DIARY FOR OCTOBER.

1. SUN. *17th Sunday after Trinity.*
2. Mon. Clerks and Deputy-Clerks of Crown and Master and Reg. in Chan. to make quarterly returns.
8. SUN. *18th Sunday after Trinity.*
11. Wed. Last day for Reg. & Mas. in Chan. to remit fees.
15. SUN. *19th Sunday after Trinity.* Law of England introduced into Upper Canada 1792.
18. Wed. *St. Luke the Evangelist.*
22. SUN. *20th Sunday after Trinity.*
28. Sat. *St. Simon and St. Jude.*
29. SUN. *21st Sunday after Trinity.*
31. Tues. *All Hallow Eve.*

The Local Courts' AND MUNICIPAL GAZETTE.

OCTOBER, 1871.

SWEARING.

[COMMUNICATED.]

Let not the title of this paper lead any to suppose that it is a dissertation on a profane habit, unfortunately too prevalent in this irreverent age. We would not encroach upon the province of another learned profession, but merely propose the brief consideration of judicial swearing. While the light oath has no justification and is condemned by religion, the legal oath is required by justice and sanctioned by Scripture. "An oath for confirmation," saith the Apostle, "is to them an end of all strife." (Heb. vi. 16.)

The subject has been suggested by an incident which happened, a short time ago, in the Police Court at London, Ontario. A certain clergyman of the Romish Church had been there arraigned to answer a charge of evading the Registration Act. At the hearing of the matter, a brother ecclesiastic was called upon to give evidence. The usual Protestant Bible having been presented to him, that he might take the customary oath, he declined to swear upon the heretical volume. He requested to be allowed the Douay Bible, authorised by his Church; but the not unreasonable request was refused. The magistrate was obstinate: the minister was firm; and the case was adjourned.

Now this is certain beyond a doubt, that the worthy magistrate, though a safe Protestant, was not a sound lawyer. The witness, if his scruples so inclined him, had a perfect right to call for the Alcoran, or the Pentateuch. More than a century ago, an answer was given from the English Bench which satisfies the question often propounded in our courts to witnesses of tender years (and which might form a leading point in the examination of candidates for the office of Police Magistrate)—"Do you understand the nature of an oath?" What that answer was, and by what reasoning it was arrived at, we shall humbly endeavour to set forth.

And first, as to forms of swearing. That the efficacy of an oath does not depend on the ceremony is an opinion supported by great and ancient authority. When the Roman emperors became converts to Christianity, they allowed their subjects, Pagan and Christian, to consult their own convictions or superstitions as to forms of taking an oath. Those early Christians, Selden tells us, made use of various forms, such as "Per vultum Sancti Lucæ," "Per pedem Christi," "Per sanctum hunc, vel illum." The practice of a *corporal* oath was borrowed from the Pagans, and established by the emperors of the East. From them dates our time-worn custom of calling Heaven to witness the truth of our declarations, "tactis sacrosanctis Dei Evangeliis:" (Codex Theodosianus, lib. 8, tit. 2, c. 14.) This Christian ceremony was adopted by the English Legislature by a statute passed in the reign of Elizabeth.

In our own Courts deviations from this immemorial method are not often seen; but we do occasionally meet with a witness whose peculiar scruples forbid him to touch the book, and who takes the oath by extending his right hand towards heaven; truly a solemn form. This is the custom of the Scottish Kirk, which deems it idolatry to kiss the book. A curious case touching this practice is reported in the second volume of that ancient reporter, Siderfin, page 6 (*temp.* 1657). In the suit of *Dutton* v. *Colt*, Dr. Owen, Vice-Chancellor of the University of Oxford, was placed in the witness-box; but when they would have put him upon his oath, he stoutly refused to conform to the established mode, or to lay his hand upon the book. He desired that it might be spread open before him, and he would raise his right hand and swear very readily. The jury were perplexed; for at that early day there was no precedent for such an eccentricity. Glin, C. J., relieved their doubts, and permitted the oath, declaring that it was in his opinion as strong as that of any other witness; "though I myself," he added, "were I to be sworn, would touch the book."

In a case once, in which the illustrious

Erskine was engaged, an important witness, called against him, without claiming to belong to any particular sect, declined to take the usual form of oath. He would hold up his hand and swear, but would not kiss the book. Being asked his reasons for objecting to do so, he answered, "Because it is written in the Revelations, that the angel standing on the sea *held up his hand.*" "This does not apply to your case," said Erskine, "for in the first place, you are no angel; and secondly, you cannot tell how the angel would have sworn if he had stood on dry ground, as you do." On this occasion, Lord Kenyon, having taken counsel of Lord Chief Justice Eyre, ruled that the scruples of the witness should be respected, however absurd the ideas on which they were grounded, and he should be allowed to swear as he pleased, without the necessity of belonging to any particular sect.

The "Heathen Chinee," it is said, adds solemnity to his asseveration by dashing a saucer to the ground: *R.* v. *Entrehman*, C. & M. 248. In China, the "Commissioners for taking affidavits," if they have to furnish the implements for depositions, must find that branch of their practice as little profitable as those of our own country.

The native of Hindostan, who is of the Gentoo religion, swears in the presence of a Brahmin, abasing himself and touching the foot of the priest. This recalls the custom of the "monks of old," who sealed their oaths by kissing the abbot's foot. As for the father abbot himself, his simple assertion passed for gospel truth.

To look back to times still more distant, the ancient Romans, as we learn from Cicero's 7th Epistle ad Familiares, i. 12, when they took an oath, dropped a pebble to the ground, imprecating upon themselves the anger of Father Jove, and ejectment as certain as that of the stone, if they wittingly deceived. "Sci sciens fallo, tum me Diespiter, salvâ urbe arceque, bonis ejiciat, ut ego hunc lapidem."

The Moslem lays one hand flat upon the Koran, and places the other on his forehead. He then bends his head till his forehead touches the sacred volume, and again lifting his eyes, gazes for some time steadfastly upon it: *Fachina* v. *Sabine*, 2 Str. 1104; and *Morgan's Case*, 1 Leach C. C. 64.

As a last example, the Jew swears upon the Pentateuch, "tacto libro legis Mosaicæ," which, it has been said, forms his "evangelium."

(To be continued.)

SELECTIONS.

THE LAW OF DISTRESS.

It has been said that no subject has given rise to more legislation than that of distress: 3 Reeves' English Law 555 n. (last ed.). We may safely affirm that there are few branches of the law in which legislation is more urgently required. We need hardly remark that this state of things is a perfectly natural result of our system in framing legal procedure. Instead of inventing an original remedy, we usually prefer to give a new scope to an old process. Instead of revising the details of such process, we leave them untouched until their inconvenience becomes intolerable. A measure is then hastily passed to redress the most pressing grievance, but no attempt is made to remove less obvious anomalies, or to bring the ancient remedy into complete accordance with the wants and ideas of the modern society. Of this method of legislation the law of distress affords an admirable illustration. Originally derived from the Gothic nations of the Continent: (Spelman Gloss: tit. Parcus, p. 447;) this process was employed by our Anglo Saxon ancestors to compel the appearance of a debtor in court. Under a law of Canute, passed to prevent the unfair exercise of this power, the defendant was to be thrice summoned to submit to the judgment of the hundred, and a fourth day of appearance was to be fixed by the shire; after which, if the misguided man still continued contumacious, the complainant might seize his goods: 1 Palgrave's Rise, &c., of the British Constitution. 180. From a very early period, by the custom of the realm, as Fleta tells us, a man might seize and impound beasts which he found trespassing upon his land, until he received compensation for the injury: Fleta, 101. After the introduction of the feudal system, distress became the ordinary means of compelling tenants to perform the services and to pay the fines and amerciaments incident to their tenure: Britton, liv. I, ch. 28, 58. The barons found the seizure of the tenant's goods a more speedy and effectual mode of obtaining satisfaction than the forfeiture of his feud. Moreover they discovered in the new remedy an instrument of oppression of which they were not slow to avail themselves. They distrained for illegal fines and customs not really due; stripped farms of the whole produce, seizing goods of great value for the smallest service, and drove the chattels and cattle distrained into their castles to prevent them from being restored upon replevin. The Sovereign did not neglect this method of supplying his needs. The records of the Exchequer relate that on one occasion the burgesses of Gloucester paid a fine of three hundred lampreys that they might not be distrained to find the prisoners of Poictou with necessaries "unless they would do it of their own accord:" (Madox's History of the Exchequer, chap. 13, p. 507.)

To remedy these evils a series of statutes

were passed, extending from Magna Charta to Stat. 1 and 2 Ph. and M., c. 12. These enactments re-affirmed the provisions of the common law, protecting the tenant against wrongful distress, and affixed heavy penalties to some of the more audacious violations of justice.

With the decline of the feudal system the process of distress lost much of its oppressive character. It was no longer a weapon in the hands of a powerful baron, but merely a summary mode of recovering rent reserved on a contract of lease voluntarily entered into. Means of evading the process were speedily discovered. Since a distress could only be made on the demised premises, the removal of the goods afforded an easy mode of depriving the landlord of his remedy. Since a distress could only be taken for rent in arrear during the continuance of the lease, the last half year's rent, which was generally not in arrear until after the expiration of the lease, could not be distrained for. Moreover, as the distress was simply a pledge, to be retained at the risk of the landlord, until the rent was paid, it afforded no remedy in the case of a tenant who obstinately refused to redeem his goods. The current of legislation which had previously been exclusively directed to the protection of the tenant, underwent a change, and the object of nearly all the statutes subsequent to that last above-named, was to improve the remedy of the landlord. He was authorised to follow and distrain goods fraudulenty removed; to distrain within a certain time after the determination of the lease; to take certain classes of goods not previously liable to distress, and a complete revolution was effected in the character of the process by the well-known Act of William and Mary, conferring on the landlord power to sell the goods distrained.

