. The whole of the questions before the arbitrators in respect to that public debt and property must be considered by the light of the statutes which were passed by the Dominion, one of which is the Interpretation Act. Not only therefore are all laws left in force, but the question of the public debt and property is to be left to arbitrators, who are to decide according to the Interpretation Act.

The clear intention of the Legislature in having three arbitrators was that the majority should govern, and this is consonant with common sense and every day experience of arbitrations between private persons, and the Legislature had the possible difficulties arising from a disagreement between the arbitrators for the different Provinces in view when they appointed three arbitrators, one of whom was unconnected with either Province, and was, in effect, as an umpire.

Putting the matter upon the strictest basis as a matter of private right, the arbitrators had a right to deal with it according to the light cast upon it by the statutes of the country; but it is not necessary to deal with it on this narrow basis, for, independently of such considerations, it is not a matter of private interest and private arbitration, but a matter of public rights and reference to public arbitration, and therefore the decision of the majority must conclude the minority. This is admittedly the execution of a public trust; and is not the exercise of a power within the ordinary meaning of the rule regarding subjects of purely private interest: *Grindley* v. *Barker*, 1 Bos. & Pul. 229; *The King* v. *Whitaker*, 9 B. & C. 648; *Cortis* v. *Kent Water Works Co.* 7 B. & C. 314; see also Co. Litt, 181 (b); Roll. Ab. 329; Caldwell on arbitration, 2nd Amer. ed. pp. 202, 203 and 204, note (1) and cases there cited; Paley on Agency, 3rd Amer. ed. pp. 177 and 178, note (g) and the cases there cited, particularly *Croker* v. *Crane*, 21 Wend. 211, 218; *Ex parte Rogers*, 7 Cowen, 526, 530, and note (a); *Woolsey* v. *Tompkins*, 23 Wend, 324; *Damon* v. *Inhabitants of Granby*, 2 Pick. 345.

Shortly after the above argument Judge Day resigned his appointment, which was accepted by the government of Quebec, and a *supersedeas* was issued under the seal of that Province, discharging him from further duties as arbitrator.

On the 21st July, the day appointed for giving judgment, it was objected on behalf of the Province of Quebec that no further action could be taken in the matter owing to the resignation of one of the arbitrators, there not being in fact the three required by the Act. The counsel for Quebec, being overruled in this, stated that they withdrew from the arbitration, and the judgment of the remaining arbitrators was then delivered by the

Hon. J. H. Gray:—At our last meeting a question was raised by the counsel for Quebec, under instructions from their government (a copy of the Order in Council having been transmitted to each of the arbitrators) which would then have been decided but for the abrupt withdrawal of Judge Day, and our subsequent immediate adjournment, namely:—"That it is essential to the validity of any decision to be given by the arbitrators that their judgment should be unanimously concurred in." It remains for me now to express the decision of the arbitrators on that question.

It is to be regretted that a position of this important character should not have been taken before it was known that there was a division of opinion between the arbitrators; and it may well be assumed that it would hardly have escaped the attention of so accomplished a jurist as Judge Day, the Arbitrator of Quebec, had he deemed it tenable, or that he would, under the circumstances of the decision, have undoubtedly brought it to the notice of his co-arbitrators. The learned Judge heard the argument, but left with us no expression of his opinion, save that the arbitration was one of a public nature. The views, therefore, now delivered are those of the remaining arbitrators, and consequently of a majority.

In matters of private reference the law is plain, that unless the terms of the submission provide that a majority may rule, all must agree in the award, or it would not be binding. The impracticability in private affairs of working out an arbitration, if unanimity was essential, led to the adoption, in almost all cases of submission, of the majority clause, or the alternative provision of an umpire. So essential to the successful conducting of an arbitration has this become that in the ordinary forms of arbitration bonds, or of rules of reference, one of these clauses is almost always found inserted. Without such clause, in private arbitration it is admitted unanimity is required.

The point now is—Does the same rule apply to public references or arbitrations?—to which class it is conceded, the present inquiry belongs—the 142nd section of the B. N. A. Act, 1867, under which the arbitration is held, containing no such clause.

Mr. Irvine, the Solicitor General for Quebec, has properly narrowed the question to this point.

Mr. Ritchie, in his argument for Quebec, cited Caldwell on Arbitration, p. 102, to prove the undoubted position as to private arbitrations. In the note to that page by the able American editor, who republished the work in the United States, we find the following remarks:—

"There is a wide distinction to be observed between the case of a power conferred for a public purpose and an authority of a private nature.—In the latter case, if the authority is conferred on several persons, it must be jointly exercised, while in the former it may be exercised by a majority."

Further on, at p. 202, he says that referees appointed under a statute must all meet and hear the parties, but the decision of the majority will

be binding. The correctness of these views is sustained by the citation of many authorities.

In the case of *Green* v. *Miller*, 6 Johnson, 38, as far back as 1810, it is clearly laid down:—"When an authority is confided to several persons for a private purpose, all must join in the act; *aliter* in matters of public concern." Thompson, J., says: "A controversy between these parties was submitted to five arbitrators. The submission did not provide that a less number than the whole might make an award. All the arbitrators met and heard the proofs and allegations of the parties, but four only agreed on the award; and whether the award be a binding award is the question now before the court No case has been cited by counsel where this question has been directly decided. I am, however, satisfied that when a submission to arbitrators is a delegation of power for a mere private purpose, it is necessary that all the arbitrators should concur in the award unless it is otherwise provided by the parties. In matters of public concern a different rule seems to prevail; there the voice of the majority shall be given."

In the case of *Grindley* v. *Barker*, 1 Bos. & Pul. 236, Erle, C. J., says:—"It is now pretty well established that when a number of persons are entrusted with powers not of mere private confidence, but in some respects of a general nature, and all of them are regularly assembled, the majority will conclude the minority, and their act will be the act of the whole." The same principle was recognized by the Court of King's Bench in the case of *The King* v. *Beaton*, 3 T. R. 592; see also Paley on Agency, 3rd Am. ed. pp. 177-8, note *c*, and *Broker* v. *Crane*, 21 Wendell, 211-18.

In *Ex parte Rogers*, 7 Cowen, U. S. Rep. 526, and note *a*, pp. 530 & 585, the whole position is ably and thoroughly reviewed; and in a long note citing the English as well as the American authorities bearing upon the same point, the distinction between public and private references and the duties and powers resulting therefrom are clearly shown, and the power of the majority to decide clearly established The English cases upon the point are not so direct, but in the reasoning of those which have been cited, or can be found, the same principle clearly manifests itself. In the Courts of the United States, decisions are constantly found bearing upon circumstances similar to those in our own Dominion. The varied nature of the business of that country, the different aspects under which questions arise from their position as a congregation of States, the daily development of new conflicts of rights arising from the expanding nature of their society, raise questions which do not come up in England, but the solution of which after all, in the absence of any particular local statutory provisions, is governed by the law of England. Under these circumstances our courts are in the habit of taking those decisions as guides. These cases then determine that in matters of public arbitrations or reference, though provisions to that effect be not specifically made, the decision of a majority shall be incident to the reference. The 142nd section of the British North America Act, 1867, must come within this rule. Were it not so intended, the section would be superfluous, because any one party in a great question of public importance could prevent a decision.

