DIARY FOR JULY.

1. Wed..Dominion Day. Long Vacation begins. Last day for Co. Clerks finally to examine Asst. Rolls, and equalize Rolls Local Municip.
2. Thurs.Error and Appeal Sittings.
5. SUN..*4th Sunday after Trinity.*
6. Mon..County Court and Surrogate Court Term begins. Heir and Devisee sittings commence.
11. Sat. ..County Court and Surrogate Court Term ends.
12. SUN..*5th Sunday after Trinity.*
14. Tues..Last day for County Judges to make return of appeals from assessments.
19. SUN..*6th Sunday after Trinity.*
21. Tues..Heir and Devisee Sittings end.
22. Wed..*St. Mary Magdalene.*
26. SUN..*7th Sunday after Trinity.*

THE

Canada Law Journal.

JULY, 1868.

AMALGAMATION.

By this word we refer to the system which prevails in this country as well as in the United States, as to the union of those two branches of the profession which, in England, are distinct. The articles copied from two English periodicals, and which originated in the remarks of Mr. Justice Hannen, a person, we believe, eminently capable of forming an opinion on such a subject, have drawn our attention to this matter.

The periodicals referred to differ in their views, and one can see both sides of the question, so far as they present them. In this country, where the amalgamation system obtains in full force, we can, from practical experience, form a much better opinion of the advantages and disadvantages of the respective systems than can be gained from mere theory.

As no change is contemplated in this country it is scarcely worth while discussing the subject at any length; but we think that that system which adapts itself to the wants of the people must necessarily be the best, and that strict rules which hamper the conduct of business are to be deprecated as, in general, injurious. The practical result of our system is to make the two branches of the profession distinct in many cases where it is advisable that they should be so distinct; but as this distinction is principally a matter of convenience, and the result of natural causes, it is less likely to be liable to the objections which, in a greater or less degree, arise from the rigid enforcement of rules of professional etiquette, many of which are, undoubtedly, detrimental to the interests of clients, without any corresponding benefit to the profession.

OUR LAWS AND LAWYERS.

We give below some extracts from an interesting lecture on the above subject, lately delivered by Mr. J. C. Hamilton, barrister-at-law. Though intended for the edification of a mixed audience, the essay contained many things which will, we think, be interesting to many of our professional readers. With this in view, we give such extracts as our space permits, thinking that anything light in the way of legal literature is in keeping with the season and the weather. The lecturer thus pleasantly sketches the Court of Chancery; and his remarks are somewhat significant that the writer practices principally in the west wing of Osgoode Hall:

"It is a heavy and encroaching court—a court to be avoided by all sinful men; a court of equity and good conscience, where natural feelings are sacrificed to justice, and 'attachments' are formed and used only as a means of torture. It is a court of numerous officers, many of whom tax costs, some of whom tax our patience. Often attacked, it has still survived, and even grown in bulk and power, and is now an 'indefeasible title' court. Its decrees are not, like judgments at law, unilateral or confined in scope and object, but may—and in practice often do—fearlessly examine all claims to the subject in dispute, and finally settle them.

It protects infants, guards the imbecile and lunatic from rapacity, comes between husband and wife, and has even tender regard to the fairer and frailer portion of the race.

Its judges are our modern knight-errants. They lay bare many a hidden fraud. Airy castles are tumbled down by their injunctions. They unravel many a tangled skein, or cut the Gordian knot of complicated accounts and encumbered estates, and have many an Augean stable to cleanse. Common law judgments are often, in effect, made void, or their operation stayed, by Equity decrees. Some of the general orders materially intrench upon Acts of Parliament.

With this insight into the scope of many suits in Chancery, you may see good reason for their longevity. The solicitor, unlike the attorney, has this happiness—the little bill which he files to-day may become his life-long friend, though it, like Pallas, spring but from his labouring brain,

yet, behold the germ of a long and virtuous existence. It will seek discovery with patient diligence, only equalled by Newton. Then with its charges, which, if not at first full enough, are aided by others in red ink and in blue, and, supported by final replication, it will scold and scrowl like an epistle of Diogenes, with postscript by Zantippe, and, finally, after seeking all manner of aid, it will end by craving such further and other relief as may, by the genius and ability of judges and other officers, be discovered and given—not forgetting costs.

Such, then, is the little mental offspring in its simple dress of black and white, trimmed with blue and fastened with red, which the practitioner with fond hopes may to-day entrust to the Registrar. Nurse it with care past defendants' attacks, nor let it be sacrificed to rude Masters' reports. Though at the first hearing the Chancellor may say cruel things, yet, if on 'further consideration' he speak kindly of your offspring, thereafter all will be happiness—dismissal will be impossible. The only cheques to be received will be from the Registrar for costs; and thus the child of many cares and tender nurture may become the support and companion in declining years, and may, peradventure, provide an heirloom after your own last cause is heard."

After speaking of the different courts and officers he gives us some statistics as to the profession and the Society of which we are members. Thus:—

"The number of barristers in actual practice is about 500, but of attornies, among whom most of this half thousand are included, there are 750. Last term there were twelve barristers called, thirty attornies admitted to practice, and fourteen students entered on the roll. By the *U. C. Law Journal* it appears that in Hilary, Easter and Michaelmas terms of last year, there were thirty-seven calls to the bar and forty-two admissions of attornies.

The Act introduced by Mr. Blake, and passed last session, which imposes additional examination, more reading and less lounging at "terms" will, doubtless, be a boon to the student, and tend to raise the standard.

Each barrister and student has his number in the society's roll; that of the last barrister called is 1,057; that of the last student of the law is 2,062. Remembering that the initiative stage takes generally five years, and making due allowance for the young gentlemen now entering as students and forming part of the above 2,062,and for many whom death may have cut off in their career (and I fear the proportion of those gay and pleasure-seeking fellows so called away is large), there still remains between the number of the latest student and the latest barrister a very large margin. May this not be thus in part accounted for? The ambition which in boyhood fired many an aspirant, who thought it a fine thing to be a lawyer, and 'fagged up' (to use the common term) enough of Horace and Euclid to 'pass Gwynne,' so called because of the important and dread part which that learned gentleman takes in the preliminary examinations, has gradually evaporated as he learned more of the sterner labours and duties before him, or he more exactly weighed and appreciated his mental qualifications, and wisely turned his attention to some of the other many useful and honorable callings always open to the willing and deserving in our happy Province.

Many of those who have actually passed the final stages — been 'called' or 'admitted'— have disappeared from the active ranks, and for like reasons.

The cry so common, as to overstocking of the profession, is probably, however, well founded; especially now that other business is prosperous in a much greater proportion than this. The same remark is often—and probably as justly—made of the medical profession. The evil or, rather, the inconvenience, has its own cure. The supply will lessen, or the surplus—the lighter material—will rise and flow over. Young men, naturally and by circumstances qualified for entering on this profession should not thus be disheartened, but remember the words of Daniel Webster —'Gentlemen, there is plenty of room in the upper stories.'

Having spoken of the professional roll, we may here, perhaps, consider some other facts of interest. The bar of Upper Canada had, it seems, formed themselves into a Society before 1797. In that year, the Statute 37 Geo. III., cap. 13, incorporated themselves under the title of "The Law Society of U. C." This is that "close corporation" of which we hear so much, who, by its benchers, presided over by a chief, called the Treasurer, govern the affairs of the profession. The six senior members of the bar, with the attorney and solicitor-general, and such other members of the bar as they (and the ruling body of the society generally so constituted) thought proper to appoint were, by the above Act, created the first benchers. There were at this time (1797) on the roll fifteen persons, some of whose names are well known in our history, but all of them have long since been enrolled by the sexton. They were John White, attorney-general, Robert Isaac Dey Gray, solicitor-general, Walter Roe, Angus McDonell, James Clark,

Christopher Robinson (father of the late Sir John), Allan McLean, William Dummer Powell, Alex. Stewart, Nicholas Hagarman (father of the late Judge Hagarman), Bartholomew C. Beardley, Timothy Thompson, Jacob Farrand, Samuel Sherwood (brother of the late Judge Sherwood), and John McKay. During the next term, same year, William Weeks was called.

In Easter Term, 1801, James Woods only was called, and in Trinity Term of that year, Thomas Scott. The next was Levius P. Sherwood, afterwards a judge of the Queen's Bench, who was called in Hilary Term, 1803. The number of entrants after this gradually increased. In Easter Term, 1803, eight gentlemen were called. The first six of the original fifteen, with Messrs. White and Gray, the chief law officers of the Crown, at their head, were the first benchers under the Act of 1807. Mr. White was Treasurer the first year, Mr. Gray from 1798 to 1801. After them we find the names of Messrs. Angus McDonell, Thomas Scott, D'Arcy Boulton, whose sons, the Hon. H. J. Boulton and other well-known gentlemen, are still residing in the Province; then Dr. Baldwin Sir John B. Robinson, Hon. H. J. Boulton, Geo. Ridout, Judge Sullivan, V. C. Jamieson, Sir Jas. B. Macaulay, and others, the office being now held by the Hon. J. Hillyard Cameron.

Some of these gentlemen afterwards appear in the list of our chief and other judges, as will be seen by calling their names to memory. The chiefs of the Queen's Bench were Wm. Osgoode, John Elmsley, Henry Alcock, Thos. Scott, Wm. Dummer Powell, Sir Wm. Campbell, Sir J. B. Robinson, Archibald McLean, and Mr. Draper."

We have often thought it a great pity that history should lose any facts or incidents which are interesting, as well in themselves as in relation to the early settlers in this country, or the knowledge of which would tend to throw any light upon scenes now rapidly fading from the memory of even "the oldest inhabitant," and especially so when we remember that, with few exceptions, the men who were of note in the early history of the colony were members of our profession. We are glad, therefore, to see the following notice of two of the gentlemen already referred to:—

Attorney-General John White.—This gentleman's law office was in a log house at the corner of Caroline and Queen streets. He resided afterwards in the house since occupied by the late Samuel Ridout. A dispute which arose between him and another legal gentleman brought them to the so-called field of honor. Pistols were used, and Mr. Attorney's life was the forfeit. This was in January, 1800. Mr. White was appointed Attorney-General, of course, by the Imperial Government. He had a lodge, built of logs and branches, covered with vines, in the woods to the north of his residence, where he used to retire for study and meditation in summer. Here, by his direction, he was buried. His grave was, till lately, visible, though not marked with a tombstone, in the Commons between Seaton and Parliament streets; but an old resident, Mr. John Ross, to whom I am indebted for some of these facts, now living on Adelaide street, informs me that he was unable to find it when passing the locality some few years since.

Solicitor-General Gray.—Several matters of public interest are connected with this gentleman's history which, for lack of records and the failure of memory in the few survivors, are fast falling into oblivion. I have learned the following, after some inquiry: He lived where Dr. Beaumont now resides, on Wellington-street, near York-street. Mr. Gray came from Cornwall, U. C., where his father and mother, as appears from passages in his will, were buried, and he there stated his desire to be buried beside them. Another fate awaited him. A man called Cosens had killed an Indian, whose brother, failing to find Cosens, killed another white man, John Sharpe, a tailor, in true savage revenge. The Indian being apprehended, a court was directed to be held at Presque Isle, near Brighton, for his trial. Judge Cochrane, Sol.-Gen. Gray, Mr. Angus McDonell, Sheriff of York, Mr. Fiske, the high bailiff, the prisoners and others, embarked at this city, then the town of York, in the schooner 'Speedy,' captain Paxton, for the place of trial.

The captain remonstrated with Governor Hunter, as the weather was threatening and the 'Speedy' was unseaworthy, but was over-ruled. A gale came on off Presque Isle, all went down, and were lost. Nor were the bodies of any on board ever afterwards found. The Solicitor-General had premonitions of his end, and stated his fears before embarking. Mr. Gray was a very extensive landholder in the Province. He had also valuable interests in a species of chattel property, for some time, fortunately, unknown among us. By the will already referred to, dated August 27, 1803, and made shortly before his death, he 'manumits and discharges from the state of slavery in which she now is, his faithful black woman servant Dorinda and gave her and her children their freedom; and, that they might not want, directed that £1,200 should be invested and the interest applied to their maintenance. To his black servants Simon and John Baker he gave, beside their freedom, 200 acres of land each and pecuni-

ary legacies. Descendants of the faithful Dorinda are still living in or near Cornwall, at very advanced ages, as well as the above-mentioned John, now said to be over ninety years old. It will be remembered that, though the slave trade was prohibited by the Provincial Act 33 Geo. 3, cap. 7, yet the state of involuntary servitude in Upper Canada was not abolished till afterwards.

It is remarkable that the Government had two schooners built at Kingston in Gen. Hunter's time, called, usually, 'the King's vessels.' The other sailed with a number of soldiers on board, and had the same fate as the 'Speedy,' neither ship nor passengers being afterwards seen."

JUDGMENTS.

QUEEN'S BENCH.

Present—The Hon Mr. Justice Hagarty; the Hon. Mr. Justice Morrison.

Wednesday, June 17, 1868.

Yorkville Road Co. v. *Baldwin* —Judgment for defendant.

Great Western Railway Co. v. *Pluman.*—Rule refused.

Hall v. *McCollum.*—Rule nisi granted.

Kerr v. *McEwan.*—Application to extend time for appeal refused.

Gould v. *British America Ins. Co.* — Rule discharged. Judgment for plaintiff on demurrer.

Commercial Bank v. *Harris.* — New trial on payment of costs by plaintiffs.

Nicholson v. *Page.*—Rule discharged.

Corporation of Huron v. *Armstrong.* — Judgment for plaintiffs on demurrer. Rule absolute.

Re Totten.—Rule absolute without costs.

Gilchrist v. *Ramsay* —Rule discharged.

Corporation of Chatham v. *Houston.*—New trial without costs.

Cain v. *Lancashire Ins. Co.* — New trial without costs.

Henderson v. *Vermilyea.*—Rule discharged.

Henricks v. *Henricks.*—Rule absolute.

Maybee v. *Turley.*—Rule discharged.

Bobier v. *Clay* —Rule absolute for nonsuit.

Leslie v. *Long.*—Cross rules. Both rules discharged with costs.

Re Appelbee & Baker;—Rule absolute.

Grigs v. *Billington.*—Rule discharged.

Wells v. *Cummings.*—Rule discharged.

Ledyard v. *Drain.*—Rule discharged.

The Queen v. *Sinnott.*—Rule discharged.

Healey v. *Parker.*—Rule discharged.

Simpson v. *Hartman.*—Rule discharged.

COMMON PLEAS.

Present — The Hon. The Chief Justice; the Hon. Mr. Justice Adam Wilson.

June 22, 1868.

Cotter v. *Sutherland.*—Rule absolute to enter verdict for plaintiff. Leave to appeal granted.

Stevens v. *Jacques.*—Rule discharged. Leave to appeal granted.

Scatcherd v. *Stewart* —Rule discharged.

Smith v. *Shewan.*—Rule discharged.

Bell v *McLean.*—Rule discharged.

Ruthven Woollen Manufacturing Co. v. *Great Western Railway Co.*—Rule discharged.

Ewing v *Deadman* —Rule discharged.

Bank Upper Canada v. *Mercer.*—Judgment for plaintiff on demurrer.

Young v. *Crossland* —Judgment for defendant on demurrer, with leave to amend on payment of costs in three weeks.

Dunlop v. *Burnham.*—Stands.

Harkley v. *Provincial Insurance Co.*—Rule absolute for new trial without costs.

Strickland v *Vansittart.*—Rule discharged.

Lalor v. *Burrow.*—Rule discharged.

McCabe v. *Robinson.*—Rule absolute for new trial. Costs to abide event.

Fenton v. *Kay.*—Rule discharged.

Burleigh et al. v. *Campbell.*—Rule absolute to enter nonsuit.

Crandell v. *McLaughlin et al.* — Rule discharged.

Roe v *Bank British North America.* — Rule absolute to enter nonsuit.