The modern statutes have almost exclusive reference to distress for rent, and it is to this branch of the process that we propose to restrict our remarks. We do not intend to discuss the policy of the law, or to suggest any serious modification of the privileges of the landlord. We take it for granted that this favoured individual should be allowed an advantage over all other creditors in the recovery of his debt. Assuming this, however, it is obviously desirable that the landlord's special remedy should be so well-defined and simple as to save him from the danger of error, and the tenant from the temptation to avenge himself by an action at law. The process, moreover, ought to be applicable to all cases in which payments by way of rent are reserved. Above all it ought to occasion the least possible inconvenience and loss to the tenant. Let us see how far the present law of distress for rent fulfils these conditions.

At the very threshold of the subject, we are confronted with several important limitations of the right to distrain, complicated with distinctions of singular subtlety. No distress can be made, except by express agreement, for payments by way of rent reserved on leases of mere chattels; but a mixed payment of rent and corporeal hereditaments—as, for instance, rent for furnished lodgings—since it is held to issue out of the hereditaments only, may be recovered by distress. Rent reserved on a mere licence to use premises for a particular purpose, as in the common case of a letting of a mere standing for machinery, cannot be distrained for, but if the letting is of the exclusive use of a defined portion of a room in a mill, the landlord may resort to this remedy. Rent due under a mere agreement for a lease, although the tenant may have entered under it, and continued in occupation for some years without paying rent, cannot be recovered by distress; but if the tenant, after entering into occupation, promises to pay a certain rent, or even only settles it in account with his landlord, a new agreement will be presumed, under which the landlord may have the right to distrain. Under a very ancient (see Britton, liv. I, ch. 28, 57b.) and wise rule of the Common Law, the remedy of distress is confined to rents of fixed amount. It would be obviously in the highest degree undesirable that the landlord should have the power of deciding for himself the amount of rent for which the seizure should be made. Where that amount has not been certainly fixed, he must resort to an action for use and occupation. According to Coke there may be a certainty in uncertainty, and it is held that a distress may be made for any rent which is capable of being reduced to a certainty. Hence a rent of 8*d.* per cubic yard for marl got and 1*s.* per 1000 for bricks made, may be distrained for, although it is obvious that questions may arise between landlord and tenant as to the amount of marl actually got, or the number of bricks actually made.

Another rule of great antiquity is, that the person distraining must possess a reversion in the demised premises: Lit. s. 114, Bro. Abr. tit. *Dette* pl. 39; citing Year Book, 48 Ed. 3, 4. Hence no distress can be made for rent reserved upon the assignment of a lease, but the reservation of a reversion of a single day will authorise a distress. A tenant from year to year underletting from year to year, has a sufficient reversion to enable him to distrain, and a mortgagor permitted by the mortgagee to continue in receipt of the rents of the mortgaged property, may distrain for rent due upon a lease made before the mortgage. It has been recently held that the reversion to support a distress need not be an actual reversion; that it is sufficient if it be a reversion by estoppel, and that if the tenant is actually let into occupation there is a reversion which he is estopped from denying: judgment of Blackburn, J., in *Morton* v. *Woods*, 37 L.J. Q.B. 248.

Other restrictions upon the landlord's power to distrain, have reference to the time at which it may be exercised, and in these we perceive a somewhat different current of judicial opinion. We have already mentioned that no distress can be made until the day after that on which the rent becomes due, and that a stat-

utory remedy has been provided for the fraudulent removal of goods to avoid a distress. By a strict construction of the statute its operation has been limited to cases in which the goods were removed *after* the rent became due. Goods previously removed cannot be seized for rent; hence, at any time before the rent day, a tenant may carry off his chattels in full view of his landlord, and with the avowed object of avoiding a distress. A man cannot distrain for rent in the night, because, as Chief Baron Gilbert says, the tenant hath not thereby notice to make a tender of his rent, which possibly he might do to prevent the impounding of his cattle: Gilbert on Distress, 50. As night is held to extend from sunset to sunrise, it appears that, in summer at least, a distress may be made before the person whose goods are seized, is awake, and cannot be made in the evening, when he is most likely to be at hand to tender the rent.

Let us suppose, however, that a landlord duly entitled to distrain has resolved to adopt that remedy. His first step is to appoint a bailiff, and the first care of that functionary is to protect himself against the risk arising from his own incompetence, by inserting in the warrant to distrain a carefully worded indemnity by the landlord. His next proceeding is to seek admission to the demised premises, and, thanks to the numerous cases which have been decided upon this subject, the limits of what he may and may not do, in order to effect this purpose, are marked out with tolerable clearness. It is not always quite so easy to discern the principle upon which the decisions are based. The leading rule seems to be that the bailiff may enter in the ordinary mode adopted by other persons who have occasion to go into the premises: *Ryan* v. *Shilcock*, 7 Ex., at p. 75. It has, however, been held that he may climb over a garden wall, or enter by an open window, methods of obtaining admission which cannot be considered as usual. Since the Englishman's house is his castle, the person distraining must not break the outer door, or unhasp a window, or open an unfastened window. It is not quite obvious why the Englishman's stable, not situate within the curtilage of his house, should also be deemed his castle; yet although the sheriff may break open the stable door, a person distraining for rent is not entitled to do so. The rule in *Semayne's case* appears to have been understood by the old authorities as prohibiting the person distraining from opening the outer door if it happened to be shut and not fastened, and a similar construction has been adopted in America, where it has been held that a sheriff's officer cannot even lift the latch of an outer door in order to open it: *Curtis* v. *Hubbard*, 1 Hill's Rep. 336. Recent English cases, however, have established the right of the person distraining to open the outer door in the ordinary way, but the tendency of judicial opinion appears now to be towards a stricter interpretation of the rule: *Nash* v. *Lucas*, L. R. 2 Q. B., 590.

The protection from distress extends only to the outer shell of the building. If the external door is open, the person distraining may break open inner doors. Hence, a lodger who has an outer door may, by keeping it locked between sunrise and sunset, prevent his landlord from availing himself of his remedy by distress; but if, although renting the upper floors from year to year, he has no outer door, he is not considered to have a castle, and the landlord's bailiff may obtrude himself under circumstances as inconvenient as those in the case in Hobart's Reports, where an entry by a bailiff, who broke open the door of a chamber where a man and his wife were in bed, was held to be lawful: Hob. 62, 263. The prohibition of breaking the outer door is also limited to the first entry of person distraining. If, after having lawfully entered he is forcibly ejected, or if, having gone out with the intention of returning, he finds himself barred out, he may break open the door to regain possession. Nice questions have arisen as to what is a sufficient possession to entitle the landlord to adopt this course. In the case of *Boyd* v. *Profaze*, 16 L. T., N. S., 431, the defendant, in going to distrain, lifted the latch of an outer door and had got his arm and foot inside, when the servants, with considerable presence of mind, placed a table between the door and a copper which stood near, and squeezed the unfortunate man between the door and the doorpost. By inserting a pair of shears in place of his limbs he succeeded in preventing the door from being closed, and having afterwards entered by force, contended that he had previously obtained a sufficient possession to entitle him to do so. The judge, however, was of opinion that the entry by the arm, foot, and shears, not being a peaceable possession, could not have that effect. After so much elaborate care bestowed upon the definition of lawful and unlawful modes of entry, it is rather surprising to find that actual entry on the demised premises is not essential to a distress. In his judgment in *Cramer* v. *Mott*, the Lord Chief Justice says, that where the article seized "is just inside the door, the tenant at the door, and the landlord's wife," acting as his agent, "in such a position as to be able in one moment to put her foot in the room, it must be taken that she was constructively in the room:" 39 L. J., Q. B., 183.

The principle of the law is that as the landlord is supposed to give credit to a visible stock on the premises he ought to have recourse to everything he finds there: judgment of Ashhurst, J. in *Gordon* v. *Faulkner*, 4 T. R., at p. 568. In point of fact, however, while this rule has been rigidly enforced in some directions, it has in others been considerably relaxed. The goods on the demised premises may belong to the tenant, yet not one of them may be distrainable for rent. The goods may not belong to the tenant, yet may be seized and sold to satisfy his debt. So long as the things distrained were merely kept by the landlord as a pledge, to be returned to

the owner on payment of the rent, no great hardship was inflicted on third persons, whose property was taken; but since the power of sale has been conferred on the landlord, the operation of this rule is often extremely harsh. An under-tenant or lodger who has paid his rent to his immediate landlord, is liable to have the whole of his goods seized for arrears due to the original landlord. Articles hired by the tenant from tradespeople may be sold to realise the rent. On both sides of the Atlantic this provision of the law has met with strong judicial approbation: (see observations of Blackburn, J., in 39 L. J., Q. B., 173, and of the Chief Justice in *Brown* v. *Sims*, 17 Serg. & Rawle, 138,) and in several States of the American Union it has been abolished. A bill was introduced by Mr. Sheridan into the House of Commons during the present Session to relieve the goods of undertenants and lodgers from the liability to be distrained for rent due to the original landlord, and after being read a second time was referred to a Select Committee. It is to be hoped that this very reasonable reform may speedily be effected. We may remark in passing that while goods belonging to third persons are liable to distress, animals *feræ naturæ* are exempted from distress on the express ground that they belong to nobody.

From the circumstance that the distress was originally a pledge, to be restored to the tenant when satisfaction was made, it naturally followed that nothing could be taken which was incapable of being restored in the same plight as when it was seized. Hence perishable articles, such as milk and meat, cannot be distrained, and fixtures which cannot be severed without detriment, are also exempt from distress. This doctrine has, however, been extended to the class of things known as tenant's fixtures, an essential attribute of which is, that they are capable of being removed without material damage. Since it was considered unjust to deprive the tenant of the means of redeeming his pledge, a conditional protection was afforded to his implements and stock. The tools of the workman, the cattle and sheep of the farmer, and the books of the scholar can only be seized if there are no other sufficient goods on the premises to satisfy the distress. The exemption of goods from distress while in the hands of a tradesman rests on a different footing, and appears to be based on the benefit derived by the commonwealth from the exercise of a public trade; See *Muspratt* v. *Gregory*, 1 M. & W., p. 645. Originally the protection appears to have been almost exclusively limited to goods sent to the tenant to have labour bestowed upon them and to be returned in an altered condition: (Co. Lit., 47 a.), but the case of *Gilman* v. *Elton*, 3 B. & B., 75, extended it to goods sent in the way of trade for the purpose of sale, and it has been recently decided that articles pledged with a pawnbroker cannot be distrained by his landlord, although they may have remained in the possession of the pawnbroker for more than a year without any payment of interest: *Swire* v. *Leach*, 18 C. B., N. S. 479. By a somewhat arbitrary restriction the exemption from distress is denied to goods placed in the hands of the tenant merely with the intent that they shall remain on the premises: hence horses and carriages sent to a livery stable-keeper: *Parsons* v. *Gingell*, 4 C. B., 545; wine sent to a wine-warehouseman to be matured: *Ex parte Russell*, 18 W. R. 753, and probably also furniture deposited with a furniture warehouseman, may be distrained for rent due by the tenant, although his trade consists exclusively in the reception and care of the articles deposited with him.