To work out the reasoning of the counsel of Quebec to its legitimate conclusion would place absolute power in the hands of the third or Dominion arbitrator. I have supposed that on points in which Ontario and Quebec were agreed it was my duty at once to assent, and that under such circumstances, whether I differed or not, was of no consequence; but, as the powers of all the arbitrators must be co-equal, if unanimity is essential, I might, by simply disagreeing, prevent an award, even when both Ontario and Quebec had agreed upon it. Such a position is untenable.

Mr. Macpherson and myself are therefore of of opinion that the decision of a majority must govern.

The arbitrators then proceeded to hear the arguments of counsel for Ontario on several of the heads stated in the printed case for that Province, and some progress having been made the arbitration was adjourned until the next day. Soon after the adjournment writs of prohibition against further proceeding in the arbitration, issued from the Superior Court of the Province of Quebec by Judge Beaudry, were served on both the arbitrators, who however met pursuant to their adjournment, and then further adjourned to meet in Toronto, in the Province of Ontario, on the 4th August, 1870. Soon after this last adjournment a writ of *quo warranto* was served on Mr. Gray, calling on him to shew cause why he should not cease to exercise jurisdiction as arbitrator for the Dominion, on the ground that he had become a resident of Ontario.

On the 4th August the arbitrators met for the purpose of considering the questions arising on the service of the writ of prohibition, and as to what further action they should take in the premises.

On the 5th August they again met, and delivered the following judgments as the result of their deliberations:

Hon. D. L Macpherson.—The two arbitrators now present meet under circumstances calling for the most careful circumspection and thoughtfulness.

The Province of Quebec is not represented before them. The counsel for Ontario calls upon them to proceed with the evidence and to make their award.

The retirement of the arbitrator for Quebec, sanctioned by the Government of that province, was formally communicated to the arbitrators when they met at Montreal on the 21st July last, by an official letter from the Premier and Secretary, the Honourable Mr. Chauveau, in which he further preferred the extraordinary request that the remaining arbitrators "will be pleased to stay further proceedings until such time as they receive notice as to their intentions from the government of this province,"—the Province of Quebec.

A request to stay proceedings until the government of Quebec should determine whether they would appoint another arbitrator was shortly afterwards made by the counsel for that Province, and was upon consideration refused by the arbi-

trators; whereupon the counsel for Quebec declared that that Province would no longer be a party to the arbitration and withdrew.

Further, each of the two arbitrators now present was, since the retirement of the arbitrator for Quebec, served, while in the city of Montreal, with a writ issued from the Superior Court of the Province of Quebec, the purport of which is to prohibit them from the further exercise of their functions until a new arbitrator should be named for that Province, or to shew cause to the contrary on the 1st of September next.

The arbitrators noticed that neither the letter of Mr. Chauveau nor the application of the counsel for Quebec named any time within which it was expected such new appointment would be made.

The retirement of the Quebec arbitrator took place, on the 9th July. Mr. Chauveau's letter is dated on the 19th, and on the 22nd the writ was obtained and served. But up to this moment the arbitrators are not informed that any new arbitrator is appointed, nor in fact that it is the intention of the government of Quebec to make a new appointment.

If the government of Quebec has power under the statute to appoint another arbitrator, and if it is their intention to do so, they have had more than reasonable time for the purpose, since their acceptance of Judge Day's resignation. It was the indefinite character of the delay asked for, which induced the arbitrators to refuse it. The writ which was issued and served almost immediately after that refusal is equally indefinite and might tend to create the impression that delay in completing the award and not to obtain a reasonable time to appoint another arbitrator was the object really desired.

It appears to me, unskilled as I am in legal technicalities, taking an equitable, common sense view of the question, to be beyond any reasonable doubt that no provincial tribunal has, or can claim any jurisdiction to examine into or decide any question referred to arbitration by the 142nd section of the British North America Act of 1867, and it may be confidently asserted that the Imperial Parliament intended the award to be absolutely final. But other and not unimportant legal questions (even if not really difficult) present themselves which, if insisted on, must be determined by some competent tribunal.

Can one of the arbitrators who has undertaken and entered upon the duties assigned by the statute, and who is under no mental or physical disability, retire from or abandon these duties before completion? This question is not one on which the other arbitrators can be expected to express an opinion.

It is, however, connected with the perhaps, more strictly legal enquiry: Does the Act of the Imperial Parliament authorize the withdrawal of an arbitrator with or without the concurrence of the party who appointed him? and does it provide for the substitution of another in his place? Again, are the arbitrators who (though respectively appointed by the governments of the Dominion and of the two Provinces) derive all their power and authority from the Imperial Statute, amenable to any government or local tribunal in matters falling strictly within the scope of their powers and duties.

The statute itself does not in terms confer any authority whatever with regard to the reference on any tribunal but the arbitrators. Can there then by implication arise a power to delay, which might be so exercised as to defeat the object of the enactment? The parties interested are the Provinces of Ontario and Quebec. Can either of them as a matter of legal or moral justice call upon one of its own courts to interrupt or control the proceedings of a jurisdiction created for the sole purpose of deciding rights and interests as between the two Provinces?

If so, the authority must belong equally to the courts of either Province, and what would be the effect of a not impossible conflict between them in their directions to the arbitrators or otherwise?

These and perhaps other questions are opened by the events above stated.

They have been seriously and dispassionately considered, and not the less that their determination may involve personal responsibility to an extent which could not be and was not anticipated when the arbitrators accepted their appointment.

I feel, however, that the first duty of the arbitrators is to make a just award; that they are not responsible for the embarrassment which the present state of things has given rise to, and which adds greatly to their responsibility while it increases, if possible, their anxiety to do right.

By simply performing what they believe to be their duty, if they do anything (while impartially exercising their best judgment) that may be looked upon as prejudicial to the interests of Quebec in the voluntary absence of counsel for that Province, the just responsibility cannot be charged upon them.

If in proceeding they act illegally, their award will not be binding and can do no injury. If it should be binding the loss of the judgment and assistance of an arbitrator for the Province of Quebec, however much the remaining arbitrators may regret it, and especially that they are deprived of the valuable aid of the arbitrator who has resigned, is not their fault. The withdrawal was his act and it has been deliberately adopted by his government, who have taken legal steps in one of their own Courts by their Attorney-General, to stop further proceedings. They have thus placed the arbitrators in the invidious position of either retracting their refusal to grant indefinite delay to the Province of Quebec, or of being placed in conflict with one of the highest tribunals of that Province.