Hayman v. *Heward.*—Appeal allowed without costs, and rule *nisi* in court below for new trial discharged with costs.

June 27, 1868.

Coons v. *Etna Insurance Company* —New trial upon payment of costs by plaintiff within a calendar month, otherwise rule absolute for nonsuit.

Hope v. *White.*—Rule absolute for non-suit. Leave to appeal granted.

Dove v. *Dove.*—Rule discharged. Leave to appeal refused.

Brown v. *McCarty et al.*—Judgment for plaintiff.

Re Moore v. *Luce.*—Appeal disallowed without costs, or with costs of appeal and costs in court below against the estate, if proceedings stand, and the court below directed to allow appellant further to be heard on his petition.

McLean v. *Eccleston.*—Appeal dismissed without costs.

McHugh v. *Grear.*—Judgment for defendant.

Davis v. *Stewart et al.*—Judgment for plaintiff on demurer to replication.

Kinghorne v. *British America Insurance Co.*—On defendants paying $200 into court within a month, rule discharged with costs; if not paid, then court will consider case next term.

Crawford v. *Great Western Railway Company.*—(Plaintiff's rule). Rule *nisi* discharged.

Same v. *Same.*—(Defendants' rule). Rule absolute to enter verdict for defendant on 1st, 2nd and 3rd issues, and verdict for plaintiff on 4th issue to stand, and verdict for plaintiff on 5th issue.

Buchanan v. *Cunningham.*—Rule discharged.

Eakins v. *Christopher et al.*—Judgment for plaintiff on demurer.

In re Burrowes.—Rule discharged with costs, to be paid Mallory.

Dunlop v. *Burnham.*—No judgment; notice of setting down having been set aside.

Purtell v. *Buchan.*—To be re-argued.

Ball v. *Town of Niagara.*—No judgment. Case in course of settlement.

We subjoin a table, compiled by an official in one of the courts, which will be of much use to those concerned in the transaction of business in the Courts of Queen's Bench and Common Pleas, during

EASTER AND MICHAELMAS TERMS.

Days.	First Week.	Second Week.	Third Week.
Monday	Motion Rule Nisi in Q. B. or C. P.	Paper Day, Q. B. New Trial Day, C. P.	Paper Day, Q. B. New Trial Day, C. P.
Tuesday	ditto	New Trial Day, Q.B. Paper Day, C. P.	New Trial Day, Q.B. Paper Day, C. P.
Wednesday..	ditto	Paper Day, Q. B. New Trial Day, C. P.	Open Day, Q. B. New Trial Day, C. P.
Thursday	ditto	Open Day, Q. B. Paper Day, C. P.	Open Day, Q. B. Open Day, C. P.
Friday.....	Paper Day, Q. B. New Trial Day, C. P.	New Trial Day, Q.B. Open Day, C. P.	New Trial Day, Q.B. Open Day, C. P.
Saturday....	New Trial Day, Q.B. Paper Day, C. P.	Open Day, Q. B. Open Day, C. P.	Open Day, Q. B. Open Day, C. P.

Hilary Term lasts only two weeks, and business is disposed of during these two weeks in the same manner as during the first two weeks of the other Terms.

County Court appeals must be set down for the first or second Paper Days of each Term, after the date of the Appeal Bond; and on those days are placed first on the paper.

SELECTIONS.

SUNDAY LAWS.*

Among theologians, in their ever recurring discussions upon the so called Sunday questions, two leadlng points of controversy have arisen,—the one as to the origin of the appoint ment of the first day of the week for peculiar observance; the other, as to what the nature of such observance should be. In regard to the first, the law has taken no heed: it found the first day of the week already selected for observance, which observance was enforced by legislation; but, as to the second, we find an almost infinite variety of provisions, shaped, it would seem, to meet the popular feeling and mode of life of the people by whom they were made, and changed from time to time according as that feeling and mode of life changed. Indeed, a study of the Sunday laws of the different portions of the United States, it is thought, would furnish, in a measure, some indication of the peculiar characteristics of its people. Thus we are not surprised that the strong religious feeling of Massachusetts compelled, by its early legislation (1791), the attendance at some church of every able bodied person, under the penalty of a fine; while its regard for freedom of religious thought is shown by the proviso, that such attendance was not required where there was no place of worship at which such person could conscientiously attend.

A similar compulsory attendance was required by an earlier statute of Connecticut (1751), which contains the following stringent provision: "No persons shall convene or meet together in company in the streets, nor go from his or her place of abode, on the Lord's day, unless to attend upon the public worship of God or some work of necessity or charity." This is followed by the provision, that "no person convicted of any offence under this act shall be allowed any appeal." So in Georgia

* This article will be read with interest in view of a recent high-handed proceeding of a Toronto policeman, who entered the room of a stranger in the city, on a Sunday, without any warrant, and took him into custody and confined him all night in a filthy cell, because he heard him playing some simple airs on a violin at the back window of his lodgings on Sunday. The unconscious victim was heavily fined and admonished by the Police Magistrate the next day. The extraordinary conduct of this ardent protector of the public morals was fully discussed by the public press, and probably will not occur again for some time. It was suggested at the time that the musical talent of Toronto policemen must be of a high order when an otherwise uneducated "Bobby" could at once discern the exact line where sacred music ends and secular music begins.—[Eds. L. J.]

and South Carolina, an early statute compelled attendance at church. The effect of slavery shows itself in the Sunday laws of some of the States. Thus, in Virginia, *any free person* found laboring at any trade or calling on Sunday was liable to a fine; while in Texas the only provision which forbids laboring on Sunday is one which fines any person who shall compel *his or her slaves, children, or apprentices to labor*, except in the sugar-making season and to save a crop, on that day.

In Florida, it is provided that "no person shall employ his apprentice, servant, or slave in labor, and that no merchant shall keep open his shop," on Sunday; and this seems to be the only restriction upon labor in this State on that day. The same statute exists in Alabama, with a provision that contracts made on Sunday are void.

In Ohio and Illinois, the Sunday laws, which are as stringent as in most States, have been made to yield to the throng of emigration which sweeps over them, by a provision that nothing shall prevent emigrants moving forward on Sunday, and that ferrymen, tollgatekeepers, and the like, shall be allowed to labor on that day in their behalf.

A tolerance toward those who believe that the seventh day of the week, instead of the first, should be set aside for observance, is shown in some of the States by making such persons exempt from the provisions of the Sunday law. This is so in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Ohio, Indiana, Illinois, Arkansas, Michigan, Kentucky, and Wisconsin. In all the above mentioned States the exception is general, save in Rhode Island, New York, and New Jersey. In Rhode Island, after providing that "all professors of sabbatarian faith or of the Jewish religion" shall be permitted to work on Sunday, the statute denies them the liberty of opening shops for the purpose of trade, or of lading or unlading vessels, or of working at the smith's business or at any other mechanical trade, in any compact village, except the compact villages of Westerly and Hopkinton. In New York and New Jersey there seems to be a qualified exemption for Jews and other sabbatarians, by a provision which excuses them from jury and other public duties on Saturday, and from answering process on that day.

Either from inadvertance or a want of the liberality shown in the other States, the Sunday laws of Pennsylvania, New Hampshire, Delaware, Maryland, North Carolina, South Carolina, Georgia, Tennessee, Mississippi, Alabama, Florida, and California are silent in regard to this by no means inconsiderable class; and it has been held in the first mentioned State that the provisions of the Sunday laws apply to Jews as well as others. *Commonwealth* v. *Wolf*, 3 S. & R. 48; *Society &c.*, v. *Commonwealth*, 52 Penn.St. 125; *City Council* v. *Benjamin*, 5 Strobh. 508; but see *Ex parte Newman*, 9 Cal. 502.

Thus far reference has been had chiefly to the provisions of the statutes of the different States in regard to the observance of Sunday, which serve to illustrate the spirit or characteristics of the State where they are found,—an investigation perhaps more curious than valuable. The most important differences, in a legal point of view, are those which are found in comparing the clauses in the statutes of the different States which restrict business, labor, and pleasure on the first day of the week.

In *Swann* v. *Broome*, 1 W. Bl. 526, Lord Mansfield gives the history of the common law doctrine, "Dies Dominicus non est juridicus," and declares that no judicial act could be done on Sunday. Other than this, the common law makes no distinction between it and any other day. The case of *Hiller* v. *English*, 4 Strobh. 486, contains an exhaustive discussion upon the limitation placed on judicial acts upon Sunday.

Laws upon the observance of Sunday came naturally from the Church at an early day; but it was not until after six hundred years that labor and secular business were prohibited by it, and then only so far as they are an impediment to religious duties, and because of their being so.

The earliest important civil legislation (5 & 6 Ed. V. c. 3) looks only to the religious celebration of the day, "that it be kept holy," and in no manner forbids labor. The statute 1 Eliz. c. 2, and 3 Jac. I. c. 4, § 27, in the same spirit, punishes by fine "all persons having no lawful or reasonable excuse for absence from church," but puts no further restriction on the observance of Sunday.

We are obliged to wait until the statute of 29 Car. II. c. 7, § 1, before we find any restriction, in terms, upon labor on the first day of the week. Up to this time, the laws had been but a re-enactment of the first clause of the Mosaic law known as the Fourth Commandment, "Remember the sabbath day to keep it holy." This statute seems to be the interpretation in that age of the remainder of that Commandment; viz., "Six days shalt thou labor, and do all thy work," &c. From this statute (29 Car. II. c 7, § 1) spring, with many modifications, the Sunday laws, as they are now found in this country.

In some of the States, as we have seen, the statute of Elizabeth compelling attendance at church has been followed (though all such laws are now, it is believed, repealed); but, for the most part, sufficient, and many of these follow closely upon the English statute of Charles II. in their terms. By this statute, no tradesman, artificer, workman, laborer, or other person or persons whatever, *shall do or exercise any worldly labor or business, or work of their ordinary calling, on Sunday*; and it prohibits the sale or hawking of goods and wares.

This statute is followed, in terms, in Georgia and South Carolina, and nearly so in Tennessee; so that, in these States, the rule laid down by Lord Tenterden, in *Sandiman* v. *Breach*, 7 B & C. 96, would apply: that under the words "person or persons" no other class is included than those described by the words which precede them. This would seem to be the case in North Carolina, where the terms of the statute are "no tradesman or other person."

The clause in the statute of Charles II. which forbids "any labor, business, or work of ordinary calling" on Sunday, is to be found in many of the statutes in this country, and has received an interpretation in the different courts of many of the States. In the case of *Allen* v. *Gardiner*, 7 R. I. 22, it was held that the execution of a release by a creditor to an assignee on Sunday is not a work of ordinary calling.

In a recent case in Massachusetts, not yet reported (*Hazard* v. *Day*), the Court refused to disturb the finding of the Court below,—that a real estate broker in Rhode Island, who delivered on Sunday a contract of his principal and received from the defendant a duplicate contract and check signed by him, was acting in his ordinary calling, and was within the Sunday law of that State. In Georgia, the execution and delivery of a note is held not to be within a person's ordinary calling. *Sanders* v. *Johnson*, 29 Ga. 526. And in North Carolina, where the sale of a horse was made privately on Sunday by a horse dealer to a person who was aware of the vendor's ordinary business, it was held that an action on the warranty would lie: *Melvin* v. *Easley*, 7 Jones Law, 356. The leading English cases bearing on the question as to what constitutes ordinary calling, are *Drury* v. *Defontaine*, 1 Taunt. 131; *Scarfe* v. *Morgan*, 4 M. & W. 270; *Wolton* v. *Gavin*, 16 Q. B. 48; *Fennell* v. *Ridler*, 5 B. & C. 406; *Norton* v. *Powell*, 4 M. & G. 42; *Smith* v. *Sparrow*, 4 Bing. 84; *Blocksome* v. *Williams*, 3 B. & C. 232; *Rex* v. *Whitnash*, 7 B. & C. 596; *Begbie* v. *Levi*, 1 Cromp. & J 180.

In most of the States,—viz., Maine, Massachusetts, Vermont, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Kentucky, Mississippi, Arkansas, Michigan, and Wisconsin,—it is evident, from the terms of the Statute, that it was the intention of the legislature to compel a general suspension of business and labor on Sunday.

Thus the execution of any contract on Sunday renders it void, as in the case of a promissory note made and delivered on that day. *Hilton* v. *Houghton*, 35 Me. 143; *Towle* v. *Larrabee*, 26 Me. 391; *State* v. *Suhur*, 33 Me. 539; *Nason* v. *Dinsmore*, 34 Me. 391; *State Bank* v. *Thompson*, 42 N.H. 369; *Allen* v. *Deming*, 14 N.H. 133; *Lyon* v. *Strong*, 6 Vt. 219; *Lovejoy* v. *Whipple*, 18 Vt. 379; *Adams* v. *Gay*, 19 Vt. 358; *Wight* v. *Geer*, 1 Root, 474; *Kepner* v. *Keefer*, 6 Watts, 231; *Hill* v. *Sherwood*, 3 Wis. 343. In *Kaufman* v. *Hamm*, 30 Mo. 387, a note given on Sunday for an antecedent debt was held valid. A bond given on Sunday has been held void. *Pattee* v. *Greely*, 13 Met 284; *Fox* v. *Mensch*, 3 Watts & Serg. 444; see also *Commonwealth* v. *Kendig*, 2 Penn. St. 448.

So "swopping horses" on Sunday is illegal and void, as is any warranty given at the time. *Lyon* v. *Strong*, 6 Vt. 219; *Robeson* v. *French*, 12 Met. 24; *Murphy* v. *Simpson*, 14 B. Mon. 419; but see *Adams* v. *Gay*, 19 Vt. 358. A sale made on Sunday of a horse is void. *O'Donnell* v. *Sweeney*, 5 Ala. 467; *Adams* v. *Hamill*, 2 Douglass, 73; *Hulet* v. *Stratton*, 5 Cush. 539; *Northrup* v. *Foot*, 14 Wend. 248; but *Miller* v. *Roessler*, 4 E. D. Smith, 234. An action of contract will not lie for a horse sold on Sunday, although the purchaser keep him afterwards. Trover is the form of action. *Ladd* v. *Rogers*, 11 Allen, 209.

But a subsequent ratification of a contract made on Sunday makes it valid. *Sargeant* v. *Butts*, 21 Vt. 99; *Sumner* v. *Jones*, 24 Vt. 317; *Johnson* v. *Willis*, 7 Gray, 164; see also *Smith* v. *Bean*, 15 N.H. 577; *Clough* v. *Davis*, 9 N.H. 500.

A sale and delivery of property on Sunday, though contrary to law, cannot be rescinded by either party. *Moore* v. *Kendall*, 1 Chand. 33.

A guaranty for the fulfilment of a lease executed on Sunday is void, although the lease is not executed until a week day following. *Merriam* v. *Stearns*, 10 Cush. 257.

Where a letter is written and delivered on Sunday promising pay for the performance of services, and there is no proof of agreement to perform the same, action may lie thereon for week day services. *Tuckerman* v. *Hinckley*, 9 Allen, 452. It is not sufficient to avoid a Sunday contract, that it was entered into then: it must be consummated on that day. *Adams* v. *Gay*, 19 Vt. 358; *Sumner* v *Jones*, 24 Vt. 317. So where A. on Sunday proposed to B. to work for him, and B. on Monday, with others, took the subject into consideration, and went to work on Tuesday, it was held that B. could recover for services. *Stackpole* v. *Symonds*, 3 Foster, 229. As has been stated, a contract made in Alabama on Sunday is, by the terms of the statute, void.

A number of acts performed on Sunday have been held to be lawful. Thus a contract made and executed on that day is valid to pass title. *Greene* v. *Godfrey*, 44 Me. 25. See *Merritt* v. *Earle*, 31 Barb. 38. So where a steamboat company on Sunday landed and stored in a railroad company's warehouse goods which were afterwards consumed by fire, they having been sued and obliged to pay for the goods, it was held that they were not prevented by the Sunday laws of Virginia from recovering in a suit against the railroad company. *Powhatan Steamboat Co.* v. *Appotamox R. R. Co.*, 24 How. 247. See *Slade* v. *Arnold*, 14 B. Mon. 287.