Not only must the person distraining exercise the greatest care as to the description, but also to the value of the goods distrained. He is bound to ascertain that such value does not greatly exceed the amount of the arrears of rent. On the other hand he must take sufficient to cover his demand, for, in general, no second distress can be made for the same arrears of rent. He is to estimate the value of the goods seized at the price they would fetch at a broker's sale; but he may be liable to an action for excessive distress, although the goods fairly sold under the distress did not in fact realize the amount of the rent and costs.

The processes of seizure and impounding have long ceased to possess any importance. Almost any equivocal expression of an intention to seize will suffice, without touching the goods or entering upon the demised premises. A mere refusal by the landlord or his agent to permit chattels to be removed until the rent is paid, has been held to amount to a seizure: *Cramer* v. *Mott*, L. R., 5 Q. B., 357. In like manner impounding, which in ancient times necessarily involved the removal of the goods, may now in many cases be effected without the slightest change in their ordinary position, and without locking up the premises or leaving any one in possession: see *Swann* v. *Falmouth*, 8 B. & C. 456. It follows that the acts of seizing and impounding may be simultaneously effected, and that the period between these acts during which the tenant might formerly tender the rent and expenses and obtain an immediate return of his goods, has no longer any existence. At common law, a tender after the goods had been impounded was unavailing, and this singular result ensued, that whereas the only object of permitting a landlord to distrain was to enable him to obtain payment of his rent and costs, he might refuse to receive such payment, and in spite of the tender, proceed under the statute to sell the goods distrained. Moved by the grievous hardship to the tenant of this state of the law, the judges have sanctioned an action on the equity of the Stat. 2 W. M., sess. 1, c. 5, in case of the sale of the goods after a tender made within the five days allowed to the tenant to replevy.

The provisions of the statute conferring the power to sell the goods distrained, have, on

the whole, been somewhat strictly construed. The notice of distress must be in writing, and the inventory must specify with reasonable certainty the articles taken; the latter must in all cases be appraised by two sworn appraisers, and the landlord is not permitted to appraise the goods, or to buy them under the distress.

In reviewing this subject, the chief point calling for remark is the fact that the whole conduct of the process is left in the hands of the person least concerned to protect the interests of the tenant, and most inclined to exercise harshly the rights given him by law. The power of distress to compel appearance on civil process was at a very early period placed in the hands of the sheriff acting by virtue of the king's writ; but upon a distress for rent, the law still "allows a man to be his own avenger, and to minister redress to himself." To confer on an interested individual the power of seizing and selling the goods of his adversary, is to afford an obvious temptation to unfair dealing: and the existing checks on abuse must be admitted to be entirely inadequate. Notice of the distress is to be given to the tenant; but this notice need not accurately state the amount of rent for which the distress is made. The goods are to be appraised by two sworn appraisers; but since these persons are employed by the landlord, and are permitted to purchase the goods at the appraised value, it is obviously their interest to make as low an appraisement as possible. The landlord is to sell at the best price; but goods sold at the appraised value are presumed to have been sold for the best price. The overplus of the sale is to be left in the hands of the sheriff, under-sheriff, or constable, for the owner's use; but since no scale of charges for distresses for arrears of rent exceeding 20*l.* has been established, the landlord and his bailiff may deduct a large sum for the costs of the distress and sale. On the other hand, the temptation to vexatious litigation on the part of the tenant is scarcely less powerful. The existing process of distress is so full of legal pitfalls that a person who desires to revenge himself upon his landlord for distraining, can hardly fail to find a pretext for involving him in an action. Of all the various sources of litigation, however, the employment of unskilled bailiffs appears to be the most fruitful. Every inexperienced auctioneer deems himself qualified to act in this capacity, and the landlord has frequently to pay heavily for the ignorance of his agent.

But while responsible for any irregularity in the conduct of the distress, the landlord is not liable for illegal acts committed without his knowledge or sanction by the person employed to distrain, and the consequence is that for grave injuries, such as the taking of goods exempted from distress, the tenant's only remedy is against the bailiff, who may be a mere man of straw. It appears to us that much of the evil at present attendant upon the exercise of the right of distress for rent might be obviated by the adoption of a similar provision to that contained in the New York Revised Statutes (Vol. II., 504, ss. 2, 3, 8), under which every distress must be made by the sheriff upon the previous affidavit of the landlord or his agent, stating the amount of rent due, and the time when it became due. The present process of distress, as Lord Mansfield long ago pointed out, is neither more nor less than an execution, and there can be no reason why it should be conducted in a different manner from other executions. As at present conducted it cannot be said to afford a remedy which is either safe for the landlord or just to the tenant.—*Law Magazine.*

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

Sale of Goodwill—Injunction.—The defendant sold to the plaintiff the goodwill of the business of an innkeeper which he was carrying on in London, in this province, under the name of "Mason's Hotel," or "Western Hotel:"

Held, [affirming the decree of the Court below] that the sale of the goodwill implied an obligation, enforcible in equity, that the defendant would not thereafter resume or carry on the business of an Innkeeper in London, under the name of "Mason's Hotel," or "Western Hotel;" and would not resume or carry on the business of an innkeeper, under any name or in any manner in the premises in question; and would not hold out in any way that he was carrying on business in continuation of, or succession to the business formerly carried on by him under the said names, or either of them.

Held, also, [varying the decree of the Court below,] that a covenant in the agreement that the vendor should pay $4000 in the event of his carrying on business as an innkeeper within ten years, was void as an undue restraint of trade but did not relieve the vendor from the implied obligation involved in the sale of the goodwill.—*Mossop* v. *Mason*.—[In Appeal.] 18 Grant, 453.

Will.—Dying without Issue.—A testator devised certain real estate to his granddaughter: and, in case of her dying without lawful issue, he directed the property to be sold by his executors; and from the proceeds of such sales, and from such other of his property as might be then remaining in their hands, he directed certain legacies to be paid, and the remainder to be applied at the discretion of his executors to missionary purposes.

Held, that the contemplated "dying without issue" was a dying without issue living at the granddaughter's death.—*Chisholm* v. *Emery*. [In Appeal.] 18 Grant, 467.

SHERIFF'S DEED—INSUFFICIENT DESCRIPTION.—A sheriff's deed described the property conveyed as "about fifteen acres, more or less, being the whole of a block or piece of land adjacent to the Grand Trunk Railway, being a part of lot number twenty-seven in the first concession of South Easthope, now in the town of Stratford."

Held, that this description was insufficient and the deed void.—*Davidson* v. *Kiely*, 18 Grant, 494.

VOLUNTARY CONVEYANCES' ACT (1868).—The Voluntary Conveyances' Act (1868) gives effect as against subsequent purchasers, to prior voluntary conveyances executed in good faith, and to them only; and a voluntary conveyance to a wife for the purpose of protecting property from creditors was held not to be good against a subsequent mortgage to a creditor.—*Richardson* v. *Armitage*, 18 Grant, 512.

PURCHASE UNDER MISTAKE—PAYMENT FOR IMPROVEMENTS.—The rule, that a party in good faith making improvements on property which he has purchased, will not be disturbed in his possession, even if the title prove bad, without payment for his improvements, will be enforced actively in this Court, as well where the purchaser is plaintiff as where he is defendant; and that although no action has been brought to dispossess him. — *Gummerson* v. *Banting*, 18 Grant, 516.

BUILDING CONTRACT.—A contractor agreed by a specified time to do certain work according to specifications, subject to certain alterations and additions, and to forfeit £3 for every day after that time until completion; and also, that the time for completing any alterations or additions should not exceed the specified period unless an extension were allowed by the clerk of the works. The contractor did not complete within the period, but failed to do so on account of alterations ordered. No extension of time had been allowed. *Held*, that the contractor had subjected himself to the forfeiture.—*Jones* v. *St. John's College*, L. R. 6 Q. B. 115.

CARRIER.—A passenger by a railway had his portmanteau put into the same carriage with him; at a station he got out for ten minutes, and on his return failed to find the carriage, and completed his journey in another; the portmanteau when found had been robbed. The jury found that his negligence had contributed to his loss. *Held*, that the general liability of the company was modified by the implied condition that the passenger should use reasonable care.—*Talley* v. *Great Western Railway Co.*, L. R. 6 C. P. 44.; s. c. in Appeal, 7 C. L. J. N. S. 20.

CONTRACT.—1. The plaintiff agreed to hire grass-land of the defendant on the terms of a lease to be signed afterwards. He entered and found the land overrun with rabbits. When the lease was presented to him he refused to sign it, unless the defendant undertook to destroy them. The defendant promised to do so, and the plaintiff signed the lease in its original form. The defendant did not destroy the rabbits. *Held*, that the promise was collateral to the lease and founded on a good consideration.—*Morgan* v. *Griffith*, L. R. 6 Ex. 70.

NEGLIGENCE—BANK.—J. deposited certificates of railway shares with a banking company who collected dividends for a commission. They kept the certificates with their own securities in a box in the manager's room, of which he had the key. The manager sold the shares, and forged J.'s name to the transfer. The fraud being discovered, J. brought a suit against the holder of the stock and the railway company, in which he obtained relief, but no costs. He then brought this claim against the bank for the amount of his costs. *Held*, that the bank was a bailee for reward, and had been guilty of negligence, but that the loss of the costs was not a natural or ordinary consequence of the neglect.—*Johnston's Claim*, L. R. 6 Ch. 212.