As a public functionary in the matter, as well as in my private capacity, I desire to evince in every proper way my profound respect for the court whose process has been served on the arbitrators. But it appears to me they cannot without a virtual abdication of their functions as arbitrators accept as a justification for a departure from their previously declared opinion, the preliminary order of prohibition (which I venture to think will not be finally confirmed) of a tribunal of that Province whose arbitrator's course has unnecessarily brought about this complication. I am of opinion that the arbitrators will best discharge the trust reposed in them by proceeding with the reference, and making, without unnecessary delay, an award which shall divide and adjust the debts, credits, liabilities, assets and properties of Upper and Lower Canada.

As already pointed out, if they have under the circumstances no power to make an award, the attempt to make one will create no prejudice to either party.

If they have the power, the duty arising under the Statute from an acceptance of their appointment, imperatively requires them, not by any act of theirs to suffer the time occupied and the cost occasioned by the proceedings so far taken to be utterly wasted, or to unnecessarily postpone the rendering of a final award.

The government of the Province of Quebec and the arbitrator appointed by them have had due notice that the present meeting would be held for the purpose of proceeding with business, and that it would be competent for the arbitrators, therefore, so to proceed in accordance with well established rules.

In order, however, to remove any possibility of misapprehension or doubt, I think it better, under the peculiar circumstances, that notice should now be given to the Province of Quebec and to Judge Day, of the intention of the arbitrators to proceed in accordance with the opinions just expressed, and that the arbitrators should adjourn until Wednesday the 17th inst., giving notice to all parties to the reference, that on that day they will proceed, should the government of Quebec not think proper to be represented or to assign any new or sufficient reason for their absence.

Hon. J. H. Gray—My colleague the arbitrator for Ontario having expressed a desire to adjourn for a week or ten days in order to afford time for a notification to the government of Quebec that the arbitrators would certainly proceed in absence of arbitrator or counsel on their part, unless at the next meeting they are represented—I shall most certainly concur. I think we should exhaust every reasonable effort to induce co-operation in this matter; but in order to prevent the delay which is now granted being in any way attributed to a doubt as to the power or intention of the arbitrators to proceed, it is as well to explain with distinctness the views of the arbitrators on the authority or the power of the courts of any of the provinces to prohibit or restrain their proceedings. With the highest respect for the courts of Quebec, on any matter coming within their jurisdiction, it is plain this arbitration does not. It derives its authority from an Imperial act. The government and Province of Quebec, of which those courts form a constituent part, is simply a party to the arbitration. Another province whose courts and government are entirely independent of and beyond the jurisdiction of the courts of Quebec is the other party—while the Dominion government simply appoints the third arbitrator by the authority of the Imperial act, which constitutes the tribunal. How is it possible that a subordinate part of the two provinces—because the courts are only parts of the whole machine of government—can control the action of another province and government and the arbitrator appointed by a third government, in a matter of submission to which the province, whose courts assume the authority, only appoints one out of three co-equal arbitrators? How can the courts of Quebec restrain the Province of Ontario or the arbitrator appointed by the government of that province, or the arbitrator appointed by the Dominion government, in a matter in which the whole proceedings may be carried on outside of the province or the territoral jurisdiction to which their process can possibly run? If so, the courts of the other provinces must have equal jurisdiction; and how absurd would it then be for the courts of Ontario to come forward and punish the arbitrators for not proceeding—for not discharging the duties they had undertaken—punished by Quebec for going on—punished by Ontario for not going on! Can any construction of the language of the Imperial statute sanction such a conflict of jurisdiction? But even if the proceedings were held within the limits of the territorial jurisdiction of the courts of one of the provinces, the subject-matter itself, and the parties proceeding therein may be and are, as regards that subject-matter, entirely exempt from that jurisdiction. Apart from the common-sense view of such a question, which must strike every man, the courts of law in England have left no doubt upon the point. The highest authorities, both in chancery and common law, have decided that even where proceedings in arbitration were carried on within the locality over which the courts had jurisdiction, and in which their process had full force, yet the courts would exercise no jurisdiction to restrain an arbitrator from making his award unless there was something in the conduct of *the parties to the reference* which rendered such interference necessary. The principle being, as laid down by Kerr on injunctions, page 142, that "there is no original jurisdiction of the court in the nature of a writ of prohibition to restrain an arbitrator from proceeding to make an award." Mr. Cameron cited a great many cases in which this position is illustrated and sustained, among others *The King* v. *Burdell et al.*, 5 A. & E. p. 619; *Harcourt* v. *Ramsbottom*, 1 Jacobs & Walk., C. R. 504; *Pope* v. *Lord Duncanon*, 9 T. R 177; *The Newry & Enniskillen R. Co.*, v. *The Ulster R. Co.*, 8 D. G. McN. & G. 486. In *Pope* v. *Lord Duncanon*, where the plaintiffs had revoked the authority of their arbitrator and notified the defendant, and the arbitrator refused to act, and the other arbitrators had notwithstanding proceeded and made their award, the court refused to restrain the defendant from acting upon the award—the Vice-Chancellor saying; "As in this case there is nothing whatever to show that the power which the plaintiffs had given to the arbitrator was revoked upon any just or reasonable grounds, I am bound to conclude the revocation was a wanton and capricious exercise of authority upon their parts, and consequently the motion must be refused" The resignation of Judge Day and the revocation of his authority by the Quebec government was no act of Ontario or of the arbitrator appointed by the Dominion, and it is therefore difficult to see why the Province of Ontario should be prejudiced by that act; or why the arbitrator appointed by the government of Ontario, or the arbitrator appointed by the Dominion government, should not proceed to discharge their duty. In the case of *The King* v. *Bardell*, 5 A. & E. 619, during the argument, Judge Patterson says: "Is there any instance in which the court has interfered to prevent an arbitrator making an award after revocation? The award may be a nullity when

made, but that is a different point." Platt replies "search has been made for precedents, but none have been found. Blackstone's commentaries, vol. 3, edition of 1862, page 117, says: "A prohibition is a writ issuing properly only out of the Court of Queen's Bench, being a prerogative one; but for the furtherance of justice it may also now be had in some cases out of the Court of Chancery, Common Pleas or Exchequer, directed to the judge and parties of a suit in any inferior court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court." If old Blackstone is still law, and the Imperial Act, British North America Act, 1867, is still in force—no other court but the Arbitrators' Court can have cognizance of the arbitration.