In Massachusetts, a will executed on Sunday is valid. *Bennett* v. *Brooks*, 9 Allen, 118. So in New Hampshire. *Perkins* v. *George*, 1 Am. Law Rev. 755.

A question has often arisen, whether a contract was made in point of time, so as to bring it within the Sunday laws. Thus it has been held that where a proposition was made on Saturday and completed by a delivery on Sunday, the contract was made on Sunday. *Smith* v. *Foster*, 41 N.H. 215. So where an agreement for use and occupation of land was made on Sunday, it was held void; but, if entered on and occupied, an action will lie for use and occupation. *Stebbins* v. *Peck*, 8 Gray, 553. A note executed on Sunday but delivered on some other day, has been held valid. *Lovejoy* v. *Whipple*, 18 Vt. 379; *Goss* v. *Whitney*, 24 Vt. 187; s. c. 27 Vt. 272; *Hilton* v. *Houghton*, 35 Me. 143; *Bank of Cumberland* v. *Mayberry*, 48 Me. 198. See *Ray* v. *Catlett*, 12 B. Mon. 532; *Clough* v. *Davis*, 9 N. H. 500; *Sherman* v. *Roberts*, 1 Grant's Cases, 261.

In Massachusetts, if the charges on a party's day book, on which he relies as evidence of his claim, are dated on the Lord's day, he must show that the sale was not in fact made on that day, or he cannot recover. *Bustin* v. *Rogers*, 11 Cush. 346. But the Court will draw no inference from the date of the contract, on a motion in arrest of judgment. *Hill* v. *Dunham*, 7 Gray, 543.

The case of *Adams* v. *Gay*, 19 Vt. 358, is very instructive in showing the effect of Sunday laws generally upon contracts.

The legislation of New York differs from that of any other State. It provides that there shall be no servile labor or work on that day, but allows the sale of meats, milk, and fish before nine o'clock in the morning. Under this statute, it has been decided that any business but judicial may be done on Sunday. *Boynton* v *Page*, 13 Wend. 425; *Miller* v. *Roessler*, 4 E. D. Smith, 234; *Sayles* v. *Smith*, 12 Wend. 57; *Greenbury* v. *Wilkins*, 9 Abbott's Practice R. 206; *Batford* v. *Every*, 44 Barb. 618.

In the case of *Smith* v. *Wilcox*, 25 Barb. 341, s. c 24 N.Y. 353, the distinction between business and servile labor is pointed out. There it was held, that no action would lie for advertising in a Sunday paper; but an agreement made on Sunday to publish an advertisement on a week day is valid. Work by an attorney's clerk on Sunday has been held to be servile labor, for which no compensation could be had as extra services, *Watts* v. *Van Ness*, 1 Hill 76; but a contract to transport property is not void because the transportation commences an that day. *Merritt* v. *Earle*, 31 Barb. 38.

In Ohio and Indiana, by the terms of the statute, "common labor" is forbidden on Sunday. This parase has received a different construction in the two States. Thus in Ohio a contract made on Sunday is held valid. *Bloom* v. *Richards*, 2 Ohio St. 387; *McGatrick* v. *Wason*, 4 Ohio St. 566; *Brown* v. *Timmany*, 20 Ohio, 81; *Swisher* v. *Williams*, Wright, 754. But a merchant may not sell wares on that day. *Cincinnati* v. *Rice*, 15 Ohio, 225. In *Bloom* v. *Richards*, the Court remarked: "The statute prohibiting common labor on the Sabbath could not stand for a moment as the law of this State, if its sole foundation was the Christian duty of keeping the day holy, and its sole motive was to enforce the observance of that day. It is to be regarded as a mere municipal regulation, whose validity is neither strengthened nor weakened by the fact that the day of rest it enjoins is the Sabbath day.

In Indiana, on the other hand, a contract made on Sunday is void, as a note or bond. *Reynolds* v. *Stevenson*, 4 Ind. 619; *Link* v. *Clemmens*, 7 Black. 479; *Bosley* v. *McAllister*, 13 Ind. 565. Subsequent ratification, however, makes it good. *Banks* v. *Werts*, 13 Ind. 203. In the same State it has been solemnly held that "gambling is not an act of common labor or usual avocation" *State* v. *Conger*, 14 Ind. 396; the accuracy of which, some who have travelled upon the rivers of the West might doubt.

The statute of Tennessee much resembles those of Ohio and Indiana. By its terms, "the practice" of the common avocations of life on Sunday is forbidden.

The statutes of Illinois and New Hampshire seem to be, upon their face, most liberal. By the terms of the first, no use of the Sabbath is forbidden, except that which "disturbs the peace and good order of society;" and in New Hampshire such ordinary business or labor is forbidden only as is carried on "to the disturbance of others." The interpretation in the last State, by the Court, of what constitutes a legal "disturbance of other," narrows to a great extent this seeming liberality. In *Varney* v. *French*, 19 N.H. 233. a contract for the sale of a horse was made on Sunday, and a note given. This was done at the house of the plaintiff, whose wife was present in the room reading a paper. The Court held that the note was void, the giving of it being, under the circumstances, a disturbance of others under the Statute; and that an act is none the less within the statute although other persons present may not object to its performance. *Allen* v. *Deming*, 14 N.H. 133; *Clough* v. *Shepherd*, 11 Foster, 490; *Smith* v. *Foster*, 41 N. H. 215. But such a contract may be subsequently ratified. *Smith* v. *Bean*, 15 N. H. 577; *Clough* v. *Davis*, 9 N. H. 500. As to what constitutes a Sunday contract, see *Smith* v. *Foster*, 41 N.H. 215.

In Pennsylvania, wordly "employment or business" is forbidden on Sunday. Under this act, contracts have been held to fall, as a bond or note. *Kepner* v. *Keefer*, 6 Watts, 831; *Fox* v. *Mensch*, 3 W. & S. 444; *Heydock*

v. *Tracy*, 3 W. & S. 507; *Morgan* v. *Richards*, 1 Browne, 171. In this State, the question has been raised, whether a marriage entered into on Sunday was valid, and it was so held; but, upon the question of the validity of the marriage settlement made on that day, the Court were divided. *Gangwere's Estate*, 14 Penn. St. 417.

Where a party has set up a claim for damages, the question has arisen whether the fact that he was, by the Sunday law unlawfully engaged, was a good defence. This has been held to so in Massachusetts. *Bosworth* v. *Swansey*, 10 Met. 363; *Jones* v. *Andover*, 10 Allen, 18; *Stanton* v. *Metropolitan, R. R Co.* (not yet reported). But in *Etchberry* v. *Levielle*, 2 Hilton, 40, it was held no defence to a suit for damages arising from a tort inflicted during a game, that such game was unlawful. See also *Mohney* v. *Cook*, 26 Penn. St. 342, and *Philadelphia R.R. Co.* v. *Tow Boat Co.* 23 Howard, 209, where damage was done to a vessel sailing on Sunday.

With the large number of foreigners found in some of our States, it is not remarkable that the Courts have been called upon to settle whether the legislature can, by such enact ments as Sunday laws, restrict them in the use of their property, limiting its value, and calling upon them for an observance of Sunday in a manner so different from that to which they have been accustomed in their own country. Thus in New York, in *Lindenmuller* v. *People*, 33 Barb. 548, it was claimed that the law forbidding the opening of theatres on Sunday is a "deprivation of the citizen of his property," under the Constitution; but the Court, in an opinion of great length, refuse to sustain this position.

In *Ex parte Andrews*, 18 Cal. 678, the provision prohibiting all persons from opening their places of business on Sunday, was held to be not unconstitutional. This was affirmed in *Ex parte Bird*, 19 Cal. 130.

For acts of charity and necessity there is a universal exception from the effect of the Sunday laws; but what shall be so held has given rise to a diversity of decisions. The legal definition of a work of necessity is well stated in *Flagg* v. *Millbury*, 4 Cush. 243, where the Court say that a physical and absolute necessity is not wanted; "but any labor, business, or work which is morally fit and proper to be done on that day, under the circumstances of the particular case, is a work of necessity within the statute." So that the repairs of a road, which should be made immediately, is a work of necessity; and the fact that it would have to be done on Sunday is no defence in an action for damages arising from a defect in an action for damages arising from a defect in the highway. So if property is exposed to an imminent danger, it is not unlawful to preserve it and remove it to a place of safety on Sunday; as where a plaintiff agreed to collect logs scattered by a storm, and defendant agreed to take them away on the next day, which should be a Sunday, Tuesday, or Friday, the contract was held to be binding. *Parmalee* v. *Wilks*, 22 Barb, 539. So labor on merchandise which A. has agreed to ship, and where longer delay is dangerous on account of the closing of navigation, is within the exception. *McGatrick* v. *Wason*, 4 Ohio St. 566.

In Alabama, a contract made on Sunday, to save a debt or avoid a threatened loss, has been held valid. *Hooper* v. *Edwards*, 18 Ala. 290; s. c. 25 Ala. 528. The hire of a horse and carriage on Sunday by a son to visit his father in the country, was held to be a valid contract. *Logan* v. *Mathews*, 6 Penn St. 417. In Massachusetts, where travelling on Sunday is prohibited, in *Buffinton* v. *Swansey* (an unreported case, tried in Bristol County, November Term, 1845), the facts showed that a young man, who worked at a distance during the week, received injuries arising from a defect in the highway, while proceeding to visit his betrothed on Sunday, and the point was raised, and discussed by the court, whether such visit might not be an act of necessity or charity. The question, however, never reached the full Court.

The letting of a carriage for hire on Sunday from a belief that it was to be used in a case of necessity or charity, when it was not in fact so used, has been held not to be an offence under the statute. *Meyers* v. *The State*, 1 Conn. 502. The supplying of fresh meat on Sunday is not a necessity in Massachusetts. *Jones* v. *Andover*, 10 Allen, 18. The case of *State* v. *Goff*, 20 Ark. 289, if the facts are correctly reported, would seem to be one of too great strictness of interpretation. Defendant was poor; had no implements to cut his wheat, which was wasting from over-ripeness; and he could borrow none until Saturday evening. He exchanged work with his neighbors during the week, hired a negro, and cut his own wheat on Sunday. Held no justification for breaking the Sabbath.

In 1618, James the First of England issued his famous "Book of Sports," in which are set out the sports which "may be lawfully used on Sunday." This was in consequence of the complaints of the arbitrary interference of Puritan magistrates and ministers; and it is therein provided that "the people should not, after the end of divine service, be disturbed, letted or discouraged from any lawful recreation." The Statute of Car. I, c. 1, which prohibits sports on Sunday, did away with the effect of the "Book of Sports;" and and a similar law is to be found in most of the States.

Travelling upon the Sunday is especially forbidden in some of the States; viz, Massachusetts, Vermont, Connecticut and New York. Under these statutes, it has been held that where a horse has been let to go a certain distance on Sunday, and is driven further, and so injured, no action will lie for such injury. *Gregg* v. *Wyman*, 4 Cush. 322. So where a horse was injured by fast driving on Sunday.

Way v. *Foster*, 1 Allen, 408. In Maine, it is held that no action lies for the death of a horse by fast driving on Sunday, but that trover for conversion will. *Morton* v. *Gloster*, 46 Me. 520. See *Woodman* v. *Hubbard*, 5 Foster, 67

In *Bryant* v. *Brideford*, 39 Me. 193, a horse was let on Sunday, and an injury occurred after the legal expiration of the day. The town was held liable for an injury arising for want of repair of the road.

In Massachusetts, the Courts have been recently called upon to give an interpretation to the word "travelling," in two recent cases which are not yet reported. In *Hamilton* v. *The City of Boston*, the plaintiff received an injury on Sunday from a defect in the highway. The Court held that walking half a mile in the streets of Boston on Sunday evening, with no intention of going to or stopping at any place but the plaintiff's own house, was not travelling within the meaning of the Lord's Day Act; but in *Stanton* v *Metropolitan R. R. Co.*, where plaintiff received an injury by being thrown from one of the defendants' horse cars, while on the way to visit a friend, it was held that the plaintiff was travelling in violation of the Lord's Day Act. In England, where the Sunday law forbids the selling of ale or spirit to any but travellers on Sunday, it is held that "a man who goes a short distance from home, for the purpose of taking refreshment, is not a traveller." *Taylor* v. *Humphreys*, 10 C. B. (N.S.) 429.

The carrying of the United States mail on Sunday awakened a discussion, which became important in a political point of view, about the year 1830, and was made the subject of party issues. (See the Report of Hon. R. M. Johnson, of the Committee of the United States House of Representatives, which shows how serious a consideration was given to the question.) Before this, in Massachusetts, it had been held that one carrying the mails on Sunday could not be arrested, but not so his passengers, "nor may he blow his horn to the disturbance of serious people." *Commonwealth* v. *Knox*, 6 Mass. 76. Although the mails were allowed to travel on Sunday in Massachusetts, it was not so with the Chief Justice of the State and his associates. An indictment was filed against them in 1793 for travelling on Sunday, and they found it necessary to humbly petition the Legislature to authorize a *nolle prosequi*.

In Rhode Island, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Kentucky, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, Wisconsin, Texas, Michigan, and Florida, travelling is not forbidden on Sunday.

In Pennsylvania, it has been held that the statute does not forbid travelling. *Jones* v. *Hughes*, 5 S. & R. 299. But it does not allow an omnibus or horse car to be driven on that day, it being held a worldly employment and breach of the peace. *Johnston* v. *Commonwealth*, 22 Penn. St. 102. This has been recently overruled in *Sparhawk* v. *Union Passenger R. R. Co.*, not yet reported. So the hire of a horse for a pleasure excursion on Sunday cannot be recovered. *Berrill* v. *Smith*, 2 Miles, 402.

By the Delaware statute, carriers, pedlers, and stage drivers are forbidden from driving or travelling on Sunday. The Ohio statute provides that emigrants are not affected by its terms; and that of Tennessee, that nothing in the statute shall prevent travellers or persons moving with their families.

What effect a contract made on Sunday, and so void, has upon the rights of third parties, has been considered by the courts. Thus a note made and delivered on Sunday, though illegal, if indorsed before maturity, without notice of any defect, to a *bona fide* holder, cannot be impeached in his hands. *State Bank* v. *Thompson*, 42 N. H. 369; *Bank of Cumberland* v. *Mayberry*, 48 Me. 198; *Allen* v. *Dening*, 14 N. H. 133. A deed on Sunday cannot be avoided by a stranger to the transaction claiming by a subsequent levy. *Greene* v. *Godfrey*, 44 Me. 25; *Richardson* v. *Kimball*, 28 Me. 463. See *Saltmarsh* v. *Tuthill*, 13 Ala. 390.

An extended examination of the Sunday laws, with their differing terms, and of the various and conflicting decisions under them, suggests the inquiry as to what legislation is best fitted to accomplish that which every good citizen desires — a proper observance of Sunday. A thorough discussion of this question opens the door to the arguments which have been offered on both sides in such numbers upon the propriety of setting apart any day of the week, especially as a day of worship; it being contended by some that all days should, in their religious observance, be alike. Persons holding these views agree, however, that there is a necessity, in the physical nature of man, for occasional rest, and that therefore a cessation from work at fixed intervals is proper. In support of this position, they cite the meaning of the Hebrew word rendered "Sabbath," which is *rest*; and claim that the only thing commanded by the Scripture is *rest*; that the space of six days seems to be the natural limit of successive labor without physical injury; and that therefore, as a mere regulation for the preservation of the public health, there should be a law forbidding labor on each seventh day. See 2 Ohio St. 387. The result of the decree of the National Convention of France, 3 Brumaire, An 2 (Oct. 24, 1793), whereby the *decade* or period of ten days, of which the tenth was appointed as a day of suspension of labor, was substituted for the week, is also cited. After a period of twelve years, the old division of time was restored by Napoleon—one day in ten having been found to give insufficient rest. The translation of the Hebrew word *kadesh* by the word "holy," in the phrase "Remember the Sabbath day, to keep it *holy*," is claimed by some to be erroneous, and that the true import

of the word is "set apart." For this there seems to be the strongest authority in Calvin (Comm. on Gen. ii. 3), and Bishop Horsley (Sermons 22 and 23 on Christian Sabbath). See also the meaning of the word, as illustrated by Dr. Campbell (Dissertation VI., Part IV., prefixed to his Translation of the Gospels.) From this it is claimed by some, that there is no divine command for the *religious* keeping of any day of the week.