RATIFICATION.—Action upon a note purporting to be signed by the defendant and J. The defendant's name had been forged by J.; the plaintiff having threatened criminal proceedings against J., the defendant signed the following: "I hold myself responsible for a bill of £20 bearing my signature and J.'s," &c. *Held*, (MARTIN, B., dissenting) that the defendant was not liable on the note.—*Brook* v. *Hook*, L. R. 6 Ex. 89; 7 C. L. J. N. S. 158.

WILL—1. Gift by will to "my great-nephew G., and to such other of my nephews and nieces as shall be living," &c. *Held*, that the great-nephews and great-nieces were entitled to share with the nephews and nieces.—*In re Blower's Trusts*. L. R. 11 Eq. 97.

2. Testator declared that "the income arising from my principal money shall be paid to my wife, while unmarried, for the support of herself and

the education of my children; and at her death, or on her marriage, to be divided among them." He left but little cash, but had a large amount of personal property, leaseholds, and freeholds. *Held*, that all the personal property and leaseholds passed by the bequests, but not the freeholds.—*Prichard* v. *Prichard*, L. R. 11 Eq. 232; 7 C. L. J. N.S. 105.

3. Testatrix gave certain pecuniary legacies and a house (which was leasehold), "and all the rest to be divided" between the daughters of A. *Held*, that "all the rest" included all the other property, real as well as personal—*Attree* v. *Attree*, L. R. 11 Eq. 280; 7 C. L. J. N. S. 195.

Husband and Wife.—The defendant's wife, without his knowledge, bought of the plaintiff goods, such as a gold pencil-case, cigar-case, glove-box, scent-bottle, guitar, music, purse, and the like, to the value of £20. The defendant was a clerk, with a salary of £400 a year. *Held*, that the wife's authority to bind her husband extended only to contract for things suitable to his style of living so far as they were within the domestic department, and that the defendant was not liable.—*Phillipson* v. *Hayter*, L. R. 6 C. P. 38.

Master and Servant.—1. A clerk of a railway company gave the plaintiff into custody, upon a charge that he attempted to rob the till at a station, after the attempt had ceased. *Held*, that as the clerk was not acting in protection of the company's property, he had no implied authority to give the plaintiff into custody, and that the company were not liable for false imprisonment.—*Allen* v. *London and South Western Railway Co.*, L. R. 6 Q. B. 65.

2. At B. three railway stations were open to one another, and the whole area was used as common ground by the passengers of all. The plaintiff, on his way to the booking-office of another company, was standing on the defendants' platform waiting for luggage, when a porter of the defendants' drove a truck laden with luggage so negligently that a trunk fell off and injured the plaintiff. *Held*, that the defendants were liable for the misfeasance of their servant, although the plaintiff was not a passenger on their line.—*Tebbutt* v. *Bristol and Exeter Railway Co.*, L. R. 6 Q. B. 73.

Registry Law—Priority—Notice.—Where the registered owner of land had parted with his interest therein by an unregistered deed, a person who afterwards fraudulently took and registered a conveyance from such registered owner, prior to the Registry Act of 1864, knowing or believing that his grantor had parted with his interest, was held not entitled to maintain his priority over the true owner, though he did not know, or had no correct information, who the true owner was.—*McLennan* v. *McDonald*, 18 Grant, 502.

MAGISTRATES, MUNICIPAL, INSOLVENCY & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

Criminal Law.—1. The prisoners indecently exposed their persons in a urinal which was on a public foot-path in Hyde Park, and open to the public. *Held*, that the jury rightly found that the urinal was a public place.—*Reg.* v. *Harris*, L. R. 1 C. C. 282

2. Indictment that the prisoner "knowingly and without lawful excuse feloniously" had in his possession a die impressed with the resemblance of a sovereign. He ordered two dies of a maker, who communicated with the mint and received permission to let the prisoner have them, which he did. *Held*, that there was no evidence of lawful excuse, and that the prisoner's intention had nothing to do with the offence.—*Reg.* v. *Harvey*, L. R. 1 C. C. 284.

3. It was the prisoner's duty as servant of H. to pay his workmen; by fraudulent representations of the amount due he obtained from his master's cashier 2*s.* 4*d.* more than was really due, and appropriated it to his own use. *Held*, that the money delivered to the prisoner was in the constructive possession of his master, and that the misappropriation of it was larceny.—*Reg.* v. *Cooke*, L. R. 1 C. C. 295.

4. The prisoner induced A. to purchase a chain from him by a statement that it was fifteen carat gold, knowing that the statement was untrue. *Held*, that a conviction for obtaining money on false pretences was good.—*Reg.* v. *Ardley*, L. R 1 C. C. 301.

Liability of City for Defective Street.—The fact that, when a resident of a city was injured by a defective way which the city was bound to keep in repair, he was driving at a "faster rate than six miles an hour," in violation of a city ordinance, is no bar to his right to recover damages for such injury, if such driving did not in any way contribute to produce it.

The fact that the jury failed to agree upon the answer to the question whether the plaintiff was driving at a faster rate than six miles an hour, does not render it reasonably certain that a general verdict for the plaintiff, in such action, is

erroneous.—*Henry Baker and Wife* v. *City of Portland; Henry Baker* v. *Same*, 7 C. L. J. N. S. 270.

INSOLVENCY.—1. A trader assigned all his property to the defendant as security for an existing debt, and money advanced to pay the debt of another creditor who had a valid mortgage upon the same property. The trader was afterwards adjudged bankrupt on his own petition. *Held*, that the assignment was valid, and not an act of bankruptcy.—*Lomax* v. *Buxton*, L. R. 6 C.P. 107.

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2. R. assigned all his property to the plaintiff in consideration of a pre-existing debt, and under a threat of legal proceedings; R. did not then contemplate bankruptcy, but was hopelessly insolvent, and was afterwards adjudged bankrupt on his own petition. *Held*, that the assignment being made under pressure was valid; and that although an act of bankruptcy, yet there was no relation back to it, the adjudication being on R.'s own petition—*Jones* v. *Harber*, L. R. 6 Q. B. 77.

CANADA REPORTS.

ONTARIO.

CHANCERY.

BIEHN v. BIEHN.

Partition—Charge for improvement.

A father placed one of his sons in possession of certain wild land, and announced his intention of giving it to him by way of advancement. He died without carrying out this intention: meanwhile the son had taken possession, and by his improvements nearly doubled the value of the land.

Held, that the son was entitled to a charge for his improvements, and to have the land allotted to him in the division of his father's estate, provided the present value of the land in its unimproved state would not exceed his share of the estate.

In such a case, *Quære*, whether the son is not entitled to an absolute decree for the land.

[18 Grant, 497.]

Examination of witnesses, and hearing at the Spring sittings, 1871, at Guelph.

Mr. *Miller* for the plaintiff.

Mr. *Fitzgerald*, Mr. *Bowlby*, and Mr. *Kingstone*, for defendants.

STRONG, V. C.—This is a suit for the partition of the lands of Moses Biehn, who died intestate. The only point which arises for decision is one respecting the interest of Moses D. Biehn, one of the co-heirs, in certain lands in the township of Wallace, the legal title to which was in the intestate at the time of his death. It is not disputed by those of the co-heirs who are adult, and it has been satisfactorily proved against the infant defendants, that the intestate Moses placed his son in possession of this property, which was then wild land, in 1864, and announced his intention of giving it to him by way of advancement, and that since that time the son had lived upon the land and made very valuable improvements upon it, worth nearly double the price of the land in its unimproved state. It is further proved that the father was ready to convey the land to the son, but died before his intention was carried out. Under this state of facts I thought that Moses D. Biehn was entitled in equity, either to the land itself or at least to a lien for his expenditure in improving it, but I reserved judgment for the purpose of looking into the authorities, none having been cited on the argument.

Whilst I have had much doubt as to whether Moses D. Biehn is not entitled to a decree declaring him absolutely entitled to the land, I think it clear that he is entitled to the lesser relief of a charge for his improvements, upon the authority of *The Unity Joint Stock Bank* v. *King*, 25 Beav. 72, the circumstances of that case being less strong than those of the present, inasmuch as there was there wanting any proof of an intention, on the part of the father, to confer the ownership of the land upon his sons.

I think I am further justified in deciding that in making partition, the two half lots in Wallace being the land of which Moses D. Biehn was put in possession by his father, should be allotted to him, provided the present value of the land in its unimproved state does not exceed the value of the share of the lands to be divided to which Moses D. Biehn is entitled. The decree will contain declarations accordingly.

The same point came subsequently before the court in the suit of *Hovey* v. *Ferguson*, when the following judgment was delivered by

MOWAT, V. C.—As respects the lot claimed by James Hovey, the decree will be the same as in *Biehn* v. *Biehn*, lately decided by my brother Strong. I am not sure that the authorities would not justify a decree in such cases for the land itself, if a decree in the shape which the Vice-Chancellor directed should not happen to do full justice to the son. The point was not argued there; at least, no authorities were cited. But if a son is entitled to the land itself, irrespective of the condition of the father's estate at the time of his death, I think that, in case of an intestacy, it would be most reasonable that the value of the land without the son's improvements should be deducted from his share of the estate; and I hope that it will be found that the court has power to imply a condition of that kind in the verbal transaction between the father and the son, or that the court may impose on the son that equity. For the present, I follow the view which my brother Strong acted upon, especially as I gather from James Hovey's answer that such a decree will be sufficient to secure to him his farm.

The plaintiffs, who are the widow and some of the heirs of intestate, claim that this lot should be partioned with the other real estate of the intestate. James, in his answer, set up his claim to the lot; and counsel for one of the other defendants, who is in the same interest with the plaintiffs, contended that the question could not now be decided. The other defendants in the same interest, as well as the plaintiffs, resisted the contention; and I am clear that it is competent for the court to decide the question without a suit by James Hovey, or a

reference to the master. It is a matter for the discretion of the court.

I think that the costs (as between party and party) of all parties up to decree should be paid out of the estate. In taxing these costs, the master will consider whether the costs of and incidental to the order made on motion were reasonably and properly incurred. No sale took place, and I have not before me the materials for judging whether the abortive proceedings were justifiable and reasonable.