It is greatly to be regretted that there was no counsel, as in the case of the unanimity question, to argue the other side; but, as has been remarked by my colleague, that is not our fault. If these legal questions are to be raised on every occasion, it was manifestly of the highest importance that Judge Day should have remained at his post. He did not resign—so far as we know—because he differed with his colleagues in concluding that the decisions of the arbitrators need not be unanimous. He assigned no such reason for his resignation, and on that question gave no decision, and so far as his colleagues know, expressed no opinion, although he was present at the argument, and subsequently looked into the authorities with his colleagues. His resignation, as stated at the time, was on other grounds; but whether they have his able assistance or not, the remaining arbitrators must proceed with the work, and decide on all questions as they arise according to the best of their judgment.

The meeting then adjourned till the 17th instant.

On that day the arbitrators proceeded with the reference, no person being present on the part of the Province of Quebec.

ENGLISH REPORTS.

Grant v. Grant.

Will—Construction—Meaning of word "nephew"—Latent ambiguity—Parol evidence.

Devise "to my nephew Joseph Grant."

At the testator's death he had two relatives living named Joseph Grant—viz., the plaintiff, who was a son of the testator's own brother, and the defendant, who was a son of a brother of the testator's wife.

Held, in an action of ejectment that parol evidence tendered by the defendant was admissible to show a latent ambiguity in the will, the word "nephew" having no definite legal signification, and that the defendant might show that the testator was in the habit of calling him his nephew; also that, the ambiguity having been thus raised, the defendant might give parol evidence to remove the ambiguity and show that the testator intended the devise to him and not to the plaintiff.

[18 W. R. 576.]

This was an action of ejectment for a house and premises at Rugby, and the defendant, who was in possession, defended for the whole.

A case was, by consent, stated for the opinion of the Court under the Common Law Procedure Act, 1852.

John Grant, the testator, at the time of making the will and codicil hereinafter mentioned, and at the time of his decease, was seized in fee of a dwelling-house and premises at Rugby (being the premises in the writ in this action mentioned), and continued to live therein up to the time of his death. The said house and premises were in the said will expressed to be devised under the words—"I devise to my said nephew Joseph Grant, his heirs and assigns, the said house and premises where I now live." John Grant made his will on the 18th of February, 1868, and a codicil thereto on the 21st February, 1868.

The will and codicil were as follows:—

"This is the last will and testament of me, John Grant, of Rugby, in the county of Warwick, dealer in marine stores, as follows; I direct the payment of my just debts, funeral and testamentary expenses, I bequeath to my niece Ann Liggins, the sum of three hundred pounds free of legacy duty; and I devise to my said niece Ann Liggins, her heirs and assigns, my house in Pennington street, in Rugby aforesaid, in the occupation of — Hudson, and my house in Riley's court, and my three houses in Gas Street, Rugby; I devise to my niece Mary Pettifer, her heirs and assigns, my five houses in New Bilton; I devise to my niece Emma Bench, her heirs and assigns, my house in Rugby, in the occupation of — Preast, my house at Old Bilton, in the occupation of — Pain, and my two remaining houses in Pennington street, in the occupation of Whitwell and Resisbaw; I bequeath to my nephew Joseph Grant, the sum of five hundred pounds, and all the stock and household effects in the house where I now live, and I devise to my said nephew Joseph Grant, his heirs and assigns, the said house and premises where I now live; I devise to my nephew James Grant, his heirs and assigns, the house and premises in the Lawford road, in the occupation of Lessimer the miller; I devise all my real estate, if any, unto my said nephew Joseph Grant, his heirs and assigns; I bequeath all the residue of my personal estate unto my said nephew James Grant absolutely; I appoint my said nephew Joseph Grant executor of this my will. In witness &c."

"This is a codicil to the last will and testament of me John Grant, of Rugby, in the county of Warwick, dealer in marine stores, dated the 18th of February, 1868. I appoint my nephew James Grant an executor of my said will in conjunction with nephew Joseph Grant; and I devise all estates vested in me as trustee or mortgagee unto the said Joseph Grant and James Grant, their heirs and assigns, subject to the equities affecting the same. In witness whereof, &c."

The testator died on the 22nd of February, 1868. His eldest brother, William Grant, survived him, and is heir-at-law. The claimant, Joseph Grant, the plaintiff in this action, is a son of the testator's brother, William Grant, and is a lawful nephew of the testator. The said Ann Liggins, Mary Pettifer, and Emma Bench, described by the testator in his will as nieces, are the married daughters of his brother, Thomas Grant. James Grant described in the will and codicil as his nephew, is a son of the testator's brother, Thomas Grant, and brother of Ann Liggins, Mary Pettifer, and Emma Bench. No

brother or sister of the testator, except the said brother William Grant, had a child named Joseph Grant. The testator at the time of making the will and codicil, and up to his death, had neither child, grandchild, or other lineal descendant.* In 1838, he married Jane Scott, widow, formerly Jane Grant, spinster, who was his first cousin, and the defendant, Joseph Grant, is the son of Joseph Grant, a brother of the testator's said wife. The last-mentioned Joseph Grant, the father of the defendant, died about twenty-two years ago, leaving a widow, and his son, the defendant, then a boy of three years old. The widow died about fifteen years ago, whereupon the testator took the defendant into his own house, and brought him up, and he lived as an inmate of the testator's house till the death of the testator, and assisted him in the management of the business of a marine store dealer. The testator's brother, William, the father of the plaintiff, has a large family, of which the plaintiff is one of the younger children; and the testator had not been on good terms with or visited his said brother, who lived about twelve miles from him, for many years before his death. He did not know how many children his said brother had, and at the time he made his will did not know of the plaintiff's name or existence.

The testator was in the habit of calling the defendant his nephew, both to the other members of the family and to persons not related to him; and the testator on several occasions expressed his intention of leaving his house and business to the defendant, and also on several occasions expressed his intention that neither his brother William, nor the family of his brother William, should have any of his property.

The will was prepared by Mr. Fuller, a solicitor at Rugby, who took his instructions from testator on his death-bed, and who did not know any of the testator's relations except the Joseph Grant who lived with him; and in giving him instructions to prepare the will the testator said that it was his intention that neither his brother William, nor any of his family, should have anything, as he had lent both him and his elder sons money which had not been repaid, and he considered they had had their share of his property in that way. He also told Mr. Fuller that he wished to give his nephew Joe the house in which the testator lived, his stock-in-trade, and £500, to enable him to carry on the business, and wished him to be his executor. Mr. Fuller asked the testator if by his nephew Joe he meant the person who lived with him, and helped him in his business; and he said, "Yes. I mean him down stairs;" and that he wished to give him the house and business as he had lived so long with him and helped him so much in his business. Mr. Fuller asked the testator if the person he called Joe was his nephew, and the testator replied that he was.*

The Court was at liberty to draw inferences of fact. The facts above stated between the asterisks were stated after protest by the plaintiff that they should not have been inserted in the case, and the question of admissibility of the whole or any part of such facts was reserved for the decision of the Court.