On the other hand, there are a large number of Christians who believe that the observance of Sunday is a divine appointment (see Hessey's "Bampton Lectures," which contain an exhaustive discussion of the whole Sunday question), among whom there are some who would have enforced it in the strictest manner; so that the early Connecticut statute before mentioned, would not be held by them too severe, nor the interpretation of the word "necessity" in Arkansas too narrow, *State* v. *Goff*, 20 Ark. 289; while others would have the legislation so shaped as not to make it obnoxious to the community.

It is difficult for any one who has read Dr. Whately's "Thoughts on the Sabbath" to escape his result—that the Lorrd's day has no connection with the Jewish Sabbath, and has no divine origin; neither was it established by the apostles, but by the Church. Those who are embraced in this class, for the most part hold that the religious observance of Sunday is most valuable for the moral nature of man, and that every assistance for its maintenance should be given it by the law. The Jews, Seventh-day Baptists, and other so called sabbatarians, think that the *seventh day* should be the one selected, and would call legislation to assist them in enforcing it. There are many qualifications, not alluded to, in the opinions which have been held, as to what shall constitute a proper observance of one day in seven; but those above stated are thought to give the main features of this many sided question. What manner of legislation will combine and reconcile them all, it is not easy to conceive. Perhaps the statutes of New Hampshire and Illinois would best, theoretically, meet the case. It will be remembered, that no labor in those States is allowed to the disturbance of others; but the case of *Varney* v. *French*, 19 N. H. 233, alluded to above, shows how narrow its terms may become by interpretation. Perhays if it were left to the jury to say what constitutes a "disturbance," the difficulty might, in a measure, be removed.—*American Law Review.*

THE TWO BRANCHES OF THE PROFESSION.

At the dinner of the Solicitors' Benevolent Association, Mr. Justice Hannen made use of the following expressions:—'I do not hesitate to enunciate my opinion that the two branches of the profession may well be amalgamated. No one knows better than myself that the duties of an advocate are entirely different from those of a solicitor; but, as in many other cases, I know of no means of drawing a sharp dividing line. They merge into one another, and a man who begins his career does not know, until he has been practising for years, for what he may have the greatest fitness, and I believe it would be well to leave it to a man to find out the opportunities that may arise of calling forth the particular qualities and talents that are in him, and so leave it to such occasions to develope whether or no he has a better capacity for carrying on the business of a solicitor or the profession of an advocate. I believe it is peculiar to England that the two branches are separated, and not only peculiar to England in its largest sense, but peculiar to this country, for in almost all of our colonies the two branches of the profession have been amalgamated. I am not aware of any inconvenience that arises from it, and there can be no better training for a young barrister, than to devote himself to the business of a solicitor.' The language of Mr. Justice Hannen is characterised by boldness. After his usual manner, having conceived an idea, he is ready to avow and defend his opinion. Moreover, His Lordship chose a most appropriate occasion and most proper audience for the enunciation of this deliberate judgment.

We propose to place before our readers some considerations on the expediency of the change proposed, and the facility which would be experienced in carrying it into operation. At the expense of being charged with a desire to 'Americanise' an ancient institution, an accusation sufficiently rebutted by the observation that our description is equally applicable to Canada and Australia, we think that we shall best put our case by showing how the system works in the United States, or rather perhaps in a given State of the Union; for example, the State of New York.

Every person who desires to practice as a lawyer in a State of the Union is 'admitted to the Bar;' and it is the rule that barristers form themselves into partnerships consisting of not less than three and of not more than seven persons. No deed of partnership is ever executed, but the members agree by parol, according to the common custom of almost all partners in business in America, in what shares the profits shall be divided. Every lawyer holds himself out to practice in every and to transact every department of legal business. Practically, partnerships are framed with the view of combining in one firm the varied kinds of ability necessary for the successful conduct of the several departments. So also, as might be expected, there is usually a disparity of age between the members, and a consequent disparity of experience. Therefore, if a client brings a bill of exchange for collection, the most youthful member undertakes the work, but if a client brings a Chancery suit of importance or a shipping cause of difficulty, the matter is handed over to the

ablest or most experienced member. The theory and the fact also are, that in each firm are contained all the elements for the due adminstration of any kind of legal business. By these measures the ordinary requirements of all classes of suitors may be satisfied. But it may, and often does occur, that a client of a firm becomes involved in a suit demanding the advocacy of the best man in the profession. At the same time the client is, of course, anxious not to desert the firm with which he has been all his life connected. This contingency is amply met. On this state of things being communicated to the firm, the client proceeds to retain the advocate required. The advocate according to an invariable rule of courtesy, communicates with the firm, so that all parties consent to the arrangement. In such case the advocate obtains his instructions from the firm, and argues the case, and there his duty begins and ends. His charges are paid by the client who retains him, and not by or through the firm.

Let us here pause a moment, and see how the change into such a system could be accomplished in England. Suppose that for the future every person desirous to practise as a lawyer, is 'called or admitted to the Bar.' proper examinations, proper periods and methods of study could be instituted, and the societies of the Inns of Court could undergo such a change as would very greatly enhance the value of their efforts as law universities. No difficulty would be found in meeting the exigencies of legal preparation both in the metropolis and in the provinces. While the new school of practitioners was being formed, the present generation of lawyers could adapt themselves readily to the new order of things. Once break down the artificial barrier, and firms would spring up in every direction, consisting, for example, of one counsel at the common law bar, another cousnel at the chancery, and of a solicitor. Who doubts that such an arrangement would best meet the wants of the public? A man of business, or of fortune, upon whom a sudden legal difficulty has come, does not, in the emergency of the moment, care to be told that a case will be prepared, laid before counsel, and an opinion obtained at the end of a week. He goes to his physician, and gets a prescription *eo instanti*. Why cannot his affairs be tended with equal celerity? Again, there may be a line between the duties of an advocate and an attorney, but it certainly is not a sharp one; and it may occur to some candid persons that it is the system, not the nature of things, that has manfactured the line. The existence of the line is scarcely perceptible in America or in our colonies. Here we have adjusted our lens so that it has become a gulf rather than a line. Again, the argument, if it is to be so called, is put forward that the honour of the Bar is maintained by the existing arrangement. We never have quite understood this expression. But it must mean one of two things, either that a barrister will be demoralised by pursuing the great principle that governs the universe of labour, namely, by getting pay for work done, or that if a barrister could only get at the original client, he would plunder the unfortunate victim. The first notion is contrary, not to all experience, but to all human action whatever, and is based on the monstrous fiction that a barrister is not paid now. The second is met by the suggestion that the barrister is not more likely to abuse his trust than the solicitor. There is one thing further, that in some few cases a barrister is retained in a rascally transaction, and the attorney acts as a veil between the advocate and the client, so that the Court is addressed by an honorable man, in valuable unconsciousness of what is behind. If any person thinks that this constitutes a proper argument, he is at liberty to do so, but we content ourselves by saying that we should be delighted to do anything to confound utterly such methods of action.

To proceed, however, with our comparison. In America, lawyers are liable in actions for negligence. In England, barristers are not so liable, because, as there is no contract to pay the barrister, there is no consideration to support the contract. Once sweep away the dogma that a barrister shall not recover for work done, and of course the corresponding obligation to perform work with a reasonable degree of skill and care arises. In reality the Bar would sustain no damage. English barristers do neglect their duties, and are most rarely, if ever, incompetent. They would have nothing to fear, while the client would enjoy his right, under protection of the law, to have that done for which now he pays just as much as he ever will pay in the future.

It is clearly impossible that, after an amalgamation of the two branches has been consummated, the law of costs can stand for an hour. We never heard any man, except a law-accountant, say a good word for costs. They are based on no intelligable principle: they plunder the client in a trumpery case, and let him off much too easily in an important case. It is not in human nature for a man who has only 500*l.* at stake in a cause or other legal matter to pay willingly a large bill, because his attorney has been put to considerable trouble. On the other hand, a matter involving many thousands of pounds may be finished at a lower figure, to the unfair detriment of the attorney's pocket. In America the system is simple enough. The firm send in their bill, assessing the amount to some extent with reference to the trouble and expense incurred, but more with reference to the value of the property recovered or dealt with. In the long run the lawyers are amply remunerated, and the clients are satisfied. If a dispute arises upon the charges of the bill, and an action is brought by the firm, the plaintiffs call the evidence of other lawyers to show that the charges are customary and fair, precisely

as would be done in England in any action other than one brought by an attorney.

Such are the main features of the American system. If introduced here the general public would, in our opinion, be benefited. Clients would be brought into immediate contact with their legal advisers, with the result that advice would be given more speedily, with more accurate perception of the facts, and with more opportunity for guidance in the further carriage of the matter; that each firm would contain within itself complete powers of conducting every description of business; that much unnecessary labour and expense would be saved to the profession; and that remuneration would be based on a plan more satisfactory to the client and to the lawyer. Then what would the profession lose? Certainly the Bar would not by this change lose its honour? That is to be preserved not by artificial rules and irrational restrictions, but by the good sense and honesty of the individual members. No doubt the attorneys and solicitors will lose what may be called the patronage of the Bar, but it is not clear either that the patronage is rightly lodged, or that it is not a nuisance rather than a prize to those who are driven to exercise it. Lord Melbourne detested episcopal patronage, and took to his bed when a see was vacant. Are there no London solicitors who experience similar sensations with regard to the choice of counsel? But we say boldly that the general public ought to enjoy that patronage, and that a man ought to choose his own advocate, although under the present system a solicitor is amply justified in refusing responsibility, unless he is left a free agent in all such matters. Then the suggestion of Mr. Justice Hannen must not be overlooked that a young man cannot discover what is the precise bent of his talent, until it is too late to adapt his course to that inclination, neither indeed, it may be added, can he anticipate in which branch of the profession he may be most aided by connection or capital or the like, all of which in a highly civilised country must tell in the struggle of life.

These, then, are among the considerations that seem to support the proposition of Mr. Justice Hannen. Even the opponents of the change admit that the force of events is becoming too strong for them. The mere fact that there is a vast system of Courts in which attorneys appear as advocates, but in which barristers are precluded from acting as attorneys, is enough, on the simple principle of fair and equal dealing, to condemn so one-sided an arrangement. It is well recognised that law and equity are daily approaching each other, that codification will consummate their union, and that the amalgamation of the two branches would then be but the work of time But in our view there is no need for delay. On the contrary, we believe the proposed change to be not merely salutary, but one to be speedily completed in the true interests of the profession and the public.—*Law Journal.*

AMALGAMATION.

Amalgamation is a word as familiar to lawyers as to chemists or metallurgists; the amalgamations of insurance and other joint-stock companies have been a very fertile source of employment to all ranks of the profession. It is not, however, of these amalgamations that we are now thinking, but of that which is to take place between the bar and the attorneys and solicitors. It is now some years since this proposition was first broached, and though it has not yet found much favour either with lawyers or those who employ them, it is every now and then revived to become the theme of more or less discussion. In the present instance, the revival has been occasioned by a strong opinion in favour of the change delivered by Mr Justice Hannen, at the anniversary dinner of the Solicitors' Benevolent Association. Mr. Hinde Palmer, Q.C., in responding to the toast of "the Bar," took occasion to express a hope that the day was far distant when any change would be made, which should place the bar in direct communication with suitors, believing as he did that such a change would diminish the honour and utility of both branches of the profession. After this it was hardly possible for the learned chairman, holding an opinion far beyond the contrary to Mr. Hinde Palmer's views, not to give utterance to his own ideas upon the topic. Any opinion delivered by a judge held in such deserved esteem as Mr. Justice Hannen is entitled to the highest respect; and it is very true indeed, as he observed, that all good opinions were in the minority once. As to this one opinion, however, we are unable to agree with Sir James Hannen, believing that on this subject his opinion is not only in the minority, but is so deservedly.

The present condition of the legal profession has been arrived at by a very gradual growth. If we could go back to the earliest days we should find the prototypes of our modern barristers holding direct communications with, and receiving direct payments from, the litigants who consulted them. The attorneys and solicitors were hardly then, as they are now, a distinct branch of the law. But as the study and practice of the law grew apace, certain individuals acquired the habit of "attorning," and of course a man who had discharged that function several times was a better assistant than one less experienced in the forms of the law. Thus Attorneyship came to be a distinct vocation, a sufficient employment to occupy the whole of one man's time and energy. The attorneys gradually rose to the dignity of a profession, and as their importance increased, provision was made for admitting none but properly qualified persons. Indeed, as far back as 15 Ed. II attention seems to have been turned to this, for the statute, cap. 1 of that year restricts the power of admitting them to the Lord Chancellor and Chief Justice, prohibiting the clerks and servants of the barons

of the Exchequer and justices from doing so, and forbids the barons and justices themselves to admit any, "but only in pleas that pass before them in the benches and places where they be assigned by us."

Thus the attorneys and solicitors grew to be an important branch of the law; and as they became a distinct body by themselves, their particular functions became distinctly marked out, as contrasted with those of the bar. It seems, therefore, that the bar and the solicitors have gravitated into their present places in obedience to the requirements of convenience; and this to our mind, is a strong *a priori* argument (we do not put it higher) in favour of the arrangement which has thus been produced.

Mr. Justice Hannen recognizs the great difference between the duties of an advocate and those of the solicitor, but thinks it impossible to draw a line of demarcation. We confess that we cannot appreciate the force of this corollary. If a line of demarcation is intrinsically advisable, the mere difficulty of assigning it is not a sufficient reason for doing without it; and, indeed, it is but seldom that a dividing line can be drawn in any matter without the immediate adjacencies bearing a strong resemblance to each other. Here, too, we have a line existing, with this strong recommendation—that it is not a line which has been drawn, but one which (if we way be permitted the confusion of metaphors) has *grown up*. It is said also that the present division of the profession into two classes works a hardship upon young men, who cannot at once decide for which branch they are best adapted. We cannot acquiesce in this. The functions of the two branches are admittedly distinct, and this being so, justice to the public demands that none should be able to transfer himself from one branch to the other without undergoing the proper training.

But it is said that as a fact the system which has grown up is *not* convenient. The mere fact, again, that other nations manage to live and litigate without such admissions, is not even a *prima facie* objection, until it is shown that they are on that account better off than we. It appears to us that, regarded in the light of the division of labour, the system is very convenient. The division of labour, like everything else, may be carried to an excess, but the advocate who professes the theory of law, and the lawyer who stands between him and the client, and transacts the practical and formal business required by the law, seem to us persons whose functions are much better discharged by separate individuals. It is said that if the amalgamation were effected, we should have this provided for by the universal formation of firms consisting of an advocate, one common law man, one chancery man, and so forth; but if so great a demolition is to be made only in order that what was once done by law may be carried out in a sort of *cy pres* manner by this process, we really think the pick-axe had better not begin its work at all. At present, any one or two solicitors, by retaining counsel when necessary, can practise, under their own sole control and responsibility; and there is far more free trade for solicitors than there would be under such a system of partnerships. Again, we cannot think that the change would improve, either in point of quality or celerity, the advocacy or the advice for which clients come to lawyers. We believe that the man who hns personally seen or heard the client's case is not as a rule in a positian to give the soundest advice. The client asks, what will the court or jury think of this? and solicitors will bear us out when we say that it is much harder than people suppose, to dismiss from the deliberatiog a quantity of things, shades, and tones, of which you become sensible, or which the clients will place before you, but which would be disregarded, or would never even make their appearance in court. It is hareer, we believe, for a lawyer to say how the court will view a case in which he himself is litigant, than to pronounce upon a case from the instructions drawn up by a competent ettorney. It is one thing to pick out all that is material, but it is another to get rid of the impression which the rest may have produced on your mind. And if the functions of the counsel and the attorney are such as are best discharged by different individuals, *ergo*, no time is wasted by their being kept apart. English law is more complicated than it need be, but if simplified to the utmost, social and commercial intricacies would still require it to be complicated; and this being so, no reasonable being could expect to have legal opinions considered and delivered in the time which a physician takes to ask a question, feel a pulse, and write a prescription.