I presume the parties are agreed as to the proper terms of the decree in other respects, as no other question was argued before me.

NOVA SCOTIA.

SUPREME COURT.

DODSON v. GRAND TRUNK RAILWAY COMPANY.

Common carriers—Responsibility at common law—Special contract.

As the (English) Carrier's Act of 1830 and the Railway and Canal Traffic Act of 1854, have not been adopted in Canada, the responsibility of a common carrier here rests wholly upon the principles of the common law, and may be so limited by special contract that he shall not be liable, even in cases of gross negligence, misconduct, or fraud on the part of his servants.

[Halifax, August 7, 1871.]

In February, 1868, the plaintiff imported from Montreal, *via* Portland, by the defendants' railway, one hundred dressed hogs, under the usual shipping papers signed by his agent and by the Managing Director of this Company, and forming a special contract which is set out in the amended writ. By the second condition, fresh fish, fruit, meat, dressed hogs and poultry or other perishable articles, were declared to be carried only at the owners' risk; while by the 16th condition in respect to live stock, the owner undertook all risk of loss, injury, damage and other contingencies in loading, unloading, transportation, conveyance and otherwise, no matter how caused.

On arrival the hogs were found to be damaged to the extent of $488, and the jury found upon the trial that the injury was caused by the negligence of the defendant's servants, and gave a verdict for the plaintiff subject to the opinion of the court on all legal objections.

Hon. J. McDonald, Q. C., for the plaintiff.

Hon. H. Blanchard, Q. C., for defendants.

SIR WM. YOUNG, C. J.—There was no imputation, as we read the amended counts, nor was there any evidence, of wilful wrong, destruction, or wanton abuse of the property, but only of mismanagement, carelessness, and neglect which, in the opinion of the jury, rendered the defendants liable: and the court would undoubtedly confirm that finding, unless it should appear that the defendants are protected by the terms of the special contract

Upon the pleadings and the evidence that is the sole question before us. It is to be decided according to the principles of the common law, neither the English Carriers Act of 11 Geo. 4. & 1 Wm. 4, nor the Railway and Canal Traffic Act of 1854, being in force in this Province.

The numerous cases cited upon the argument have, therefore, only a partial application, and will aid us chiefly by way of illustration and analogy. They are reviewed at much length and with singular ability in the case of *Peek* v. *North Staffordshire Railway Company*, 10 H. L. Cas. 473, decided in 1863. Several of the Common Law Judges were called in to assist the Lords in that case, and Mr. Justice Blackburn delivered an elaborate opinion, which was endorsed by Lord Wensleydale (better known as Baron Parke), both of them, as we all know, very eminent lawyers. Of the opinions in this leading case we will, of course, avail ourselves, as affording a sounder view of the decisions, and of higher authority than any we could ourselves prepare.

According to Mr Justice Story, (Commentaries on the Law of Bailments, 5th Ed. sec. 549) "Common carriers cannot by any special agreement exempt themselves from all responsibility, so as to evade altogether the salutary policy of the Common Law. They cannot, therefore, by a special notice, exempt themselves from all responsibility in cases of gross negligence and fraud, or, by demanding an exorbitant price, compel the owners of the goods to yield to unjust and oppressive limitations of their rights. And the carrier will be equally liable in case of the fraud or misconduct of his servants, as he would be in case of his own personal fraud or misconduct." Judge Blackburn (10 H. L. Cas. 494) argued that the weight of authority was in 1832 in favor of this view of the law, but he added that the cases decided in the English Courts between 1832 (*i. e.* two years after the passage of the Carriers Act, but not depending upon it) and the year 1854, established that the doctrine so enounced by Story was not law, and "that a carrier might, by a special notice, make a contract limiting his liability even in the cases there mentioned, of gross negligence, misconduct or fraud on the part of his servants;" and the judge held that "the reason why the Legislature intervened in the Railway and Canal Traffic Act, 1854, was because it thought the companies took advantage of those decisions (in Story's language) to 'evade altogether the salutary policy of the Common Law.'"

It is to be observed, however, while recognizing such power, that the right of making special contracts or qualified acceptances by common carriers, seems to have been asserted in early times. Lord Coke declared it in *Southcote's Case*, 4 Co. Rep. 84 (Vol. 2 p. 487), where he says "that if goods are delivered to one to be delivered over, it is good policy to provide for himself in such special manner, for doubt of being charged by his general acceptance." See also the case of *Mors* v. *Slue*, 1 Ventr. 238. This, says Story, is now fully recognized and settled beyond any reasonable doubt; and he cites a whole array of cases. See also 1 Parsons on Contracts, 708–715.

In *Nicholson* v. *Willan*, 5 East 512, decided long before the passage of the Carriers Act, Lord Ellenborough said that there is no case to be met with in the books in which the right of a carrier to limit by special contract his own responsibility has ever been by express decision denied,—the Court "cannot do otherwise than sustain such right, however liable to abuse and productive of inconvenience it may be, leaving to the Legislature, if it shall think fit, to apply such remedy hereafter as the evil may require." It is remarkable that just fifty years elapsed after this wise

suggestion in the courts before it was adopted in Parliament.

In *Carr* v. *Lancashire & Yorkshire Railroad Company*, 7 Ex. 707, decided in 1852, on which the 16th condition we have cited as to live stock is plainly founded, where the jury found as a fact that the plaintiff's horse had been injured through the gross carelessness of the defendants, they had guarded themselves by a notice in these words: "This ticket is issued subject to the owner's undertaking all risks of conveyance whatsoever, as the company will not be responsible for any injury or damage, (howsoever caused) occurring to live stock of any description travelling upon the Lancashire and Yorkshire Railway, or in their vehicles." The finding of the jury was not complained of, just as we approve of the finding of the jury here, yet the Court of Exchequer held that this was a special contract by which the plaintiff had taken upon himself all risk, just as in this case the defendants stipulated that the hogs were carried "only at the owner's risk"—the only difference being in the words "howsoever caused," or "no matter how caused" on which we will presently remark. "It is not for us," said Baron Parke, "to fritter away the true sense and meaning of these contracts. * * * If any inconvenience should arise from their being entered into, that is not a matter for our interference, but it must be left to the Legislature, who may, if they please, put a stop to this mode which the carriers have adopted of limiting their liability. We are bound to construe the words used according to their proper meaning; and according to the true intention of the parties as here expressed, I think the defendants are not liable."

This case was much relied on by the defendants' counsel, with that of *Wilton* v. *Atlantic Mail Steam Company*, 10 C. B. N. S. 453, where the same principles were applied to carriers by sea, and the company was relieved of liability for the negligence of the master, by virtue of a special contract which provided that they should not be accountable for luggage unless a bill of lading had been signed therefor.

The decisions in favour of railroad companies, culminating in the case from 7 Ex., brought down upon them,—to use the strong expression of one of the English judges,—the Railway and Canal Traffic Act of 1854, 17 & 18 Vic. chap. 31, by the 7th section of which, "Every such company shall be liable for the loss of, or for any injury done to live stock or goods, occasioned by the negligence of their servants, notwithstanding any notice, condition, or declaration made and given by such company, contrary thereto, or in any way limiting such liability —every such notice, condition, and declaration being hereby declared to be null and void." Then follow five provisos, the first of which declares that "Nothing herein contained shall be construed to prevent said companies from making such conditions in the premises, as shall be adjudged by the court or a judge, before whom any question relating thereto shall be tried, to be just and reasonable."

The fourth proviso declares that "No special contract between such company and any other person respecting the forwarding or delivery of live stock or goods shall be binding upon or affect any such party, unless the same be signed by him or by the person delivering such animals or goods respectively for carriage." This proviso and the practice under it, have doubtless suggested the form of the shipping papers or contracts used by the Grand Trunk Railway Company.

Subsequent to this Act of 1854, the cases have mainly turned on the justice and reasonableness of the conditions imposed by railroad companies, and the fact that this is to be settled by the courts, affords to the public an effective and most valuable protection. It is true that the 7th section, with its host of provisos, is not spoken of in the most complimentary terms. Lord Westbury assails it for its cumbrous language, and Mr. Justice Willes calls it "an element of confusion." Its true construction, too, has led to great variety of opinion. Still, though susceptible of improvement, it has been found a valuable enactment, and in the principal case from the House of Lords, it will be instructive to review the terms of the condition then in controversy, and the opinions it elicited.

The action was brought for injury done to three marble chimney pieces sent by railway, and the Company sought to protect themselves by the following condition, "That the company shall not be responsible for the loss of or injury to any marbles, musical instruments, toys, or other articles, which from their brittleness, fragility, delicacy, or liability to ignition, are more than ordinarily hazardous, unless declared and insured according to their value." It appeared by the evidence that the price of the carriage was 55s. stg., per ton. Ten per cent. of the value was demanded for insurance, which the consignor declined paying and sent the chimney pieces uninsured—their value was £210, and the injury done to them was estimated at £52.

To persons who are sometimes astonished at the difference of opinions in the courts of justice, it may give a curious and useful lesson, to mark the variety in this case. It was tried before Mr. Justice Erle, who thought the condition reasonable and just, and directed a verdict to be entered for the defendants. Upon argument in the Queen's Bench, (1 E. B. & E. 958) Lord Campbell and Mr. Justice Crompton took the opposite view, and judgment was given for the plaintiff. This decision was reversed in the Exchequer Chamber (Ib. 980), by Chief Baron Pollock, Mr. Baron Martin, Mr. Justice Willes, Mr. Baron Watson, and Mr. Baron Channel, the judgment was given for the defendants, Mr. Justice Williams dissenting. Of the judges in the House of Lords, besides some of the above called in to assist, Chief Justice Cockburn and Mr. Justice Blackburn gave their opinions for the plaintiff. So that of these common law judges, including two Chief Justices and the Chief Baron, it turned out that five were in favor of the plaintiff and six for the defendants. In the House of Lords, the then Lord Chancellor (Lord Westbury) after remarking with deference that he could not believe that there was in the matter itself any very serious difficulty, combined with Lords Cranworth and Wensleydale in giving judgment for the plaintiff, thus reverting to the original judgment which had been reversed in the Exchequer Chamber; while Lord Chelmsford thought the judgment should be for the company.