The question for the opinion of the Court was whether Joseph Grant, the plaintiff, was entitled to the said dwelling-house and premises under the above devise.

Chapman (*Quain, Q.C.*, with him), for the plaintiff, admitted that precisely similar words in the same will—viz, "I appoint my said nephew Joseph Grant executor"—had already been construed by Lord Penzance in the Probate Court adversely to the present plaintiff (see 18 W. R. 230, L. R. 2 P. & D. 8); but contended that "nephew" in its primary sense meant brother's or sister's son, and not the son of a brother or sister of a wife or husband, and referred to the dictionaries of Bayley, Johnston, and Richardson. If in all other instances in a will, the testator uses the word in its primary sense, resort cannot be had to extrinsic evidence to show that in a particular instance he used it in a wider sense. The plaintiff here fully answers the description in the will, and the defendant does not do so in an equal degree, and there is, therefore, no ambiguity, and evidence was not admissible to show the testator meant the defendant: Wigram on Wills, proposition 2; 2 Blacks. Com. 207; *Miller* v. *Travers*, 8 Bing. 244; *Richardson* v. *Watson*, 4 B. & Ad. 799; reported also, and rather differently, in 1 Nev. & M. 569; and it seems that Wigram, V. C., preferred the latter report. Lord Penzance in his judgment relied on the case as reported in 4 B. & Ad.

Field, Q. C. (*Wills*, with him), for the defendant, contended that the word "nephew" had no strict primary meaning, citing the use of the word in the authorized translation of the Bible, and in Shakspeare, and that the case, therefore, fell, not within the 1st or 2nd, but within the 3rd proposition of Wigram, and extrinsic evidence was admissible to clear up the latent ambiguity and show who the testator really meant: Hawkins on Wills, proposition 4. [BRETT, J., referred to Wigram, pp. 160, 161.]

Chapman in reply.—The son of a brother pays less legacy duty than the son of a wife's brother. [BRETT, J.—But the word "nephew" is not used in the Act.]

Cur. adv. vult

The judgment of the Court (BOVILL, C. J., MONTAGUE SMITH, J., and BRETT, J.) was now delivered by

BOVILL, C. J.—The question raised in this case has already been decided by Lord Penzance in the Probate Court in favor of the defendant, but there is an appeal against his judgment, and the plaintiff has required the decision of this Court in the present action of ejectment, which affects the title to the real estate. The determination of the question really depends upon the admissibility of, and the effect to be given to, the parol evidence, and this evidence is of two kinds, one class of evidence being offered for the purpose of showing that there is in the will a latent ambiguity, and the other class for the purpose of explaining and removing it. The devise of the testator was to "my nephew Joseph Grant," and the point at issue is whether these words apply to the plaintiff or to the defendant. The language of the will itself is clear, and free from ambiguity on the face of it; but, as in most cases of wills parol evidence is necessary, and, therefore, admissible to identify the party intended to be described, just in the same way as such

evidence is admissible to identify and to show what was the subject-matter devised. The parol evidence to prove that the plaintiff was the son of a deceased brother of the testator, and therefore answered the description in the will was clearly admissible; and it is equally competent for the defendant to endeavour to prove that the words of the will may also apply to him; and this can only be done by parol evidence, which is, therefore, admissible for that purpose.

In each case the kind of parol evidence is not admissible for the purpose of controlling, varying, or altering the written will of the testator, but is admitted simply for the purpose of enabling the Court to understand it, and to declare the intention of the testator according to the words in which that intention is expressed. If such evidence establishes that the description in the will may apply to each of two or more persons, then a latent ambiguity is exposed; and, rather than that the devise should fail altogether for uncertainty, the law allows the ambiguity which is exposed by the parol evidence to be cleared up and removed by similar evidence, provided such parol evidence is sufficient to enable the Court to ascertain the sense in which the testator employed the particular expression upon which the ambiguity arises. If the parol evidence, after exposing the latent ambiguity, fails to solve it, the Court cannot give effect to that part of the will. Thus in *Thomas* v. *Thomas*, 6 T. R. 671, where the particular devise was, "to my granddaughter Mary Thomas of Llrelloyd in the parish of Merthyr," evidence was given that the testator had a grand-daughter of the name of Eleanor Evans, who lived in Merthyr parish, and a great grand-daughter named Mary Thomas, who lived in the parish of Llangoin, some miles from Merthyr parish. No other evidence being given, it was held that, although an ambiguity was raised, it was not solved, and, therefore, that the court could not apply the devise; that it consequently failed, and that the subject-matter of the devise went to the heir-at-law. The plaintiff's evidence in the present case clearly brought him within the description in the will. The defendant's evidence proved that he was the son of a brother of the testator's wife, and, the testator having married his first cousin of the same name as himself, the defendant's name was the same as that of the plaintiff. Does, then, the defendant by this evidence show that the description will apply to him? It is quite true that a son of a brother or a sister is generally called and known as a nephew; and this term, therefore, would no doubt apply to the plaintiff. But the word "nephew" has no definite legal signification, and there is not anything to limit the application to the precise relationship above described; on the contrary, there are many authorities to show that it has been and may be used in a much wider sense, extending to persons in a different degree of relationship; and, in its ordinary and popular sense, it is frequently and commonly applied to other persons; for instance, it is commonly applied by a husband to the son of his wife's brother or sister, or by a wife to the son of her husband's brother or sister. The son of either of such brothers or sisters would commonly call the husband and wife his uncle and aunt; nor could it be said that, in popular and ordinary language, such a description would be unusual or inappropriate. It is the court which has to be satisfied that the description may apply to the defendant; and, if it rested on this evidence alone, we should be of opinion that the defendant had brought himself within the description of the will so as to create a latent ambiguity, and to let in further parol evidence as to which of the two parties was intended to be described. It is not necessary that the description in the will should be in all respects accurate or perfect, but it is enough if it satisfies the mind of the judge that there is a sufficient description with legal certainty: see Vice-Chancellor Wigram's Treatise on Extrinsic Evidence, prop. 7, pl. 186, for example; where a testator devised to Mary, Elizabeth and Ann, the three daughters of Mary Brynon, and at the date of the will Mary Brynon had two legitimate daughters, and one illegitimate daughter, Elizabeth. Parol evidence was admitted to show that Mary Brynon had formerly had a legitimate daughter Elizabeth, who died an infant; and, although it was considered that the legitimate daughter was *primâ facie* the person intended, the other facts and circumstances were left to the jury to say which of the two Elizabeths was intended to be described: *Doe d. Thomas* v. *Brynon*, 12 A. & E. 431. The present case is also somewhat similar in principle to *Bennett* v. *Marshall*, 2 K. & J. 740, where, a devise being "to my second cousin, William Marshall," and the testator had no second cousin of that name, but had a first cousin once removed named William Marshall, and a first cousin once removed named William John Robert Blandford Marshall, it was considered by the present Lord Chancellor that, as it was a common practice, where a person has several Christian names, to call him by the first of those names only, a sufficient case of ambiguity was made out to call for parol evidence in order to ascertain which of the two parties was intended. Upon such evidence the decision in that case was in favor of the cousin with the several names; the Vice Chancellor remarking that, if the evidence had been perfectly balanced, the cousin named William only would have been entitled to the preference. So here, if the parol evidence were equally balanced, we might probably hold that the plaintiff would be entitled in preference to the defendant; but this cannot affect the question of the admissibility of the evidence. Another instance of effect being given to what was considered popular language used by a testator occurs in the case of *Doe d. Gains* v. *Rouse*, 5 C. B. 422, where the testator, who had a wife Mary, to whom he was married in 1834, and who survived him, in 1840 went through the ceremony of marriage with a woman whose Christian name was Caroline, and who continued to reside with him to the time of his death. By his will he devised certain property to "my dear wife Caroline her heirs &c. absolutely;" and the court held that Caroline took under this devise, notwithstanding the entire description was not applicable to her, the description being sufficient in a popular sense.