It is no doubt important that the barrister and the soicitor should each be able to appreciate the other's work. Under the existing division, we think that they do, and the practice which is largely on the increase, among both solicitor and bar students, of studying for a certain time the practice of *both* branches, will promote this for the future. No doubt there are changes which might be made to great advantage, for instance, as to the computation of solicitors' costs, and the payment of conveyancing; but in order to deal with these matters it is not necessary to overhaul the whole fabric.—*Solicitors' Journal.*

The shortest will extant is possibly that of Lord Wensleydale, which was proved on the 8th ultimo. It runs thus:—"This is the last will of me, James, Lord Wensleydale. I give all my property, real and personal, and all I have in the world, and that I have the power to dispose of, to my beloved wife Cecilia, her heirs and executors, absolutely. This 25th day of November, A. D. 1863. Wensleydale." The estate was sworn under £120,000.—*South London Press*

ONTARIO REPORTS.

PRACTICE COURT.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law, Reporter in Practice Court and Chambers.)*

Maitland et al v. Cameron.

Issue—Irregularity—Service of notice of trial.

1. A joinder of issue should be properly entitled, and when the name of one of the plaintiffs was omitted it was *held* to be irregular.
2. Service of notice of trial, &c., on a person alleged to be a partner of the defendant, *held* insufficient, without some evidence of his authority or duty, either express or implied, to receive service of notices or papers.

[Practice Court, E. T., 1868.]

During Easter Term, *Anderson* obtained a rule calling on the plaintiffs to show cause why the verdict should not be set aside for irregularity, and for a new trial, with costs, on the grounds—1. That no joinder of issue in the cause was served. 2. That notice of trial was not served personally on defendant, who appeared in person, nor did it come to his knowledge in the proper time before the assizes, notice of such irregularities having been given to the plaintiffs' attorney before the trial, &c.

A. Kirkpatrick showed cause during the same term, referring to Reg. Gen. 1865, 138.

The defendant, in person, supported his rule, citing *Fry* v. *Mann*, 1 Dowl. 419; *McGuin* v. *Benjamin*, 1 Cham. R, 142; *Chase* v. *Gilmour*, 6 U. C. Q B, 604.

It appeared from the affidavits and papers filed that the joinder of issue served on the defendant was not properly entitled in the cause, the name of one of the plaintiffs being omitted, and that the notice of trial was handed to a partner of the defendant, at the chambers of the defendant, the defendant not being present. That as soon as the notice of trial came to the defendant's knowledge, on the 19th March, (the assizes in Kingston, where the trial was to be heard, commencing on the 26th March,) the defendant caused the defective joinder, the issue book and notice of trial to be returned to the plaintiff's attorney, with a written notice to the effect that no joinder of issue had been served, nor any notice of trial served personally on the defendant, and that if the plaintiff proceeded with the trial of the issue, that the defendant would move to set aside the verdict for irregularity. Notwithstanding such notice the plaintiff proceeded and took a verdict, the defendant not appearing or making any defence.

In his appearance the defendant gave his address, "his chambers, on King-street."

Morrison, J.—As to the irregularity in the joinder of issue, I think the objection must prevail; the defendant pleaded an equitable plea, to which the plaintiff had to reply, and the replication, although only taking issue on the defendant's plea, is a pleading, and, as such, requires to be served, and as said by Mr. Chitty, in his first volume on pleading, the names of the parties should be accurately stated in the margin. Here the names are inacurately stated, and, so far, irregular, and as notice of the irregularity was given to the plaintiffs as soon as the joinder came to the defendant's knowledge, the plaintiffs proceeded at their peril.

Then as to irregularity in, or rather the defective service of the notice of trial, as well as the joinder of issue, I am inclined to think that the service was not a good one. The clerk who made the service went to the defendant's chambers, on the 12th March, where he saw a partner of the defendant's, of whom he enquired whether the defendant was there, to which he replied that defendant had not come down from his residence, and then the clerk handed the papers to the partner. The general rule, as I take it deducible from the various decisions is, that a notice must be served on some person at a defendant's residence or chambers authorized to receive letters, notices or messages, such as a servant, a clerk of the defendant; that if the service is on a person, such as a friend of the defendant, staying at defendant's house, it is insufficient, and that, even if the party who served the notice swears that he *believes* the person served had authority to receive it.—*Brandon* v. *Edmonds*, 2 Dowl. N.S., 225; *Rowland* v. *Vitzitelly*, 1 D. & L 767. I cannot say that a partner of a defendant is a person authorized to receive such notices or papers, or that it is his duty to do so. Here it is not stated or shown that the partner was so authorized, or that he was in the habit of doing so for defendant. For all that appears on the affidavits filed by the plaintiffs on showing cause, this gentleman, assuming him to be a partner of the defendant, may have been at defendant's chambers, casually, on the day he was handed the papers, for it is not shown that he and defendant occupied the same offices. He may have been there as any stranger might be. The defendant swears that the notice of trial, &c., only came to his knowledge on the 19th March, and on the same day the plaintiffs' attorney was notified of the irregularities of the defective joinder, and the notice of trial returned. Under these circumstances I am constrained to give effect to the objection, and to make the rule absolute for setting aside the verdict.

Rule absolute.

COMMON LAW CHAMBERS.

Fields v. Miller.

Appeal—Forcing appellant to proceed—Judgment for costs of defence—Bond—Con. Stat. U. C., cap. 13, *sec.* 16.

Giving the necessary security is a proceeding prior to settling a case for appeal.

If an appellant fails duly to prosecute an appeal pursuant to leave, the respondent will, when leave to appeal has been given, be protected by the court withdrawing the leave.

Under Con Stat. U. C., cap. 13, sec. 16, sub-sec. 4, only one bond is requisite on a judgment for costs alone, that part of the statute referring only to judgments for the payment of *money*, as distinct from costs.

[Chambers, March 28, 1868.]

This was an action of trespass, in which judgment had been entered for defendant, pursuant to a decision of the Court of Queen's Bench; and upon which judgment execution was issued for the costs of defence.

The plaintiff gave notice of intention to appeal to the Court of Error and Appeal, on leave given for that purpose. He then filed the bond for security for the costs in appeal, and due prosecu-

tion of the appeal as required by the act, and in the form given in the orders of the court, with affidavits of justification and execution.

Notice was given of an intended application for the allowance of this bond. In pursuance of this,

O'Brien, for the plaintiff, now moved for the allowance of the bond, and for a fiat to the Sheriff of Kent, under the Con. Stat. U. C., cap. 13, sec. 16, to stay the execution.

J. B. Read for the defendant, opposed the allowance of the bond.

1. The appeal should be first settled, for otherwise there might be a difficulty in forcing the appellant to proceed with the appeal: *Rowe* v. *Jarvis*, 14 U. C. C. P. 244.

2. The judgment of the court is for the payment of money, namely, the costs of defence; and the case comes within the exception contained in Con. Stat. U. C., cap. 13, sec. 16, sub-sec. 4; and the execution should not be stayed until security is given for these costs.

O'Brien contra.

1. The court can, if the appellant fails to prosecute his appeal, withdraw the leave to appeal, and so prevent any injustice to the defendant: *Clissold* v *Machell*, 25 U. C. Q. B. 546.

2. The Legislature evidently intended, by the words, "judgment, &c., directs a payment of money," a judgment for a plaintiff, on a money demand, not costs merely, or, as in this case, the costs of a defence. This was the view taken by the Chancellor in a late case of *Heward* v. *Heward* (not reported).

Hagarty, J.—Giving the necessary security is a proceeding prior to settling the case for appeal; and the court will protect a defendant, if the plaintiff does not proceed with his appeal, in the manner suggested in *Clissold* v. *Machell*.

Unless there is an express decision to the contrary, I must hold that the statute does not contemplate the necessity of a plaintiff securing a defendant against the costs of the judgment he is appealing against. It would be a great injustice to require security in such a case, and I think the bond produced is sufficient. I shall therefore allow it, and stay the execution

Bond allowed.

Hesketh v. Ward.

Insolvent debtor—Application for discharge—Con. Stat. U. C. c. 24 s. 41 and c. 26 s. 7 distinguished—Reading examination filed on former application—Right of debtor to file affidavits explanatory of his answers on application for discharge—Right of debtor's counsel at examination to cross-examine debtor.

W. a defendant in close custody under a *ca. sa.* applied for the third time for his discharge, under Con. Stat. cap. 26, secs. 7 & 8.

Held—1. That a defendant cannot be committed on a *ca. sa.* ordered to issue against him under that Act.

2. Where several examinations had, plaintiff entitled to read the former examinations, on showing cause to application for defendant's discharge, for the purpose of contradicting answers on last examination only.

3. Defendant entitled to file affidavits explanatory of his answers, but not to make out a new case.

4. When defendant in close custody, execution creditor cannot compel him to be examined.

Semble.—As to right of defendant's counsel to take part in the examination of his client.

Quære.—Can a prior examination under Con. Stat. U. C. cap. 24 sec. 41, be referred to and acted on, and imprisonment awarded on it, after a subsequent examination had under Con. Stat. U. C. cap. 26, sec. 7.

[Chambers, April 13, 1868.]

The defendant, a debtor in close custody in the gaol of the county of York, under a writ of *capias ad satisfaciendum*, pursuant to sec. 7, cap. 26. Con. Stat. U. C., was for the third time examined as to his means of paying the judgment in this cause.

He had failed in two former attempts to obtain his discharge, owing to his answers having been held unsatisfactory.

Mr. Justice Adam Wilson, before whom the application for his discharge, after the second examination, was made, refused it on the ground that the answers were unsatisfactory, and, in his judgment, pointed out in what respect they were so, and suggested information that the defendant ought to give before he would be entitled to his discharge, and gave plaintiff leave to elect either to allow defendant to supply the deficiencies in his examination by affidavit, or to have the application discharged and a new examination of defendant had. The plaintiff elected the latter course. The summons was discharged, and defendant served another ten days' notice under sec. 8 of cap. 26, Con. Stat. U. C., and before the expiration of the ten days he was re-examined.

After the third examination he again applied for his discharge from custody, under Con. Stat. U. C. cap. 26, secs. 7 and 8, filing the usual affidavit, that he was not worth twenty dollars, exclusive of his necessary wearing apparel, &c., and that he had submitted to be examined pursuant to an order granted for that purpose under sec. 7 of said Act. An affidavit of service of the ten days' notice required by sec. 8, an affidavit of his own, explaining some of his accounts, and giving the information required by Mr. Justice Adam Wilson, affidavits of F. H. Bills (his brother-in-law) and others, corroborating his statements, and supplying some deficiencies therein, and an affidavit of his attorney, who stated that he attended the examination on defendant's behalf, and at the close thereof, by plaintiff's counsel, requested leave (1) to cross-examine defendant upon his answers; (2) to ask defendant questions explanatory of his answers; and (3) to examine him touching matters brought out in his examination, and upon extraneous matters;—that plaintiff's counsel objected thereto, and the examiner refused to allow him to ask any of such questions; and that he believed that had he been allowed so to do, he would have been able to bring out at the examination all the matters contained in the affidavit of defendant, filed in support of this application.

This summons also came on for argument before Mr. Justice Adam Wilson, in Chambers, on the 2nd March, 1868.

For the plaintiff, it was contended that the defendant could not file any affidavits in support of his application, but must stand or fall by his answers; that *the examination* must be held satisfactory before the defendant would be entitled to his discharge; that the examination was not satisfactory, and therefore defendant was not entitled to his discharge.

For the defendant, it was urged that his counsel should have been allowed to examine defendant, as above stated; for if the examiner was correct in not allowing him that liberty, the whole conduct of the examination was in

the hands of the plaintiff, whose object it was to keep defendant in custody, and who, of course, could ask just such questions as he chose, to accomplish that purpose; that defendant should be allowed to explain answers at his examination, which, although to him they might seem satisfactory, yet to a professional gentleman quite the contrary, and that he must have an opportunity of doing this at some time and in some way, and that the proper course was by affidavit upon this application; and that, taking the examination and affidavits together, a case was made out clearly entitling defendant to his discharge.

The learned Judge, without deciding whether or not the examiner was correct in refusing defendant's counsel to take part in the examination, said he though' defendant should be allowed to explain his answers, and so allowed the affidavits filed by him to be read, and on the 23rd March following gave his judgment, which concluded as follows:

"I think the defendant has made a case which entitles him to be discharged, on the ground of having *satisfactorily answered* according to the statute. I am not, however, satisfied that he has dealt with his property in the manner represented fairly towards the plaintiff as his creditor; and as I do not think I should decide what imprisonment to impose upon him without hearing him expressly upon that point, I shall forbear making any order until he serves notice on the plaintiff, or his attorney, that he will apply to be discharged, because he has answered satisfactorily, and because he has not made away with his property to prevent its being taken in execution."

Defendant immediately thereafter served notice that he would apply for his discharge to Mr. Justice Adam Wilson, on the ground that his answers had been held satisfactory; and accordingly application was made on the 10th day of April following, when—

J. A. Boyd shewed cause, and contended that the defendant had been examined three times, and every examination on the face of it showed that he (defendant) had made away with his property for the purpose of defrauding plaintiff, and that he should not be discharged from custody without a committal for some time at least; and that it should be made a condition precedent to his discharge that he should give the plaintiff an assignment of a number of debts due to him and disclosed in the examination.

For the defendant, it was argued that his first examination was had under sec. 41 of c. 24 Con. Stat. U. C., at the instance of the plaintiff, and upon which the plaintiff did nothing. The last two examinations were had under sec. 7 of c. 26 Con. Stat. U. C., and an examination under this latter Act is for an entirely different purpose than one under the former. The former is for the benefit of the creditor, the latter for the benefit of the debtor; the one enables the plaintiff to obtain a writ of *capias ad satisfaciendum* against the defendant for fraudulent distribution of property, or, in case of contempt, in refusing to attend the examination, or improperly answering an order of committal; the other (cap. 26) provides for the examination of a debtor in close custody, and is an examination which a debtor must submit to as a condition precedent to his obtaining his discharge (see sec. 8 of cap. 26), and there is no punishment provided in case a debtor refuses to be examined under this section, only that it deprives him of the right to apply for his discharge, and as long as he refuses to be examined he will have to remain in custody. In other words, the former examination is compulsory, the latter voluntary. There is, therefore, no power to commit defendant on his two last examinations, unless his case comes within sec. 11 of c. 26, which it does not. Then, as to the first examination under sec 41, c 24, there are two modes of punishment pointed out: the Judge has power either to order a *ca. sa* to issue, or to order defendant to be committed; and it has been held in *Wallis* v. *Harper*, 7 U C. L J 72, that an order to c mmit can only be granted when the defendant has been guilty of some act of contempt, as in refusing to be examined. In other cases, as when the examination discloses a fraudulent disposition of property, the proper course is to order a *ca. sa.* to issue; therefore, in this case, no order to commit could be made, for defendant has been guilty of no contempt; at most, a regular *ca sa.* could be ordered, and defendant is now in custody under a *ca sa.*

Plaintiff has waived his right to ask to have defendant committed on first examination by allowing some eight months to elapse since that examination, and in the meantime has twice examined defendant under cap 26 He (plaintiff) cannot now, when he finds defendant is going to be discharged, fall back upon that examination and ask to have him committed; and as defendant's examination has been "held satisfactory," and as his case does not come within section 11 of cap. 26, he is entitled to his *immediate* discharge. See Con. Stat. U. C., cap 24 sec 41, cap. 26, secs. 7, 8 & 11, *Wallis* v. *Harper*, 3 Prac. Rep. 50; *Ib.* 7 U C. L J. 72.