Now as to the condition itself, which is the converse of the second condition in the case in hand, it was remarked that the defendants had chosen the very words used by the Legislature in the Carriers Act, and that these very words were determined in *Hinton* v. *Dibdin*, 2 Q. B. 646, to exempt the carrier from liability for loss or injury occasioned by gross negligence of the carrier's servants. Mr. Justice Crompton observed, that he had great difficulty in making a refined distinction between a stipulation to be free from any loss or injury, and to be free from responsibility for any injury or damage, "however caused," which the Court of Exchequer decided in *Carr* v. *The Lancashire & Yorkshire Railroad Company*, to include cases of gross negligence, "but," he added, "I think that a condition that the company shall not be responsible for losses (which appears to me to include losses by every species of gross negligence,) ought not to be held just and reasonable." It is to be noted that the judges, who were for the defendants, did not dissent in substance from this view, but thought that in the true construction of the condition, losses occasioned by gross negligence did not come within it.

The court of ultimate appeal, by a majority of three to one, forming with the other judges a majority of eight to seven of the judicial minds employed upon this important case, decided that the condition imposed by this company was unreasonable and unjust, and the minority did not differ with them as to its essential character. Now, this is an inquiry of the highest practical importance to us. This court has now unanimously held that by the law as it obtains in this Province, and probably in all the other Provinces of the Dominion, there is no law to restrain the Grand Trunk Railway Company from exacting such terms and imposing such conditions as they think fit, in their printed papers which the public using the railway must accede to. We give no opinion whether the condition in the case in hand is reasonable or otherwise; much is to be said for, and something against it. But as it is essentially the same with the condition in *Peek* v. *North Staffordshire Railway Company*, it is well to ponder on the significant words of the Lord Chancellor that "the necessary effect of such a contract would be, that it would exempt the company from responsibility for injury however caused, including therefore, gross negligence and even fraud or dishonesty on the part of the servants of the company; for the condition is expressed without any limitation or exception" (p. 567). In a passage we have already cited, Mr. Justice Blackburn, with the apparent assent of the Law Lords, and certainly with that of Lord Wensleydale, declared that at common law a carrier might by a special notice make a contract, (and the Queen's Bench of Ontario has decided that there is no distinction between a notice and a condition forming a part of a special contract*) limiting his responsibility even in the cases of gross negligence, misconduct or fraud on the part of servants!

We are far from thinking that the Grand Trunk Railway Company would push its advantages or avail itself of the law to such extremes. But as the British North America Act, 1867, in the 91st and 92nd sections declares that exclusive legislative authority belongs to the Parliament of Canada over "lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Provinces with any other or others of the Provinces, or extending beyond the limits of the Province," we think it right to call the attention of the Dominion Government and the Legislature to what we conceive to be the actual state of the law upon a question so deeply affecting the trade and commerce of the country.

It may be that with a view to their protection, Parliament may deem it advisable to enact a law for the whole Dominion, founded on the Imperial Act of 1854, with such modifications as the experience of the mother country and the decisions since that period will naturally suggest.

In the case in hand, we are constrained by the authorities to set aside the verdict for the plaintiff, and award the defendants a new trial with costs of argument.

Rule absolute.

Plaintiff's attorney, *Mr. Peter Lynch.*

Defendant's attorney, *Mr. J. N. Ritchie.*

[We are indebted to Mr. N. H. Meagher, student-at-law, Halifax, as well for the above report as for others previously received.—Eds. L. J.]

* *La Pointe* v. *The Grand Trunk Railway Company*, 26 U. C. Q. B. 479.—Eds. L. J.

ENGLISH REPORTS.

COMMON PLEAS.

The Queen v. White.

Abandoning child whereby life was endangered—Child allowed by father to remain in danger—Misdemeanour—24 & 25 Vic. c. 100, s. 27.

The prisoner was convicted under section 27 of 24 & 25 Vic. c. 100, of having unlawfully abandoned and exposed a certain infant under the age of two years whereby its life was endangered.

The prisoner and his wife were the parents of the child, which was about nine months old on the 1st of September, 1870, the time mentioned in the indictment. They had been living apart for three weeks, when the mother came to the house of the prisoner at seven o'clock in the evening, laid the child down outside the door, and called out, "Bill, here's your child; I can't keep it; I am gone." She then went away, and was not seen again that night. Shortly afterwards the prisoner came out, stepped over the child, and walked away. About ten o'clock the prisoner returned, and was told that the child was lying outside the house, in the road; he then refused to take it in. About one a.m. a police constable who had been sent for found the child lying in the road, cold and stiff; he took charge of it, and by his care it was restored to animation. At 4.30 a.m. the prisoner admitted to the constable that he knew the child was in the road.

Held, that the prisoner was properly convicted.

[19 W. R. 783, C. C.R.]

Case stated by the Chairman of Quarter Sessions for the County of Southampton. The prisoner was indicted at the Quarter Sessions for the County of Southampton, held at Winchester, on the 19th day of October, 1870, under the Act 24th and 25th Vic. c. 100, s. 27, for that he did on the 1st day of September, 1870, unlawfully and wilfully expose and abandon a certain child, then being under the age of two years, whereby the life of the said child was endangered. It appeared from the evidence that Emily White (the wife of the prisoner) was the mother of the child, which was about nine months old at the time mentioned in the indictment. On that day

she had an interview with her husband from whom she had been living apart since the 11th of August of the same year, and asked him if he intended to give her money or victuals, he passed by her without answering, and went into his house; this was about 7 p.m.; his mother shut the wicket of the garden and forbade his wife from coming in. The wife then went to the door of the house, laid the child down close to the door, and called out "Bill, here's your child, I can't keep it, I am gone," she left and was seen no more that night. Shortly after the prisoner came out of the house, stepped over the child, and went away. About 8.30 two witnesses found the child lying in the road outside the wicket of the garden, which was a few yards from the house door, it was dressed in short clothes with nothing on its head; they remained at the spot till about 10 p.m.; when the prisoner came home, they told him that his child was lying in the road, his answer was "it must bide there for what he knew and then the mother ought to be taken up for the murder of it." Another witness Maria Thorn (the mother of the wife) deposed also to the fact that about the same time in answer to her observation that he ought to take the child in, he said "he should not touch it, those that put it there must come and take it." She then went into the house. About 11 p.m. one of the two witnesses went for a police-constable and returned with him to the place about 1 a.m., when the child was found lying on its face in the road with its clothes blown over its waist and cold and stiff. The constable took charge of it, and by his care it was restored to animation. At 4.30 a.m. the constable went to the house and asked the prisoner if he knew where his child was; he said "no." On being asked if he knew it was in the road he answered "yes." It appeared that during the time which elapsed between the prisoner leaving his house about 7 p.m. and his return about 10 p.m., he had been to the police-constable stationed at Beaulieu, and told him that there had been a disturbance between him and his wife, and wished him to come up and settle it, but he did not say anything about the child.

The prisoner's counsel objected that upon these facts there was no evidence of abandonment or exposure under the Act by the prisoner.

The Court overruled the objection. The jury found the prisoner guilty.

The question for the Court is, whether the prisoner was or was not properly convicted.

April 29.—No counsel appeared.

Cur. adv. vult.

May 6.—Bovill, C. J.—We have considered this case and are of opinion that the conviction was right. Section 27 of 24 & 25 Vic. c. 100, declares it to be a misdemeanour unlawfully to abandon or expose any child under the age of two years, whereby the life of the child shall be endangered. The words are in the alternative, and if either abandonment or exposure is proved, the offence is complete. The prisoner was the father of the child, and was bound, not only morally, but legally, to provide for and protect it; he was aware that it had been deserted by its mother, and the evidence is clear that he had the opportunity of taking it under his protection. The only question which we have had to consider is, whether there was any evidence to go to the jury of abandonment or exposure by the prisoner, whereby the child's life was endangered. I am clearly of opinion that upon the facts stated the jury not only might, but ought to have convicted. The life of the child was in danger. The prisoner must have been well aware that this was the case, and his responsibility and duty with respect to it were very different from that of a stranger.

Martin, B.—I concur, though at first I felt some doubt whether without extending the words of the statute beyond their ordinary meaning, we could hold that the father, not having the actual possession of the child, could be said to have abandoned or exposed it. But he was legally bound to protect the child, and failed to do so, and on the facts I think he did abandon it.

Bramwell, B.—I am of the same opinion.

Channell, B.—I have been requested by my brother Byles, who was present on Saturday last, to say that he agrees that the conviction was right. I also have considered the case and am of the same opinion.

Blackburn, J.—I think there was evidence for the jury that the prisoner abandoned the child. If a stranger to it had been charged with the same offence under similar circumstances, I think he would have been under no legal obligation to protect it, and would have been entitled to an acquittal. There might be a moral duty, but it would be one of imperfect obligation, for breach of which he could not be convicted. But the father was legally bound to protect and maintain his own child, and if he had failed to do so, and it had in consequence died, there can be no doubt that he would have been guilty of manslaughter. He is bound to protect the child, and though no mischief may in fact have happened to it, I think that if it was in danger, and he wilfully left it in that condition, he abandoned it by neglecting a duty, which it is clear that physically he was in a position to perform.

Conviction affirmed.

CHANCERY.

Joyce v. Cottrell.

Administration—Maintenance—Claim by mother.

Advances made by a mother for the maintenance of a son during his minority will be regarded as acts of bounty, unless there is evidence of an intention of claiming repayment.

In order to establish a claim for repayment of money expended for maintenance subsequent to majority, a contract must be shown.

[19 W. R. 1076—V. C. W.]

This suit, which now came before the Court on further consideration, was one for the administration of the estate of Joseph Cottrell, who died intestate in September, 1861, and the question which now arose was whether his mother was entitled to claim out of her son's estate a sum of £920, which she had expended for his maintenance during his minority and after he attained twenty-one years of age.