But there is another ground upon which it appears to us that the defendant may endeavour to bring himself within the description in the will—viz., that the testator was in the habit of

calling him his nephew Joseph Grant In all cases of wills, the surrounding circumstances as they existed at the time of the will, including the state of the testator's family and the nature of his property, may generally be proved in order to place the court as nearly as possible in the same condition as the testator, so that they may understand the language of his will, and apply it in the same sense in which he used it. We are of opinion that evidence may be given of a testator having been in the habit of using expressions in a particular sense; though whether such evidence will affect the will, or its application, will depend upon the particular circumstances and the language of the devise in each case; and it would not generally be admissible to alter the natural meaning and legal effect and construction of the words, where they have a definite and clear meaning. In *Richardson* v. *Watson*, 4 B. & Ad. 799, where a question arose as to what was intended under a devise of "the close in the occupation of Watson," Lord Wensleydale said, "Generally speaking, evidence might be given to show that the testator used the word, 'close' in the sense which it bore in the county where the property was situate, as denoting a farm;" though in the particular case it was held that such evidence was not admissible, because the other parts of the will showed that the testator had used the expression in its ordinary sense, as denoting an enclosure only. This subject was much considered by the Court of Exchequer in the case of *Doe d. Hiscocks* v. *Hiscocks*, 5 M. & W. 363, and the following passage occurs in the judgment at page 368: "Again, the testator may have habitually called certain persons or things by peculiar names, by which they were not commonly known. If these names should occur in his will, they could only be explained and construed by the aid of evidence to show the sense in which he used them, in like manner as if his will were written in cypher, or in a foreign language. The habits of the testator in these particulars must be receivable as evidence to explain the meaning of his will." In *Crosthwaite* v. *Dean*, 16 W. R. 355, where a devise was to Charlotte Lee, evidence was admitted by the present Lord Chancellor to show that a person who originally bore that name, but had married a person of the name of Antrim, from whom she was afterwards separated, was habitually called by the testator by her maiden name of Lee. In *Goodinge* v. *Goodinge*, 1 Ves. Sen. 231, where the devise was to certain "poor relations," evidence was admitted of the testator having poor relations in Salop, and that he knew thereof; and Lord Hardwick thus referred to another case—"As where the testator described a legatee by a wrong name, which she never bore, parol evidence was allowed by the Master of the Rolls to show that the testator knew such a person, and used to call her by a nickname." In *Beachcroft* v. *Beachcroft*, 1 Mad. 438, the case thus referred to is said to be the case of *Beaumont* v. *Fell*, 2 P. Wms. 140, where the bequest was to Catharine Earnley, and a person named Gertrude Yardley claimed to be the person described; evidence was admitted to show that the testator usually called Gertrude "Gatty," and that, whilst giving instructions for his will, he spoke in so feeble a voice that the attorney's clerk might easily have mistaken the names. In *Beachcroft* v. *Beachcroft* (*ubi supra*), the bequest was, "to my children the sum of pounds sterling 5000 each." It was contended that this could apply only to legitimate children, and that, as the testator died unmarried, the legacy did not take effect. But evidence was admitted that the testator had illegitimate children, born in India previous to the making of the will; that he was much attached to them, and had sent them to England to be educated. Upon this, the Vice-Chancellor decreed that the legacies applied to them. He says, "If there is a latent ambiguity, evidence is admissible to show who the testator was in the habit of considering in the character described in the will." When it appeared on the face of the will itself that, in some parts of it, the testatrix had used the term "nieces" to describe her great nieces, a similar construction was placed upon the words "nephews and nieces" in another part of the same will, so as to include great nephews and nieces, though in that case it did not depend upon extrinsic evidence: *James* v. *Smith*, 14 Sim. 214. If then this head of evidence be admissible, as we think it is, it distinctly appears from the case, that the testator was in the habit of calling the defendant his nephew; and, as his name was Joseph Grant, he would in this view also answer the description in the testator's will of "my nephew Joseph Grant." The defendant has thus, as it seems to us, satisfactorily shown that the words of the will may apply either to him or to the plaintiff; and then, as there is nothing in the will itself, or upon the evidence to which we have hitherto adverted, to show which of them was the person intended to be described, and to whom the testator intended the words to apply, the further parol evidence as to the testator's knowledge and other circumstances became admissible, and upon such of that evidence as was properly admissible it is not disputed that the defendant was in fact the person intended to be described by the testator. Under these circumstances, the parol evidence being admissible for the purposes and in the manner which we have pointed out, we think it exposed a latent ambiguity, and equally removed it, and enables us to understand the language of the will, and to apply it as the testator is clearly shown to have intended it, that is, in favor of the defendant. This view is in accordance with the decision of Lord Penzance, and we give our judgment for the defendant.

Judgment for the defendant.

UNITED STATES REPORTS.

REGISTER'S COURT.

In re Estate of George A. Alter, Deceased.

A husband and wife made wills in each other's favor, but by mistake each signed the will of the other. After the death of the husband an act of Assembly was passed, giving the Register's Court the power of a Court of Chancery, and authorizing it, at the petition of the wife, to reform the paper and admit it to probate on proof of the alleged mistake. On the filing of the petition authorized, *Held:*

1. That the jurisdiction of Chancery would only attach after probate.
2. That it has jurisdiction only to construe or reform an instrument already made; it cannot execute one.

3. The will in this instance is a manifest absurdity, as it purports to give all the property of the wife to herself, and the real and personal estate of S. A. Alter vested on his death in his heirs-at-law and distributees under the intestate acts, and no special legislation could divest their rights; as against them it was unconstitutional.