ADAM WILSON, J.—The 41st sec. of ch 24 does not apply to cases in which the party is in *close* custody. In such cases the general rule of law is—the creditor can have no other species of execution, and therefore an examination as to property is of no moment.

In such a case, the debtor cannot be compulsorily examined by the creditor.

The direction that a *ca. sa* may be ordered, or a committal to *close* custody, if the debtor be in the limits, supposes this construction of the Act.

The 26th section is the one precisely applicable to this case, for here the debtor is in *close* custody, and though, by sec 13, the like examination may be had of the debtor though on the limits as may be had in close custody, yet, in either of these cases, it is not properly a *compulsory* examination, but one which the debtor must undergo as the condition on which his application to be discharged from confinement can alone be entertained. He is not obliged to answer interrogatories or to submit to an examination—that is, he cannot be specially punished for not doing so; the only result is that his application for discharge will not be received, or will not be successful.

I cannot award imprisonment for wrongly parting with his property to evade the payment of this judgment, for such conduct is not within the enactment of the 11th section—this is manifest from the section itself, and is confirmed

by the decision in *Wallis* v. *Harper*, 7 U. C. L. J. 72.

I am not quite clear that the examination of September last, while the prisoner was on the limits on mesne process, though *after* judgment, can now be considered; for, perhaps, I cannot order him *to be committed* to gaol, as he is now *in* gaol, nor can I order a *ca. sa.* to issue against him, as he is in on a *ca. sa.* at present, and it may be that the taking him on a *ca. sa.* after *that* examination and examining him twice while a prisoner upon the *ca. sa.*, since the former examination, prevents the plaintiff from falling back upon the previous examination for the purpose of showing it to have disclosed a parting with his property to defeat or defraud his creditors or any of them, and from claiming the right to have him committed to custody under the 41st sec. I do not see why the plaintiff might not examine the defendant after his discharge, if his answers still showed an improper parting with his property, and apply then to have the defendant committed to gaol, by way of punishment, under that section.

And this view naturally suggests—why do this again when it has been done already, and when it now appears that this improper conduct has been committed, and why not commit upon the present disclosed misconduct of the defendant?

The defendant may be committed by way of punishment, though he is now in custody under a *ca. sa.*, for he would be discharged from further custody on the *ca. sa.* and be detained or committed under the order.

When the debtor is punished under ch. 26 sec. 11, he is *re-committed* under the *ca. sa.* and Judge's order, limiting the time—probably the detainer or cause of detention that would be returned, on a *habeas corpus* would be the *ca. sa.* alone;—the Judge's order merely limiting the time of imprisonment to be suffered under the *ca. sa.*

The fact of his being now in custody, or already committed, may be no reason why he should not be committed under the order on his being discharged from the *ca. sa.*

Then the question is, can the former examination be referred to and acted upon, and imprisonment be awarded on it, after the later proceedings before mentioned have been taken; do the later proceedings supersede the effect of that examination and the examination itself; if not, why may it not be still looked to and acted upon?

My general conclusion is it may be; but before deciding, it being a new case, it may be better to consult with one of my brother Judges on the subject.

13th April.—Having seen Mr. Justice Hagarty, he is of opinion that the prior examination should not now be looked to, but that the plaintiff should be left to renew his examination of the defendant if he please. This, I must say, is not my own opinion; but in a case of imprisonment or liberty I would rather acquiesce in the discharge being granted than detain the defendant on a doubtful matter, with the opinion of one of my brother Judges in favour of the discharge.

*Prisoner discharged.**

* *See* report of former application in 4 Prac. Rep. 158. [Eds. L. J.]

ENGLISH REPORTS.

COMMON PLEAS.

Bramble v. Moss.

Where issue is taken on a plea which sets up a composition deed under the Bankruptcy Act, 1861, proof must be given to support the plea that the requisite proportion of the creditors have assented to the deed.

The certificate of registration and the debtor's affidavit in pursuance of paragraph 5 of section 192 do not constitute such proof.

[16 W. R. 649—April, 1868.]

The declaration was on the money counts. The defendant pleaded a composition deed, the plea averring (*inter alia*) that a majority in number, representing three-fourths in value of the creditors of the defendant, whose debts respectively amounted to ten pounds and upwards, did, in writing, assent to and approve of the said deed. It also averred that all conditions precedent had been performed, and all times elapsed necessary to make the deed a bar to the action.

At the trial before Smith, J., at Guildhall, on the 19th February last, the defendant put in the deed and proved its execution by the attesting witness. He also put in the certificate of registration under the hand of the chief registrar, and the seal of the court, and an office copy, duly sealed, of the affidavit required by the 5th clause of the 192nd section of the Bankruptcy Act, 1861. No other evidence was given that the requisite number or proportion of creditors had assented to the deed.

It was objected by the plaintiff's counsel that such evidence was necessary, and the learned judge being of that opinion the plaintiff had a verdict, leave being reserved to move to set it aside and enter it for the defendant if the Court thought that the evidence produced was sufficient to prove the plea.

Besley now moved accordingly.—The certificate of registration is conclusive; it is the act of the Bankruptcy Court, and this Court cannot inquire whether it was properly given. *Kelley* v. *Morray*, 35 L. J. C. P. 285, 14 W. R. 939, shows that the certificate of the appointment of an assignee is conclusive. [Smith, J.—There the certificate states the appointment of the assignee; here it does not state that a majority have assented.] No; but the affidavit does, and that is under the seal of the court, [Bovill, C. J.—The affidavit is only that of the debtor. The certificate shows that the affidavit has been filed; not that its contents are true.] He referred to the 206th section. [Bovill, C. J.—Does that section do more than make a copy evidence?] Secondly, the objection is not open to the plaintiff, as the replication merely takes issue on the plea, which avers performance of all conditions precedent necessary to make the deed binding; and under the 57th section of the Common Law Procedure Act, 1852, the plaintiff ought to have specified the conditions precedent whose performance he intended to contest.

Bovill, C. J.—The evidence is insufficient to support the plea, the whole of which is put in issue by the replication. Section 206 makes duly authenticated copies of proceedings admissible in evidence, but its only object is to save the production of the original documents. The copy

of the affidavit is evidence that such an affidavit was made, but there is no enactment which renders either the copy or the original evidence that the matters contained in it are true.

Byles, J.—I coincide in all my Lord has said. It has been the universal practice to prove that a majority of creditors have assented, and there is an easy and inexpensive way of doing so by calling the debtor himself.

Keating, J.—The affidavit is required to obtain registration, and the registrar is bound to register the deed on its production. He cannot inquire into its truth. None of the sections make the statements contained in the affidavit evidence. The copy is evidence that the affidavit is made and delivered to the registrar, but of nothing else.

Smith, J.—The 192nd section makes these deeds binding, provided certain conditions are fulfilled. The first of these is that a majority in number representing three-fourths in value of the creditors of the debtor whose debts amount to £10 and upwards shall assent to the deed. The fourth and fifth conditions require that the deed shall be registered and an affidavit made. The certificate and affidavit are evidence that these latter conditions have been fulfilled; they are no evidence that the first has been complied with.

Rule refused.

Baines v. Lumley.

Statute of Limitations—3 & 4 *Will. IV., c.* 27, *ss.* 3, 8.

A. let land to B. by parol from year to year, reserving rent payable in March and November. The last payment of rent was in 1846; rent again became due in November, but was not paid. A. died in December of the same year, and B. retained possession. In ejectment by A.'s heir,

Held that the time under the Statute of Limitations ran from the last payment of rent, and not from the death of A., as the case fell within the 8th, and not within the 3rd section.

Semble, that if the 3rd section applied, A. was not shown to have continued in receipt of the rent till the time of her death, so as to bring the case within it.

[16 W. R., 674; April 18, 1868.]

This was an action of ejectment tried before Lush, J., at the last Durham assizes, when the verdict was entered for the defendant, with leave reserved to the plaintiffs to move to enter it for them.

The action was brought by the plaintiff, claiming through a Mrs. Kitchen, to recover land in the county of Durham which formerly belonged to her. Mrs Kitchen lived in London, and the land in question was occupied under her by a person named Gibson, through whom the defendant claimed, on a parol tenancy from year to year, the rent becoming payable in the May and November of each year. The last payment of such rent to her that the plaintiff could prove was in March, 1664; another half-year's rent became payable to her on the 13th of November, 1846, but was never paid. Mrs. Kitchen died on the 22nd of December, 1846, and this action was commenced in October 1866. As more than twenty years have elapsed between the last payment of rent and the date of the writ, the verdict was entered for the defendant.

Stephen Temple, Q.C., now moved, pursuant to the leave reserved, to enter the verdict for the plaintiff, and contended that the Statute of Limitations (3 & 4 Will. IV. c. 27 s. 2) only ran from the death of Mrs. Kitchen, and that, therefore, the action was not barred. The case fell within the 3rd section of the Act, which provides as to the right to bring an action "to recover any land or rent . . . that when the person claiming such land or rent shall claim the estate or interest of some deceased person, who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right be deemed to have first accrued at the time of such death." Mrs. Kitchen continued in receipt of the rent till her death within the mean of the section, for it is not necessary that the rent should be paid with absolute punctuality.

Bovill, C.J.—I am of opinion there should be no rule. The case is governed by sections 7 to 9 of the Act relating to tenants, and the section which more particularly refers to the case is the 8th, which is as follows:—"When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenany shall have been received (which shall last happen)." In the early part of that session the word "rent" applies to a rent charge, in the latter part to rent reserved. The last time rent was paid here was in March, 1846. Mr. Temple contended that the case fell within the third section, and not within the 8th; but that is disposed of by the case of *Doe* v. *Angell*, 9 Q.B. 328. Lord Denman there says, p. 355, that the word "rent, in the 2nd section," is used in the sense of rent charge only, as was stated by Tindal, C.J., in the judgment in *Paget* v. *Foley*, 2 Bing. N.C., 679, 688, and as is expressly held by the Court of Exchequer in the case of *Grant* v. *Ellis*, 9 M. & W. 113. The word is used in the same sense in the 3rd, 4th, and 5th sections. In the 7th section it is used in the same sense . . . In the 8th section the same sense must be given to it in the earlier part of the section; but at the close of it the word is manifestly used in the other sense—viz., that of rent reserved." That therefore being the true construction of the Act, the case is governed by the 8th section, and not by the 3rd. But even if it were otherwise the case is not brought within the 3rd section, because it is necessary to show that the deceased continued in receipt of the rent till her death; and here the rent became due on the 13th of November, and I take it as a fact that that rent was never received.

Byles, J., concurred.

Montagu Smith, J.—What "last" happened here was the receipt of rent in March, 1846, more than twenty years before action.

Keating, J.—I did not hear all the case; but so far as I did hear it I quite agree.

CHANCERY.

Attwood v. Maude.

Partnership—Dissolution—Return of premium.

M., a solicitor, took A. into partnership for seven years, receiving a premium. Disputes afterwards arose between the partners, M. charging A., who had very little experience, with incompetency; and A. anticipated M. in filing a bill of dissolution, two years only of the term having elapsed.

The Court, being satisfied upon the evidence that M. had, when the agreement was made, been aware of A.'s inexperience, and had taken the premium on that account, decreed a return of premium proportionate to the unexpired term.

[16 W. R. 665; Feb. 21; March 11, 1868.]

The bill in this case prayed a dissolution of partnership and a return of a premium which had been paid by the plaintiff, or a proportionate part thereof.

The facts were as follows:—

In 1864 the plaintiff and defendant entered into a seven years' partnership as solicitors as from Jan. 1, 1864, under articles of agreement dated Jan. 7. 1864. The defendant at this time had practised on his own account for some years, but the plaintiff, having been but a short time admitted, had had very little experience of the conduct of a solicitor's business, and of this the defendant was aware.

The agreement provided that the plaintiff should pay the defendant £800 as purchase-money for one-third of the profit of the defendant's business, and a similar part of the office furniture, &c., the calculation being stated to be made on the basis of the defendant's business being worth £600 per annum. The plaintiff was to bring £200 into the firm as capital. There was also a clause providing for the event of either partner dying during the continuance of the partnership, and it was provided by this that if the plaintiff should die in the first year the defendant should repay to his representatives £200, and if in the second year £100; after two years no repayment of any premium to be made.

The £800 and £200 were duly paid by the plaintiff and the partnership commenced, but disagreements subsequently arose between the partners accompanied with much mutual recrimination, and the defendant charged the plaintiff with negligence and incompetence. At length, on Feb. 13, 1866, the defendant wrote the plaintiff a letter saying that it was evident that their partnership must be dissolved, and that he had already instructed counsel as to filing a bill. The plaintiff, however, anticipated the defendant by filing his own bill on Feb. 16 following. As to the charges made by the partners against each other there was some conflict of evidence.

Vice-Chancellor Stuart decreed a dissolution of the partnership, but, holding that its necessity had been occasioned by the plaintiff's conduct, refused to order repayment of any part of the premium: against this latter part of the decree the plaintiff appealed.

Kay, Q C. and *North*, for the appellant.—In the absence of fraud a dissolution does not enable one partner to put the whole premium into his pocket: *Bury* v. *Allen*, 1 Coll. 589; *Astle* v. *Wright*, 23 Beav. 81; *Featherstonhaugh* v. *Turner*, 25 Beav 382; *Pease* v. *Hewitt*, 31 Beav. 22, 10 W. R. 535; *Hamil* v. *Stokes*, 4 Price, 161. In the absence of fraud or misconduct on the part of the partner who paid the premium, the Court is accustomed to order a partial return proportioned according to the unexpired term of the partnership Here the defendant alleges neglect and incompetence on the plaintiff's part but no neglect is proved, and as to incompetence, the defendant well knew, when treating for the partnership, that the plaintiff had had but very little experience, and received from the plaintiff a premium to compensate him for the inconvenience which might be occasioned thereby In *Therman* v *Abell*. 2 Vern. 64, a return of premium was made in spite of misconduct of the party who paid it. In *Bury* v. *Allen* (*ubi sup*) the bill for dissolution was filed by the partner who claimed and obtained the return of premium.

Bacon, *Q C*., and *Whitehorne*, for the respondent.—The principles deducible from the cases are—(1) that if there be fraud on the part of the partner who received the premium, the whole is ordered to be returned; (2) if the partnership be otherwise determined by the act of the partner receiving the premium, there is a proportionate return, the amount being in the the of discretion Court; (3) if the partnership be determined by the act of the partner who paid the premium, or in consequence of something which was in the contemplation of the parties, when the partnership was formed there is no return of premium. Here the defendant has completely performed his side of the contract; the dissolution is the act of the plaintiff, the defendant's letter not amounting to a dissolution; but if that were otherwise, the court is bound to look at the whole state of circumstances which preceded the dissolution, and it was the plaintiff's conduct which occasioned it. In *Akhurst* v. *Jackson*. 1 Swanst. 85. the partnership was terminated by the bankruptcy of the partner who had received the premium, but the Court refused any return; and see *Lee* v. *Page*, 9 W. R. 754, 7 Jur. N. S 769. They also referred to *Airey* v. *Borham*, 29 Beav. 622; *Bullock* v. *Crockett*. 3 Giff. 507; and Lindley on Partnership, 2nd Ed. i. 79.

Kay, *Q C*., in reply.