A suit of *Cottrell v. Cottrell*, had previously been instituted for the administration of the estate of Samuel Cottrell, the father of the intestate, who had by his will bequeathed a sum of £100 to each of his children, and a further sum of £1,000 to his son Joseph. The will contained a declaration that the legacy should not be paid to

his son Joseph until he attained the age of twenty-eight years, at the discretion of his guardians, but the interest was directed to be applied for his maintenance and education. Accordingly in that suit an inquiry was directed as to who had maintained Joseph Cottrell from the date of his father's death, and what was proper to be allowed in that respect, and to what date, and the chief clerk certified that Joseph Cottrell had been maintained by his mother until his death, and £920 was a proper sum to be allowed in respect thereof. In the order made on further consideration the question was left open.

In the present suit the claim was again brought forward against the estate of Joseph Cottrell.

E. Russell Roberts stated the case for the opinion of the Court.

Dickenson, Q. C., and *Lake*, for the widow, submitted that the finding of the chief clerk, which must be taken to have been made on the request of all parties, was decisive, and that the claim must be allowed. They relied upon *Bruin* v. *Knott*, 1 Phillips, 572.

Chapman Barber and *Bedwell*, for a brother of the intestate, the administrator, contended that there was no necessity for the inquiry—no claim could be made by the mother after she had allowed her son to receive his legacy, which she might have retained in respect of his maintenance during his minority. After he attained twenty-one she must show a contract. There was no evidence in support of any such contract.

Langley, for a sister of the intestate, contended that the certificate was not binding. If the son had been maintained by a stranger to the suit of *Cottrell* v. *Cottrell* he could not, as a creditor against Joseph's estate, be bound by a certificate made in a suit when he was not represented on the merits, but the question must in this cause be tried over again. The maintenance was an act of kindness and charity, and the claim must be disallowed: *Worthington* v. *M'Craw*, 5 W. R. 124, 23 Beav. 81; *Grove* v. *Price*, 26 Beav. 105, 8 W. R. Ch. Dig. 84.

Dickinson, Q. C., in reply.

WICKENS, V.C.—The only question in this case is, whether there is or is not a debt against the estate of Joseph Cottrell, in respect of the sums expended for his maintenance by his mother. That question resolves itself into two heads; first, with reference to the sums expended during his minority for maintenance, and secondly, the sums expended after majority.

In general I think it may be said that when a mother maintains a child, although not under any legal liability, she does so under one of three different views—first, with the intention of afterwards claiming the amount as a debt due to her; secondly, as an act of maternal duty, kindness, or bounty, that is, as a gift; or, thirdly, she may make the advance on an intermediate footing, that is to say, in the expectation of being recouped out of some fund under the jurisdiction of the Court, which it would allow to be so applied, although such expenditure had not been previously sanctioned by the Court.

Of course I apprehend that if a mother or any other person confers a gift, intending it as a gift at the time, she cannot afterwards, under a changed state of circumstances, come to this Court and say it was a loan. In the present case the question is, first, did the mother make the advances during the minority with the intention of afterwards claiming as a creditor? I see no reason to believe that she did so, and therefore I hold in this respect that there was no debt for maintenance during the minority. It is probably not necessary to consider whether she made these advances during minority with the intention of afterwards claiming them out of a fund under the control of the Court, but in my opinion it is clear she did not from what took place after the son came of age; for I cannot conceive stronger intimation of an intention not to claim any repayment than is manifested by her handing over the sum of £1,000 as she did. I take it, therefore, as clear for the present purpose that, whether these advances were actually intended as bounty or not during the minority, there was nothing to create a debt. The fund I am now dealing with is not under the control of the Court otherwise than for the purpose of administration of the intestate's estate, and I am now trying the question as against the fund, as a jury would try the question in an action of *assumpsit*.

As to what took place after majority, the claim has entirely failed. What the mother has to show is a contract, and she shows none. I am perfectly convinced in my own mind that she never, during these six years between the minority and the death of Joseph Cottrell, had the smallest idea of claiming repayment of anything from him. Nothing would have surprised him more than if she had intimated such an intention to him, and it would probably have caused an alteration in their arrangements. She was bound to intimate such an intention to him; but she never, as I believe, formed such an intention, and certainly never intimated it.

As to what took place before my predecessor, there is a little difficulty, because some part of the case was dealt with in the former suit; but I do not know that I am technically bound, by the finding upon the certificate that the sum was proper to be allowed, to hold that that constituted it a debt against this estate. Although all the parties were present, the precise question before me could not have arisen in the former suit, and I do not think that the certificate is conclusive upon me to hold that there was any debt, and being convinced that there was none, I dismiss the summons. The claim will be disallowed.

REVIEWS.

LA REVUE CRITIQUE. July, 1871. Montreal: Dawson Brothers.

The July number of this quarterly commences with an extract from the report of the Hon. J. H. Gray, on the assimilation of the Laws of Ontario, Nova Scotia and New Brunswick. The writer thus concludes:—

"The instructions given to me being simply to prepare for a commission hereafter to be issued—not to recommend or propose any form—I have confined my labor solely to pointing out the differences; but there can be no doubt that an excellent practical Code of Law, simple in its language, easily understood, expeditious and eco-

nomical in its administration, could be formed from a judicious selection of the best of the laws of each of the Provinces by men who were severally acquainted with each."

The advantages to be derived from one uniform system of judicature in all the Provinces of the Dominion would be immense, and great is the pity that in the Province of Quebec the possibility of any assimilation was considered too remote even to be alluded to in the British North America Act. The Law Reform Commission recently appointed in this Province will do well to keep in view the final end contemplated by that Act in making their report.

The industrious pen of Mr. Girouard contributes a lengthy essay upon the Treaty of Washington, looked at, as he says, in a purely legal point of view, but at the same time he appears to find it difficult to keep clear of its political bearing. Whether we agree with his conclusions or not, it is without doubt a valuable addition to our reading on this important and interesting subject.

The other articles are Le Droit Constitutionnel du Canada—An introductory lecture to the study of the law—Writs of Prohibition, and some others of no special interest in this Province. In an article on the Riel-Scott affair, the question is discussed as to whether the Dominion Government had or has now the power to take any legal steps to secure the punishment of the murderer Riel. The conclusion arrived at is as follows:—

"For these reasons, it does not appear to me that the Dominion Government could have taken, or could now take any legal steps to secure Riel's punishment as long as he is abroad, but as there is no Statute of Limitations with reference to murder, assuredly should he ever come within the Dominion, justice will be found to reach him and hands to take him."

This may be comforting to the writer, but not to the public, for scoundrels like Riel too often go unhung now-a-days to expect such a proper ending for him, and the last news from Manitoba seems to show how fallacious were the hopes of the writer.

AN INDEX OF REPEALED AND REPEALING STATUTES AFFECTING PRINCIPALLY THE PROVINCE OF ONTARIO. By I. N. Winstanley, Barrister-at-law. Toronto: Henry Rowsell, 1871.

We acknowledge receipt of this Index, which can scarcely fail to be of great use to those for whom it is intended, and will doubtless command a ready sale.

We have for some time past been hoping to see something of this kind; the changes in the statute law are so rapid and confusing that any aid in keeping track of them will be received with satisfaction.

APPOINTMENTS TO OFFICE.

EXECUTIVE COUNCIL OF ONTARIO.

THE HON. STEPHEN RICHARDS, to be Secretary and Registrar of the Province of Ontario, in the room and stead of the Hon. M. C. Cameron, resigned. (Gazetted 29th July, 1871.)

THE HON. MATTHEW CROOKS CAMERON, to be Commissioner of Crown Lands for the Province of Ontario, in the room and stead of the Hon. Stephen Richards, resigned. (Gazetted 29th July, 1871.)

LAW REFORM COMMISSIONERS.

THE HON. ADAM WILSON, one of the Judges of H.M. Court of Queen's Bench for Ontario.

THE HON. JOHN WELLINGTON GWYNNE, one of the Judges of H.M. Court of Common Pleas for Ontario.

THE HON. SAMUEL HENRY STRONG, one of the Vice-Chancellors of the Court of Chancery for Ontario.

HIS HONOR JAMES ROBERT GOWAN, Judge of the County Court of the County of Simcoe, and

CHRISTOPHER SALMON PATTERSON, of Osgoode Hall, Barrister-at-law, Commissioners to inquire into and report upon the present jurisdiction of the several Law and Equity Courts of Ontario, and upon the modes of procedure now adopted in each, and upon such other matters and things therewith connected as are in the commision more fully set forth:—under the name and title of "Law Reform Commissioners." (Gazetted Sept. 23, 1871.)

COMMISSIONER IN EXTRADITION CASES.

FRANCOIS CARON, of the Town of Windsor, in the Province of Ontario, Esq., to be a Commissioner for the purposes contemplated in the Act of the Parliament of Canada, 31st Vic. Cap. 94. (Gazetted 7th October, 1871.)

COUNTY COURT JUDGE.

RICHARD JOHN FITZGERALD, of Osgoode Hall, and of the Town of Picton, in the Province of Ontario, Esq., Barrister-at-law, to be Judge of the County Court of the County of Prince Edward, in the said Province, in the room and stead of David L. Fairfield, Esq., deceased. (Gazetted 9th Sept., 1871.)

STIPENDIARY MAGISTRATE AND REGISTRAR.

DELEVAN D. VAN NORMAN of the Town of Simcoe, Esq., to be Stipendiary Magistrate and Registrar for the Territorial District of Thunder Bay, having his office at Prince Arthur's Landing, in the said district. (Gazetted 3rd June, 1871.)

PATRICK McCURRY, of Osgoods Hall, Esq., Barrister-at-law, to be Stipendiary Magistrate and Registrar for the District of Parry Sound, in the room and stead of Jesse Wright Rose, Esq., deceased. (Gazetted 9th Sept. 1871.)

POLICE MAGISTRATE.

RICHARD H. HOLLAND, of Osgoode Hall, Esq., Barrister-at-law, to be Police Magistrate and Registrar in and for the Town of Port Hope. (Gazetted 9th Sept. 1871.)