[*Philadelphia Legal Gazette*, June 12, 1870.]

Sur petition to reform will.

Opinion by Ludlow, J., delivered June 18th, 1870.

George A. Alter and Catharine, his wife, each determined to make a will, and each intended to give to the survivor the property he or she possessed. Two wills were prepared for execution, and, as was supposed, were duly executed, and then placed in separate envelopes. The husband died, and, on an examination of the envelope containing, as was thought, his will, it was discovered that the husband had signed his wife's will, and the wife had signed the husband's will.

In this dilemma the wife obtained legislation, and an act of Assembly was passed authorizing her to file a petition stating the facts, and upon proof of "the alleged mistake" to the satisfaction of the Register's Court, that tribunal is clothed with "the powers of a Court of Chancery," and is authorized "to reform said paper-writing," and "to have entered in the office for the Register of Wills in and for the city and county, the said paper-writing, which he (George A. Alter) intended to execute as his last will and testament, as if the said writing had been signed by him, with his own hand and seal, and not by his said wife Catharine."

The petition contemplated by the act of Assembly has been filed, notice was duly given to the heirs-at-law of the decedent, and they resist this application. It ought further to be added that the wife of George A. Alter not only survived her husband, but is now alive; and we have no doubt, as a matter of fact, that a clear mistake was made in the execution of these papers.

We will be best able to perform our duty if we first determine what, exactly, we are asked to do in this case. Clearly we are, in general terms, to reform a last will and testament; but which will is to be reformed? Undoubtedly the will which has been executed by the wife in due form of law, and which is upon its face a testamentary disposition of property, by a woman who is now alive, and whose will is therefore ambulatory until her death. Nor is this all. We must go further, and by virtue of a legislative edict strike out, in fact and in law, the name of the wife, and thus execute a will for a dead man.

Such legislation as this was, we think, never before heard of, and if it can stand the test of judicial criticism will work a revolution in our law.

For the following reasons we think the act is fatally defective:

1. If a Court of Chancery ever had jurisdiction in matters of probate, that power is now considered to be obsolete. Spencer's Eq. Juris., ch. vi., p. 701; Adams' Eq., ch. iv., p 248-9; Ib. 178. Nor can jurisdiction attach until after probate: *Allen* v. *McRierson*, 1 H. L. Cases, 191; Story's Eq. Juris., sec. 140; see also Ib. ch. xxxix., sec. 1445-7.

And a court of equity cannot in any event dispense with the regulations prescribed by the legislature as it regards formalities necessary in the execution of wills: 1 Fremm. ch. 130. Adams in his work, commenting upon this point, declares that "a will cannot be corrected by evidence of mistake so as to supply a clause or word inadvertently omitted by the drawer or copier, for there can be no will without the statutory forms." And this principle is correctly stated if we regard it as applying to the formalities required by statute. Story, in his work upon equity, remarks: "It will be found, we think, upon examination, that American courts of equity have not interfered to correct alleged mistakes in the execution of wills, either as to statutory requisites or the manner of writing, as by inserting the name of another legatee," and adds: "The extent to which the English equity courts have sometimes carried this branch of their remedial powers, has more the appearance of making wills as they (testators) probably would do if now alive, than carrying them into effect as they were in fact made:" 1 Story Eq., sec. 180 (*a*). It is well settled that Chancery never relieves against a statute: Comyn's Dig., tit. Chancery, 3 F., 6, 7, 8; Sedgwick's Stat. and Const. Law, 104.

In the further investigation of the subject it is to be remarked, that among the host of cases cited by counsel for the wife, not one of them is at all like this cause, and for the reason, that while deeds, contracts, and wills have been reformed, the effort has invariably been made to find out an intention in an instrument having a legal existence, and not to execute a paper. Hence it has been wisely said, "In the construction of wills indulgence has been shown to the ignorance, unskilfulness, and even negligence of testators, and no degree of technical informality, or of grammatical or orthographical error, will deter the court from giving effect to an intention;" but it is to be observed that in every case which has come to our knowledge, a will, duly executed, has been before a court of law or of equity. A diligent search has failed to produce a single instance in which a court of law or of equity has ever executed a will, while in a case reported in 14 Jurist, 402, the Prerogative Court in England refused probate in a cause precisely similar to this one, except that the parties executing the supposed wills were sisters, and not husband and wife. It is thus reported:—

"Harding applied for probate of the will of the deceased to be granted, the signatures of the two wills being respectively restored to their original state, on a suggestion that a court of equity might put a construction on the contents of the will now before the court.

"Sir H. Jenner Fust—Two ladies lived together, and they determined to make what I may call mutual wills. The wills are the same *mutatis mutandis;* they were drawn up and executed, that is, if executed they are, at one and the same time, but unfortunately each signed the other's will. After the death of one of them the solicitor alters them, so as to make of one of them appear as that of the other, and I need scarcely say that he has erred in so doing. But what is to be done with this paper? It is not the will of the deceased, and it purports to give

all her property to herself—a manifest absurdity. I must reject the motion."

If we are not much mistaken, it was a vain thing to endeavor to clothe the Register's Court, in this case, with Chancery powers, for it is evident that courts of Chancery have no such jurisdiction as is now contended for.

2. It has, however, been argued that legislation in this instance cured all defects, for we may consider, under the act, evidence of intention in a case in which there is no latent ambiguity; and, secondly, this act of Assembly has repealed in effect and for the purposes of this case our statute of wills.

It is too clear for argument that, in the present condition of our law, the evidence produced in this case would have been rejected but for this statute, because, as we have before said, there is here no latent ambiguity; and, possibly, legislative authority might have been all powerful but for article 9 in our Bill of Rights, which declares, among other things, that no man can be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land," and this article presents to this petitioner an insurmountable barrier. In *Norman v. Heish*, 5 W. & S. 173, when the attempt was made to give an inheritable source, as well as descendible quality, to the blood of one Christopher Norman, which it did not possess while he lived, the Chief Justice, commenting on the section of the declaration of rights above quoted, says, with a power the force of which can now be appreciated: "What law? undoubtedly a pre-existent rule of conduct declarative of a penalty for a prohibited act; not an *ex post facto* rescript or decree made for the occasion.

"The design of the convention was to exclude arbitrary power from every branch of the Government, and there would be no exclusion of it if such rescripts or decrees were allowed to take effect in the form of a statute. The right of property has no foundation or security but the law, and when the Legislature shall successfully attempt to overturn it, even in a single instance, the liberty of the citizen will be no more."

What proposition can be clearer than that at the moment the breath went out of the body of George A. Alter, his estate, real and personal, vested, in full property, in his heirs-at-law and distributees under the intestate law of Pennsylvania? It is true he may have intended to execute a will, but he did not in fact do so; he signed a paper, but not his will; and the case is not harder than that of a person who, in disregard of our statute of wills, signs his name at the top in place of the end thereof, or who adds a codicil and does not execute it, or who dies while his professional adviser is preparing his will.