March 11.—The judgment of the Court was delivered by—

Lord Cairns, L.C.* (after stating the facts):—This case belongs to a class which the Court is often called on to decide. In *Akhurst* v. *Jackson*, 1 Swanst. 85; *Freeland* v. *Stansfield*, 2 W R. 575, 2 Sm. & Giff 479; *Bury* v. *Allen*, 1 Coll. 589; *Astle* v. *Wright*, 23 Beav. 81; *Lee* v. *Page*, 9 W R. 754, 7 Jur. N. S. 769, the principles which guide the Court in questions as to the return of premiums have been laid down. The Court will not suffer a partner who has committed a breach of the agreement to take advantage of his own breach and retain a premium paid to him, though on the other hand, if the party who had paid the premium were himself the faulty person, no return of premium would be decreed. In this case there was neither bankruptcy nor an agreement to dissolve. The authority of the cases is not disputed, but it is said that the partnership was dissolved through the

* This case was argued before the Lords Justices (Lord Cairns and Sir C. J. Selwyn) on Feb. 21 and 22, when judgment was reserved. Subsequently to this Lord Cairns received the Great Seal, and on March 11 delivered the judgment of himself and Lord Justice Selwyn.

acts of the plaintiff, his misconduct and the filing of his bill. But when we come to consider the nature of such a partnership as this, it is immaterial by whom the bill was first filed. The charge of negligence made by the defendant against the plaintiff is not proved; the evidence in support of it is weak and is answered by the evidence of the plaintiff; the case is thus narrowed to the charge of incompetence. Now, the defendant had ample opportunity of knowing what the plaintiff's capacity was; he must be taken to have known the kind of person he was treating with, and took higher terms in consequence. The decision might have been otherwise had there been fraudulent conduct or wilful neglect. [His Lordship cited the judgment of Lord Cottenham in *Hirst* v *Tolson*, 2 M. & G. 134.]

Upon the evidence, and considering the defendant's means of knowledge, we must take it that he was well aware what the plaintiff would be to him, and accepted this sum in compensation. The inconvenience has turned out greater than he thought it would be. A state of circumstances having arisen which renders it impossible for the partnership to continue, the result is that the defendant has received the £800 in consideration of the inconvenience which he would have to undergo, and now he is relieved from it.

The plaintiff must have so much of his £800 returned as bears to the whole sum the same proportion that the unexpired term of the partnership bears to the whole term. There will be no costs of the appeal, but the deposit will be returned.

Viscountess Gort v. Clark.

Light and air—Noise and vibration—Mandatory injunction—Damages.

Where the injury sought to be restrained has been completed before the filing of the bill, and the plaintiff has in the first instance, demanded damages, the Court will not grant a mandatory injunction, even where the injury is substantial, but will direct an inquiry as to damages.

The noise and vibration occassioned by a steam engine and circular saw considered an annoyance amounting to a nuisance, in respect of which an inquiry as to damages was granted.

Durell v. *Pritchard*, 14 W. R. 212, L. R. 1 Ch. 244, considered.

Decree of Stuart, V. C., affirmed.

This was an appeal from a decision of the Vice-Chancellor Stuart. The plaintiff was owner of a row of small tenements in Grosse-street Rathbone-place, which were let on lease to tenants, who sublet them in lodgings to persons of the working classes. Up to the month of August, 1864, at the back of the houses, fourteen feet from them only, was the back wall of a range of ancient stables in Black-Horse Yard, twenty-six feet in height. The defendant in that month, acquired the site of the stables, and began to erect thereon a factory, with an external wall fifty-six feet high, which was built up to its full height in the month of December, 1864, and the factory was completed and used soon after. On the 10th of January the agent of the plaintiff, who had hitherto not complained, wrote to the defendant, and complained that the factory wall interfered seriously with the access of light and air to the plaintiff's houses, and on the 26th of January wrote again, demanding £800 as compensation, and requiring in the alternative that the damage should be assessed by a surveyor. The defendant in reply, offered to purchase the freehold at a fair price, or to take a long lease of the premises; but his offer was declined, and a mandatory injunction threatened. The bill was filed in April, 1865, praying that the defendent might be restrained from erecting a wall higher than any wall which had existed on the site during the last twenty years, or raising any wall, by which the access of light and air to the back of the house might be impeded, and that the defendant might be ordered to reduce any wall already built by him to a height not greater than the original height of the stable wall, with an alternative prayer for an inquiry as to damages sustaind by the plaintiff. The plaintiff did not move for an injunction, but after answer amended her bill, and charged the existance of a nuisance, occassioned by the noise and vibration caused by a steam-engine and circular saw, which were at work in the factory from morning to night, and the smell of paint, used in painting the "self-coiling revolving shutters," of which the defendant was maker and patentee; in respect of which she prayed for an injunction or an inquiry as to damages.

The Vice-Chancellor declined to grant the injunction, but directed an inquiry as to damages, in respect both of the loss of light and air, and of the annoyance caused by the noise and vibration. From this decision the defendant appealed.

Bacon, Q. C., and *Bevir*, for the appellant—We admit that the erection, to some extent, does interfere with the plaintiff's light and air, but her claim is an exaggerated one, and is not put forward in such a shape as to entitle her to relief in this court. She has herself made it a question of damages only, and this is a mere bill for £800, which ought to be dismissed, without prejudice to her right to bring an action. Delay is also fatal to her claim. She has stood by and allowed us to lay out £4,000, and it was too late in April, 1865, to ask for a mandatory injunction when the building was practically finished in December, 1864. As the plaintiff is a reversioner, the damage done to her is inappreciable, and the Court will not interfere on her behalf, when the result would be the ruin of our trade. They referred to *Clarke* v. *Clark*, 14 W. R. 115, L. R. 1 Ch. 16; *Durell* v. *Pritchard*, 14 W. R. 212, L. R. 1 Ch 244; *Currier's Company* v. *Corbett*, 13 W. R 1056; *Robson* v. *Wittingham*, 14 W. R. 291, L. R. 1 Ch 442.

Greene, Q. C., and *Walford*, for the respondent, were not called upon.

Wood, L. J.—The strongest point in this case is, that the demand of the plaintiff was in the first instance shaped in the way of damages As regards the actual state of things in the present case, the question whether injury is or is not done to the plaintiff in cases of this description has been fully considered in *Clarke* v. *Clark* *Durell* v. *Pritchard* (*ubi sup.*) There is a wall of fifty-six feet in height, erected by the defendant in substitution for a wall of twenty-six feet, and at a distance of fourteen feet only, upon the average, from the plaintiff's back windows. There is no doubt that the light and air have been considerably diminished: at the same time, as is generally the case, some compensation is given. There is a recess in one part of the wall,

and an open space left in another part, but what guarantee has the plaintiff for the continuance of such accomodation? This accomodation, therefore, on which the defendant has laid some stress in his evidence, cannot be taken into account in estimating the injury sustained. I certainly am inclined to think that Lord Cranworth, L. C., carried a little too far the principle laid down by him in *Yates* v. *Jack*, 14 W. R. 618, L. R. 1 Ch 295, that the owner of ancient lights is entitled not only to sufficient light for the purpose of his then business, but to all the light which he had enjoyed previously to the interruption sought to be restrained; but that is needless to be considered here, as in the present case there was an absolute interference with the plaintiff's light. That being so, there is no question but that the plaintiff might have filed her bill, and moved for an injunction while the factory was in course of erection. Now the factory was completed for all practical purposes in December, but the plaintiff's agent first complained on the 10th of January. The remarks of Sir G. Turner, L. J., in *Durell* v. *Pritchard*, as to the practice of the Court with respect to mandatory injunctions mean simply this—that the Court will not interfere to the extent of pulling down a building already finished, unless where very serious damage would otherwise ensue. Delay on the part of the plaintiff has been spoken of, but I think that a month was not a very long time for a reversioner like the plaintiff to become acquainted with what was going on and make up her mind to interfere. The case originally assumed the complexion of a mere question of damages; but £800 is a large sum, and the defendant did not choose to come in to such terms. It cannot, however, be said that the light and air enjoyed by another may be taken by any one with impunity on the condition of paying him damages for the deprivation, to be assessed possibly somewhat as claims of compensation are assessed under the Lands Clauses Act; although the plaintiff may all along have been willing enough to take damages, provided she could get the sum she demanded. The question as to noise and vibration rests on a different footing. The Court, in my opinion, has jurisdiction to direct an inquiry as to damages in this case. It is in evidence that a steam-engine and circular saw are in constant work from morning to night fourteen feet from the windows of one of the houses, and that must be an annoyance amounting to a nuisance, if *Soltau* v. *DeHeld*, 2 Sim. N. S. 150, be law. The decree of the Vice-Chancellor must be sustained, and the appeal dismissed.

Selwyn, L. J.—I am of the same opinion. The defendant has wholly failed to prove that the delay of the plaintiff in commencing proceedings to establish her right was such as to disentitle her to relief. With respect to the substantial injury which the evidence shows the plaintiff to have sustained, the case of *Durell* v. *Pritchard*, at first sight, would seem to justify the Court in granting a mandatory injunction. *Robson* v. *Wiltingham*, however, shows that that class of cases has been carried too far. I think, therefore, that the Vice-Chancellor was right in limiting the relief to an inquiry as to damages sustained by the plaintiff, and not granting a mandatory injunction. The case goes far beyond the principle laid down in *Clarke* v. *Clark*, inasmuch as it is clearly proved that the plaintiff has in the present case sustained substantial injury; and so I agree with the Lord Justice that the appeal must be dismissed.

SANDWICH ISLAND REPORTS.

SUPREME COURT.

The King v. Ahsee.

Suicide—Indictment—Attempt to commit murder.

By the Court.

Allen, Ch. J.—The indictment charges the defendant with an attempt to commit the offence of murder, by hanging himself by the neck; to which indictment a general demurrer is filed.

The Attorney-General alleges this act to be an offence against the statute of this kingdom, which declares murder to be the killing of any human being with malice aforethought, without authority, justification, or extenuation by law, and also against that statute (Penal Code, c. 45, §. 5) which declares the attempt to commit an offence punishable with death or imprisonment for life, as punishable by imprisonment at hard labor not more than ten years

The counsel for defence contends that the act charged is not an offence known to the law, and hence it becomes necessary to ascertain the true meaning of the crime of murder under our statute; and, to do this satisfactorily, it may be well to ascertain what is the generally received definition of the crime of murder.

It is defined by Lord Coke, in 3d Institute, 47, as homicide with malice aforethought, either expressed by the party or implied by law. Malice, he says, is prepensed when one compasseth to kill, wound, or beat another, and does it *sedato animo*. In East's Pleas of the Crown (c. 5, s. 2) murder is defined as the voluntary killing of any person, of malice prepense, or aforethought express or implied. The penal code, upon which this indictment is found, uses the word in substantially the same sense; and, if we take the context together, it is very evident that it refers to the killing of another, and not one's self; and when the word is used by text-writers or by courts, it is always used as meaning the killing of another. It is never applied to suicide. The word self-murder is sometimes used. By the statutes of Massachusetts, in the first section of the class of offences against the lives and persons of individuals, it is declared that every person who shall commit the crime of murder shall suffer the punishment of death for the same. This can not apply to the suicide, for he is already dead by his own hand; and hence the statute cannot have reference to one who commits self-murder. The construction put upon our code by the Attorney-General leads to the same difficulty. Those learned in the law, and who draft statutes, would never use the expression, that whoever shall commit the crime of suicide shall suffer death.

It is very evident that the ablest text-writers never use the word murder as synonymous with suicide or self-murder. Punishment may be inflicted on the one, but the other is beyond its

reach. The code is made for the purpose of punishing those who commit murder, and not those who are murdered.

The Attorney-General has cited the case of the *Commonwealth* v. *George Bowen* (13 Mass. 354). Chief Justice Parker charged the jury that, if one counsel another to commit suicide, and the other, by reason of the advice, kill himself, the adviser is guilty of murder as principal. Admit this as sound law, it does not follow that a person who commits suicide is a murderer according to the provisions of the code or at common law. A contrary opinion is expressed by Chief Baron Alderson, in the case of *Regina* v. *Leddington* (9 Carrington & Payne, 79), in his charge to the jury. He says to them that they have no right to inquire into this charge. It is a case of suicide, and the prisoner is charged with inciting it. It is a case we cannot try, and the prisoner must be acquitted.

No punishment by a human tribunal can be inflicted on the self-murderer. Can a punishment, then, be inflicted on one who attempts to commit the act? The court has been unable to find in any penal statute any provision against an attempt to commit self-murder, and for the very reason that he who commits the act is his own executioner; and this is the first indictment we have ever heard of, charging the attempt to commit suicide as an attempt to commit murder, unless there is an analogy in the case of the *Commonwealth* v. *Bowen*, above stated. It is very evident that this indictment cannot be sustained by any provision of the criminal code of this kingdom, and we are not aware of any code against which it is an offence. That it is a wicked and highly immoral act is true; but the wisdom of legislative bodies has never deemed it wise to make a provision to apply to the act charged against the defendant, and we are of opinion that we should be slow to give an entirely new construction to the code concerning murder, and to impose a punishment never contemplated, and of the wisdom of which the framers of the law have not as yet expressed a favorable opinion.

Our statutes, the Attorney General contends, should be construed in reference to the statutes of other countries and to the common law. So far as these statutes and the common law can impart any knowledge of the terms used, it is a sound suggestion; but it would not be contended that it was the duty of the court to modify a statute to make it similar in its provisions to any other. Every statute must have the force of its clearly defined terms. We find, however, no statute of any country, nor any provision of the common law, which will sustain this indictment.

The demurrer is sustained, and the indictment quashed. —*Hawaiian Gazette.*

GENERAL CORRESPONDENCE.

Discussion of Judicial decisions—Points reserved by County Judge.

To the Editor of the Law Journal.

Dear Sir,—Permit us, through the columns of your Journal, to place before the profession the ruling of the Judge of the County Court of the County of Ontario, in a certain cause tried before him at the last sittings of the said Court. This is done with all due deference to the learned Judge, and with the hope that you or some other member of the profession may attack or justify his conduct.

The action was brought on a promissory note, and was originally commenced in the Court of Queen's Bench; but by an order of the Hon. Mr. Justice Morrison, it was brought down to be tried at the last sittings of the said County Court, under 23 Vict., cap. 42, sec. 4.

The action was against a company, and two other defendants, individually. The company and one of the other two defendants appeared by the same attorney, but the other defendant did not appear, against whom, consequently, judgment was signed by default. The declaration was in the usual form against those who had appeared, and contained a suggestion that judgment by default had been signed and obtained against him who had not appeared to the writ.

The only plea pleaded to this declaration was simply that of *payment*, upon which the plaintiffs joined issue in the usual way. When the case came on for trial the defendants' attorney appeared in person and made the following objections: firstly, that the record was insufficient, because a *copy* of the Judge's order directing the case to be tried at the County Court, instead of the order itself, ought to have been attached thereto; and, secondly, that the declaration disclosed no cause of action against one of the defendants, inasmuch as the note, upon which the suit was brought, was signed by him as Managing Director of the said Company.

In answer to the first objection, it was strongly urged by the plaintiffs' counsel, that the statute above referred to expressly provides that the order itself, *and not a copy thereof*, shall be annexed to the record; and to the second, that the defendants' attorney was estopped from raising such an objection, inasmuch as the only plea was that of *payment;* that if the record were not sufficient, advantage ought to have been taken of the defect before that stage of the proceedings; that the plea of *payment* admitted the sufficiency of the record, both in form and substance; and that, as the objections were merely for time, the learned judge ought not to defeat the very

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object of the statute, as well as of the order to try the case at the County Court.

However, from some motive or other, the learned Judge directed the jury to find for the plaintiffs, but reserved leave to the defendants (who had appeared) to move against the verdict upon the points above, and endorsed the record as follows: "I hereby certify that this cause is one which, in my opinion, should stand for motion in the Court of Queen's Bench."