MAXWELL W. STRANGE, of the City of Kingston, Esq., Barrister-at-law, to be Police Magistrate in and for the City of Kingston, in the room and stead of John Creighton, Esq., resigned. (Gazetted 8th July, 1871.)

REGISTRARS.

STEPHEN BLACKBURN, of the City of London, Esq., to be Registrar in and for the West Riding of the County of Middlesex, having his office in the Village of Glencoe, in the said County. (Gazetted 22nd July, 1871.)

THOMAS LAUDER, of the Village of Durham, Esq., to be Registrar for the South Riding of the County of Grey, having his office at the Village of Durham, in the said County. (Gazetted 29th July, 1871.)

WILLIAM TORRANCE HAYS, of the Town of Goderich, Esq., Barrister-at-law, to be Registrar in and for the North Riding of the County of Huron. (Gazetted 30th Sept. 1871.)

SAMUEL ROBB, the elder, of the Town of Stratford, Esq., to be Registrar in and for the North Riding of the County of Perth, in the place and stead of William Smith, Esq., deceased. (Gazetted 30th September, 1871.)

PATRICK WHELIHAN, of the Town of St. Mary's, Esq., to be Registrar in and for the South Riding of the County of Perth. (Gazetted 30th September, 1871.)

JOHN ANDERSON, of the Village of Orangeville, Esq., to be Registrar in and for the North Riding of the County of Wellington. (Gazetted 30th September, 1871.)

DEPUTY CLERK OF THE CROWN, ETC.

JAMES LINDSAY, of the Village of Dunnville, Esq., to be Deputy Clerk of the Crown, and Clerk of the County Court of the County of Haldimand, in the room and stead of Robert N. Griffith, Esq., deceased. (Gazetted 13th May, 1871.)

CLERK OF THE DISTRICT COURT.

JAMES BENNETTS, of Bruce Mines, Esq., to be Clerk of the District Court of the Provisional Judicial District of Algoma, in the room and stead of Henry Pilgrim, Esq., resigned. (Gazetted 23rd September, 1871.)

NOTARIES PUBLIC.

WILLIAM WORTS EVATT, of the Village of Paisley, Esq,, Barrister-at-law. EZRA ALBERT BATES, of the Village of Arnprior, Gentleman, Attorney-at-law. (Gazetted 13th May, 1871.)

THOMAS MORPHY, of the Town of Brampton, Gentleman, Attorney-at-law. DUNCAN McGIBBON, of the Town of Milton, Gentleman, Attorney-at-law. ROBERT W. PARKINSON, of the City of Toronto, Gentleman, Attorney-at law. (Gazetted 20th May, 1871.

JAMES BISHOP BROWNING, of the Village of Bracebridge, Gentleman, Attorney-at-law. (Gazetted 3rd June, 1871.)

FREDERICK COLQUHOUN, of the Village of Waterloo, Gentleman, Attorney-at-law. ALEXANDER FINKLE, of the Town of Woodstock, Gentleman, Attorney-at-law. FRED. D. VAN NORMAN, of the Town of Brantford, Gentleman, Attorney-at-law, JOSEPH JOHN MURPHY, of the City of Ottawa, Gentleman, Attorney-at-law. (Gazetted 1st July, 1871.)

JOSEPH E. MACDOUGALL, of the City of Toronto, Esq. Barrister-at-law. WALTER DUDLEY, of the Village of Newmarket, Esq., Barrister-at-law. JAS. J. FOY, of City of Toronto, Esq., Barrister-at-law. JOHN ALEX. GEMMILL, of the City of Ottawa, Gentleman, Attorney-at-law. JOHN SECORD, of the Village of Tilsonburg, Gentleman, Attorney-at-law. (Gazetted 8th July, 1871.)

WILLIAM BELL, of the City of Hamilton, Esq., Barrister-at-law. SETH SOPER SMITH, of the Town of Port Hope, Esq , Barrister-at-law. WILLIAM H. MOORE, of the Town of Peterboro', Gentleman, Attorney-at-law. JOSEPH GODARD HALL, of the Town of Port Hope, Gentleman, Attorney-at-law. (Gazetted 15th July, 1871.

WM. ALEX. HAMILTON DUFF, of the City of Hamilton, Gentleman, Attorney-at-law. (Gazetted 22nd July, 1871.

JAMES H. MACDONALD, of the City of Toronto, Esq., Barrister-at-law. WM. GLENHOLME FALCONBRIDGE, of the City of Toronto, Esq., Barrister-at-law. (Gazetted 29th July, 1871.)

WILLIAM H. BILLINGS, of the Town of Whitby, Gentleman, Attorney-at-law. (Gazetted 26th Aug. 1871.)

ARCHIBALD HENRY MACDONALD, of the Town of Guelph, Esq., Barrister-at-law. FREDERICK JOHN FRENCH, of the Town of Prescott, Esq., Barrister-at-law. DANIEL WADE, of the Town of Pembroke, Esq., Barrister-at-law. DAVID BROWN ROBERTSON, of the Town of Belleville, Esq., Barrister-at-law. WILLIAM J. HANNAH, of the City of Toronto, Esq., Barrister-at-law. THOMAS JAMES WILSON, of the Village of Parkhill, Gentleman, Attorney-at-law. NORMAN FITZHERBERT PATERSON, of the Village of Beaverton, Gentleman, Attorney-at-law. RODERICK STEPHEN ROBLIN, of the Town of Picton, Gentleman, Attorney-at-law. (Gazetted 9th September, 1871.

ROBERT THOMPSON LIVINGSTONE, of the Town of Simcoe, Esq., Barrister-at-law. JAMES F. MACDONALD, of the Town of Ingersoll, Esq., Barrister-at-law. PETER FRANK WALKER, of the Town of Goderich, Gentleman, Attorney-at-law. JAMES FLETCHER, of the Town of Brampton, Gentleman, Attorney-at-law. (Gazetted 16th September, 1871.)

DAVID LYNCH SCOTT, of the Town of Brampton, Esq., Barrister-at-law. WILLIAM HENRY FULLER, of the City of Kingston, Esq., Barrister-at-law. WALTER SCOTT WILLIAMS, of the Town of Napanee, Gentleman, Attorney-at-law. ANGUS BELL, of the Village of Singhampton, Gentleman. (Gazetted 23rd September, 1871.)

NEIL M. MONRO, of the Village of Fergus, Esq., Barrister-at-law. MARK SCANLON, of the Village of Bradford, Gentleman, Attorney-at-law. (Gazetted Oct. 7, 1871.)

HENRY JOSEPH LARKIN, of the City of Toronto, Esq., Barrister-at-law. (Gazetted 14th October, 1871.)

JOHN WILLIAM DOUGLAS, of the Town of Perth, Esq., Barrister-at-law. (Gazetted 21st October, 1871.)

JOHN KENNEDY, of the Village of Mount Forest, Gentleman, Attorney-at-law. (Gazetted 21st Oct., 1871.)

ASSOCIATE CORONERS.

SIDNEY WILLIAM CLEGG, of the Village of Apsley, Esquire, M.D.; within and for the County of Peterborough. (Gazetted 6th May, 1871.)

JAMES HAYES, of the Town of Simcoe, Esquire, M.D.; within and for the Co. of Norfolk. (Gazetted May 6, 1871.)

JOHN M. FOWLER, of the Village of Burford, Esquire, M.D.; within and for the County of Brant. (Gazetted 27th May, 1871.)

JOHN MEARNS, of the Village of Petrolea, Esquire, M.D.; within and for the County of Lambton. (Gazetted 3rd June, 1871.)

DANIEL J. M. HAGARTY, of the City of London, Esquire, M.D.; within and for the County of Mlddlesex. (Gazetted June 10, 1870.)

DAVID MITCHELL, of the Village of Constance, Esq., M.D.; within and for the County of Huron. (Gazetted June 24, 1871.)

WILLIAM S. CHRISTOE, of the Township of Artemesia, Esquire, M.D.; within and for the County of Grey. (Gazetted July 22, 1871.)

JOHN KELLY, of the Village of Little Britain, Esquire, M.D.; within and for the County of Victoria. (Gazetted July 22, 1871.)

WILLIAM LUMLEY, of the Village of Glencoe, Esquire. M.D.; within and for the County of Middlesex. (Gazetted July 22, 1871.)

EDWARD LOUIS ATKINSON, of the Village of Gananoque, Esquire, M.D.; within and for the County of Grenville. (Gazetted August 3, 1871.)

JOHN GODKIN GILES, of the Village of Farmersville, Esq., M.D.; within and for the United Counties of Leeds and Grenville. (Gazetted 26th August, 1871.)

WILLIAM C. LUNDY, of the Town of Amherstburg, Esq., M.D.; within and for the County of Essex. (Gazetted 26th August, 1871.)

ALBERT WILLIAM SOVEREEN, of the Village of Fredericksburgh, Esq., M.D.; within and for the County of Norfolk. (Gazetted 16th September, 1871.)

HENRY JOSEPH MURPHY, of the Town of Chatham, Esq., M.D.; within and for the County of Kent. (Gazetted 16th September, 1871.)

ABRAHAM PRATT, of the City of Ottawa, Esq.; within and for the county of Carleton. (Gazetted 23rd September, 1871.)

BRINSLEY MARCIUS WALTON, of the Village of Westmeath, Esq., M.D.; within and for the County of Renfrew. (Gazetted 30th September, 1871.)

JACOB GILBERT TERRYBERRY, of the Village of Burford, Esq , M.D.; within and for the County of Oxford. (Gazetted 21st Oct. 1871.)

QUITE a sensation was created in the English parliament a couple of weeks ago by a motion to exclude all lawyers from the house who had been elected for counties. This motion was founded on Act of Edward III, passed just 500 years ago, and which some industrious antiquary had exhumed. The reason for its passage was declared to be that these "men of law who follow divers businesses in the king's courts on behalf of private persons, with whom they are, do procure and cause to be brought into parliament sundry petitions in the name of the commons which in nowise relate to them, but only the private persons with whom they are engaged." The lawyers directly declared the act repealed, on the authority of Lord Coke, and the Attorney-General was of the same opinion. But the friends of the motion would not thus be put down, and a lengthy debate was the result.—*Albany Law Journal.*