This is a hard case, but the injury which would be inflicted upon society by giving effect to this act would be infinitely greater than any evil which will flow from a disregard of it. And the time has not yet arrived when by any process of legal ingenuity, aided by legislative action, the property of one man can be arbitrarily given to another by any "rescript or decree," as Chief Justice Gibson calls it, such as is presented to our notice in this case.

Without power at law or in equity to aid this petitioner, and with a constitutional provision staring us in the face, we must decline to grant the prayer of this petition.

Petition dismissed.

GENERAL CORRESPONDENCE.

Insolvency—Confirmation.

To the Editors of the Law Journal.

Gentlemen:—Would you kindly state in your next issue what is the practice in the courts of insolvency in your Province under the "Insolvent Act of 1869" in reference to the confirmation of deeds of discharge, or of composition and discharge in cases where there is no opposition, or the opposition is withdrawn before the application for confirmation is made. If you have any decisions bearing on this point of practice please state the gist of them also.

I am led to make this inquiry because a contention has arisen in this Province in reference to the course to be pursued when a consent to a discharge by the creditors has been given, and under it the insolvent applies for an order of confirmation. The contention on one side is that in a case of this kind, if no opposition to such discharge be made, or, if made, is withdrawn before the application for confirmation is made, no order for confirmation is required—that the Act does not contemplate an order to confirm in a case of this kind—that being essential only where the opposition to the discharge is persisted in and an argument thereon is had before the Judge of the Court—and further that a reconveyance by the assignee to the insolvent is alone necessary, and that the words in the 97th section of the Act, "the assignee shall act on said deed of composition and discharge according to its terms, clearly mean a reconveyance only and exclude the idea of a subsequent order to confirm. The contention on the other side is that an order, with recitals, to confirm a discharge is essential and contemplated by the Act to be given in all cases.

A Subscriber.

Halifax, N. S., Aug. 4, 1870.

[We will answer the above letter next month—Eds. L. J.]

To the Editors of the Law Journal

Gentlemen:—Would you oblige by an answer to the following: Can a person appealing from a decision of a magistrate for selling liquor on Sunday, elect to have a jury. By the Tavern and Shop Licenses Act of 1868-69, Ontario, sec. 36, it provides: "But every such appeal shall be tried by the chairman of the said court without a jury;" but, by the 66th section of 32 & 33 Vic. cap. 31, Dominion, it is provided that on an appeal, &c. "may, at the request of either appellant or respondent, empanel a jury, &c."

An answer in your next will oblige,

Yours, ———.

To the Editors of the Law Journal.

Gentlemen:—Can a City Alderman, who has qualified as magistrate, issue a Police Court Summons, since the passing of section eleven of the Law Reform Act, except in case of the illness or absence, or at the request in writing of the Police Magistrate. One Police Magistrate holds he can, and that the clause only applies to proceedings subsequent to the summons. Your opinion would oblige,

Yours, ———.

[We are are always glad to help correspondents, who are subscribers, but the courtesy should be mutual,—if it can be called *courtesy*, either in the first place to become a subscriber, or in the second, to pay the small annual subscription we require.—Eds. L. J.]

Challenging the Array.—On the evening of the trial my second brother, Henry French Barrington, a gentleman of considerable estate, of good temper, but irresistible impetuosity, came to me. He was a complete country gentleman, utterly ignorant of the law, its terms and proceedings; and as I was the first of my name who had ever followed any profession, the army excepted, my opinion, so soon as I became a counsellor, was considered by him as oracular. Having called me aside out of the bar-room, my brother seemed greatly agitated, and informed me that a friend of ours, who had seen the jury list, declared that it had been decidedly packed! He asked me what he ought to do. I told him we should have "challenged the array." "That was my own opinion, Jonah," said he, "and I will do it now!"

He said no more, but departed instantly, and I did not think again upon the subject. An hour after, however, my brother sent in a second request to see me. I found him, to all appearances, quite cool and tranquil. "I have done it," cried he, exultingly, "'twas better late than never," and with that he produced from his coat pocket a long queue and a handful of powdered curls. "See here!" continued he, "the cowardly rascal!"

"Heavens!" cried I, "French, are you mad?"

"Mad!" replied he, "no, no! I followed your advice exactly. I went directly after I left you to the grand jury-room to 'challenge the array,' and there I challenged the head of the array, that cowardly Lyons! He peremptorily refused to fight me, so I knocked him down before the grand jury and cut off his curls and tail; see, here they are, the rascal, and my brother Jack is gone to flog the sub sheriff."—*Barrington's Sketches.*

AUTUMN CIRCUITS, 1870.

Eastern.—*The Hon. the Chief Justice of the Common Pleas.*

Pembroke	Wednesday	Sept. 28.
Ottawa	Monday	Oct. 3.
L'Original	Monday	" 10.
Cornwall	Thursday	" 13.
Brockvile	Tuesday	" 18.
Perth	Monday	" 24.
Kingston	Thursday	Nov. 3.

Midland—*Hon. Mr. Justice Galt.*

Napanee	Tuesday	Sept. 27.
Picton	Tuesday	Oct. 4.
Belleville	Friday	" 7.
Whitby	Tuesday	" 18.
Lindsay	Tuesday	" 25.
Peterborough	Tuesday	Nov. 1.
Cobourg	Tuesday	" 8.

Niagara.—*Hon. Mr. Justice Gwynne.*

Owen Sound	Tuesday	Sept. 13.
St. Catharines	Monday	" 19.
Welland	Monday	" 26.
Barrie	Monday	Oct. 3.
Milton	Wednesday	" 26.
Hamilton	Monday	" 31.

Oxford.—*Hon. Mr. Justice Morrison.*

Cayuga	Wednesday	Sept. 28.
Simcoe	Monday	Oct. 3.
Berlin	Wednesday	" 12.
Stratford	Monday	" 17.
Woodstock	Monday	" 24.
Guelph	Monday	" 31.
Brantford	Monday	Nov. 7.

Western.—*Hon. Mr. Justice Wilson.*

Walkerton	Wednesday	Sept. 21.
Goderich	Monday	" 26.
Sarnia	Tuesday	Oct. 4.
St. Thomas	Wednesday	" 12.
London	Monday	" 17.
Chatham	Monday	" 31.
Sandwich	Monday	Nov. 7.

Home.—*The Hon. the Chief Justice of Ontario.*

Brampton	Tuesday	Sept. 27.
Toronto	Tuesday	Oct. 11.

TO CORRESPONDENTS.

"Lex."—We cannot depart from our rule not to insert letters not accompanied by the name of the writer.