This, of course, as was contended by the plaintiffs' counsel, defeated the object of the order; and though the Court of Queen's Bench saw fit to grant the order, that time might be saved, still his Honor took it upon himself to throw the plaintiffs over until Michaelmas Term next, that being the Term of the Superior Courts next following the date of the certificate endorsed on the record. This ruling of his Honor was somewhat difficult to understand. However, it ought, perhaps, not to be inferred that he acted contrary to what he thought *might be right*; but it is certainly to be deeply regretted that, when a statute provides a method by which claims of this description can be more speedily recovered (and in a case like this, where time is of the greatest importance) there is not some method of testing the validity of the ruling of a Judge below, without the necessity of waiting till the fifth day of the following term of the Courts above. If defendants are entitled, as of course, to except to declarations in cases like this, the statute would be useless—its object entirely defeated. It was passed, no doubt, to cover cases exactly like the present, where a defence is made simply for time.

And looking from the most favorable standpoint for the defendants,—supposing that the declaration did not disclose a sufficient cause of action against one defendant; that it was insufficient, *i. e.*, either as disclosing a case insufficient on the merits, or as framed in violation of any of the rules of pleading, was not that defendant estopped from raising any objection which might, and ought to have been raised by a demurrer, when he had, in fact, selected the course of going to trial, of placing himself upon the country, upon the issue *payment or no payment*?

Please give an opinion on the subject, and oblige, Yours very truly,

Armour & Lowe.

[We confess that we are unable to see any ground for the learned Judge reserving the points alluded to above, on the facts there set forth. It would, however, be unfair to discuss the subject at length upon an *ex parte* statement, and it would be very improper to countenance any insinuation as to motives. As an abstract question, suggested by a perusal of this letter, it may be questioned whether a full, temperate and liberal discussion of the rulings of Judges would not be, in the long run, as beneficial to the judges themselves as it would to the profession. Such is the practice in England, though less so here, for reasons which it is not necessary to discuss; and though it would not be seemly for a Judge to enter the arena, he would not want a champion if his decision contained but the smallest foundation whereon to build an argument.

This is a matter which is capable of being much enlarged upon. Our present observations are drawn out by considering the difficulties to which lawyers are often subjected (without offering any opinion as to the legality of the decision above complained of) by the want of knowledge or carelessness of those who hold positions which give a propriety or weight and importance to decisions which are occasionally intrinsically worthless.—Eds. L. J.]

Law Reform.

To the Editors of the Law Journal.

Sir,—The Act respecting Mortgages and Sales of Personal Property unaccompanied by change of possession is in its present scope insufficient for the protection of Her Majesty's leiges.

The registration of every claim to personal property is necessary for the protection of the public in view of the fact that the holder of moveables is always presumed to be the owner. Anything calculated to rebut this presumption should be as notorious as the fact of possession—at least as far as it is possible to make it so.

It is certainly to the credit of the profession that pleading practitioners are more acute than legislators. To secure a claim, without sacrifice of the debtor's goods, it is comparatively easy to have a quiet Sheriffs' sale, to the creditor. The thing can be managed very pleasantly and your client is safely secured Furniture, pianos and the like can be leased nom-

inally, though really sold. There are many arguments valid to confirm the legality and morality of these transactions. But the worst of it is that when a claim is put in for collection, judgment obtained, and execution issued, up starts a claimant whose existence you had not dreamed of, and of whose claim it was therefore impossible to acquire any knowledge.

Give honest lawyers fair play, and they will not be harassed by clients who demur to pay costs for a worthless judgment. If the registered claim is sanctioned by the execution of due "legal solemnities" the client will be informed that the case is doubtful or hopeless, and there will be no ground for grumbling.

Yours, &c.

An Attorney.

July 6, 1868.

Insolvency—Effect of discharge—Schedule of debts—Official assignee.

To the Editors of the Canada Law Journal.

I notice several letters from "Scarboro," and one from "Quinté." It seems evident from the cases cited by "Scarboro," and particularly from the judgment *McKay et al.* vs. *Goodson*, reported in No. 5 Vol. 27 Queen's Bench, that unless the debt is mentioned in the Schedule of liabilities, a discharge of the Insolvent will not be a discharge of the debt. The practice in these counties, in some cases, has been to make an Assignment without any Schedule of liabilities at all. "Scarboro" need not suppose that this has been done through the advice of the Official Assignee, (though he may by education be qualified to give advice on the subject) but lawyers, acting to the least of their judgment under the decision of Judge Draper in the case of *Hingston* vs. *Campbell* 2 U. C. L. J., N. S. 299. Draper, C. J., there says: "a copy of the list of creditors produced at first meeting of creditors need not be appended to the assignment." Let us look practically at the matter—an insolvent makes an assignment to an official assignee under Act of 1865 and C. J. Draper's decision without appending a list of his creditors; he waits for a year, and gets a discharge from all his debts, mentioned and set forth in the statement of of his affairs annexed to the deed of assignment, which, according to Judge Morrison, discharges him from nothing. Either C. J. Draper's decision is wrong, or, to give effect to both decisions, we must agree that a man who wishes to get a consent of his creditors to his discharge must have a schedule of liabilities, while a man who waits for a year may get a discharge without any schedule at all. The Judges seem to be as uncertain as the law itself.

I quite agree with "Scarboro" that the Act of 1864, although the intentions of the framer were good, seems lamentably deficient, and particularly in matters of practice, such as in appeal, taxation of costs, &c., but we must remember that the framer of the bill was a Lower Canadian Lawyer, and could not be expected to *know* the practice in Upper Canada. I also agree with "Quinte," that, as a general rule, assignees are not to blame. But *Ex parte Alexander*, 1 Deacon & Chitty, 514, says that "an Official Assignee is an officer purely ministerial,; he is debarred by his position from taking either the side of the creditor or that of the insolvent. As a consequence, he cannot stop the application for discharge, or appear to oppose it, neither, as assignee, should he apply for it."

St. Lawrence.

Brockville, July 8th, 1868.

CHANCERY AUTUMN CIRCUITS, 1868.

The Hon. the Chancellor.

Toronto	Tuesday	Sept.	1.

Eastern Circuit.

The Hon. the Chancellor.

Brockville	Friday	Sept.	18.
Cornwall	Monday	Sept.	21.
Ottawa	Tuesday	Sept.	29.
Peterboro'	Monday	Oct.	5.
Lindsay	Thursday	Oct.	8.
Kingston	Tuesday	Oct.	13.
Belleville	Monday	Oct.	19.

Home Circuit.

The Hon. Vice-Chancellor Spragge.

Owen Sound	Tuesday	Sept.	15.
Barrie	Monday	Sept.	21.
Brantford	Tuesday	Oct.	27.
St. Catharines	Friday	Oct.	30.
Guelph	Wednesday	Nov.	4.
Hamilton	Tuesday	Nov.	10.
Cobourg	Thursday	Nov.	19.
Whitby	Friday	Nov.	27.

Western Circuit.

The Hon. Vice-Chancellor Mowat.

Simcoe	Tuesday	Sept,	29.
Woodstock	Friday	Oct.	2.
Goderich	Tuesday	Oct.	6.
Stratford	Monday	Oct.	12.
Sarnia	Thursday	Oct.	15.
Sandwich	Monday	Oct	19.
Chatham	Thursday	Oct.	22.
London	Tuesday	Oct	27.

AUTUMN CIRCUITS, 1868.

Eastern Circuit.

The Hon. the Chief Justice of the Common Pleas.

Ottawa	Wednesday	Sept.	2.
L'Orginal	Wednesday	Sept.	16.
Perth	Monday	Sept.	21.
Pembroke	Friday	Sept.	25.
Brockville	Wednesday	Sept.	30.
Cornwall	Wednesday	Oct.	14.
Kingston	Wednesday	Oct.	21.

Midland Circuit.

The Hon. Mr. Justice Hagarty.

Belleville	Wednesday	Sept.	30.
Picton	Monday	Oct.	12.
Napanee	Thursday	Oct.	15.
Cobourg	Tuesday	Oct.	20.
Whitby	Tuesday	Oct.	27.
Peterborough	Monday	Nov.	2.
Lindsay	Friday	Nov.	6.

Niagara Circuit.

The Hon. Mr. Justice J. Wilson.

Owen Sound	Tuesday	Sept.	22.
Barrie	Tuesday	Sept.	29.
Milton	Tuesday	Oct.	6.
Hamilton	Monday	Oct.	19.
St. Catharines	Thursday	Nov.	5.
Welland	Wednesday	Nov.	11.

Oxford Circuit.

The Hon. Mr. Justice Morrison.

Cayuga	Thursday	Sept.	10.
Simcoe	Tuesday	Sept.	15.
Woodstock	Tuesday	Sept.	29.
Stratford	Tuesday	Oct.	6.
Brantford	Tuesday	Oct.	13.
Guelph	Thursday	Oct.	29.
Berlin	Wednesday	Nov.	4.

Western Circuit.

The Hon. Mr. Justice A. Wilson.

Walkerton	Wednesday	Sept.	16.
Goderich	Tuesday	Sept.	22.
Sarnia	Wednesday	Sept.	30.
London	Monday	Oct.	3.
St. Thomas	Tuesday	Oct.	27.
Chatham	Tuesday	Nov.	3.
Sandwich	Tuesday	Nov.	10.

Home Circuit.

The Hon. the Chief Justice of Ontario.

County of Peel	Thursday	Sept.	24.
City of Toronto	Tuesday	Oct.	6.
County of York	Thursday	Oct.	15.

REVIEWS.

The Principles of Equity; intended for the use of Students and the Profession. By Edmund Henry Turner Snell, of the Middle Temple, Barrister-at-Law. London: Stevens & Haynes, Law Booksellers and Publishers, 11 Bell Yard, Temple Bar, 1868.

We have to thank the publishers for advance sheets of this valuable work, and for a complete copy lately supplied to us. We have had the work before us for a considerable time, intending to give it such a review as its worth demands. Our delay in reviewing it has arisen in great part from our desire to do it justice. We cannot now say too much in praise of it. It is one of the most readable and most instructive law treatises that has lately been issued from the press.

While the author has furnished a work which, considering his simplicity and clearness of diction, is all that a student can desire; his exposition of principles, illustrated by the most recently decided cases, makes his book a valuable text book for members of the profession engaged in active practice. His introductory chapter on equity is an admirable disquisition on the nature and origin of that branch of jurisprudence. In a few words, he shows that as the common law courts fell short of and were incapable of meeting the growing legal wants of society, a fresh tribunal of necessity arose, and that is the origin of Courts of Equity as distinguished from Courts of Law. But at the same time he shows that courts of equity are now bound as completely as courts of law by fixed rules.

The author, having made a brief comparison of courts of equity with courts of common law, classifies equity in relation to common law, as having a jurisdiction exclusive, concurrent or auxiliary. Under the head exclusive jurisdiction, he treats in a very able manner of trusts generally, express private trusts, express or charitable trusts, implied trusts, constructive trusts, trustees and executors, *donationes mortis causâ*, legacies, conversion, reconversion, election, performance, satisfaction, administration, marshalling, assets, legal mortgages, equitable mortgages, mortgages and pledges of personalty, penalties and forfeitures, and liens. Under the head of concurrent jurisdiction, he treats in like manner of accident, mistake, actual fraud, constructive fraud, suretyship, partnership, account, set off and appropriation of payments, specific performance, injunction and interpleader. Under the head of auxiliary or specially remedial jurisdiction, he treats of discovery, bills to perpetuate testimony, bills *quia timet* and bills of peace, cancelling and delivery up of documents, bills to establish wills *ne exeat regno*. Besides, there is a part of his work which treats of persons under disability, such as infants, persons of unsound mind, married women (their separate estate, pin money, paraphernalia), equity to a settlement, settlements in derogation of marital rights.

All these are as it were so many complete and entertaining essays on the different branches of the law to which they appertain. The references to the most recent cases, by way of illustration as he proceeds, give the book a reliability that adds greatly to its intrinsic value.

There is a chapter in which the author briefly and succinctly treats of the following

legal maxims of equity, stripped of their usual Latin habilaments:—Equity will not suffer a wrong without a remedy; equity follows the law; where there are equal equities, the first in time shall prevail; where there is equal equity, the law must prevail; he who seeks equity must do equity; he who comes into equity must come with clean hands; equity aids the vigilant, not the indolent; equity is equity; equity looks to the intent rather than the form; equity looks at that as done which ought to have been done; equity imputes an intention to fulfil an obligation. Each maxim is shortly explained and illustrated by a leading case, and the whole comprised within twenty-seven pages.

The author explains in his preface that his work is the result of notes made by him in the course of his studies for the bar, not only from his own private reading but from the lectures of an able and distinguished lecturer on equity jurisprudence, Mr. Birbeck. Certainly Mr. Snell has "improved the occasion," and acquitted himself well. We must bespeak for him that patronage which his labours so justly merit. His *debut* as an author has been most successful. We cannot speak too highly of this his first effort, and feel confident that all who may read it, as we have done, will think as well of it as we now do. Its utility as a work of reference is much enhanced by the addition of a very full and carefully-compiled index.

The book has been adopted by the Law Society here as one of its standard text books.

The type, paper, and general get-up of the work, so far as mechanical execution is concerned, is first class, and such as we had a right to expect from the standing and well-deserved popularity of the publishers, Messrs. Stevens & Haynes. The book may be ordered through Mr. Adams, law bookseller of Toronto, who is their agent in this province.

APPOINTMENTS TO OFFICE.

CANADA GAZETTE.

COUNTY COURT JUDGES.

WILLIAM MERCER WILSON, of Osgoode Hall, and of the Town of Simcoe, in the County of Norfolk, Esquire, Barrister-at-law, to be Judge of the County Court, of said County, in the place and stead of William Salmon, late of same place, Esquire, deceased. (Gazetted 9th May, 1868.)

WILLIAM HORTON, of Osgoode Hall, and of the City of London in the County of Middlesex in the Province of Ontario, Esquire, Barrister-at-Law, to be Deputy Judge of the County Court for the County of Middlesex in the said Province. (Gazetted 5th June, 1868.)

DEPUTY MINISTER OF JUSTICE.

HEWITT BERNARD, of the City of Ottawa, Esquire, and of Osgoode Hall, Barrister-at-Law. (Gazetted 29th May, 1868.)

ONTARIO GAZETTE.

ATTORNEY GENERAL FOR ONTARIO.

The Honorable JOHN SANDFIELD MACDONALD. (Gazetted 16th July, 1867.)

COMMISSIONER OF PUBLIC WORKS.

The Honorable JOHN CARLING, for the Province of Ontario. (Gazetted 16th July, 1867.)

COMMISSIONER OF CROWN LANDS.

The Honorable STEPHEN RICHARDS for the Province of Ontario. (Gazetted 16th July, 1867.)

PROVINCIAL SECRETARY.

The Honorable MATTHEW CROOKS CAMERON, for the Province of Ontario. (Gazetted 20th July, 1867.)

PROVINCIAL TREASURER.

The Honorable EDMUND BURKE WOOD, for the Province of Ontario. (Gazetted 20th July, 1867.)

ASSISTANT SECRETARY.

THOMAS CHARLES PATTESON, of the City of Toronto, Esquire, Barrister-at-Law, to be Assistant Secretary and Deputy Registrar for the Province of Ontario; such appointment to date from the 1st day of October, A.D., 1867. (Gazetted 7th March, 1868.)

CLERK OF THE CROWN.

ROBERT GLADSTONE DALTON, of Osgoode Hall, Esquire, Barrister-at-law, to be Clerk of the Crown and Pleas, in the Court of Queen's Bench, in the room and stead of Lawrence Heyden, Esquire, deceased. (Gazetted 27th June, 1868.)

DEPUTY CLERK OF THE CROWN.

SAMUEL REYNOLDS, Junior, Esquire, of the Town of Prescott, to be Deputy Clerk of the Crown and Clerk of the County Court for the United Counties of Leeds and Grenville in the room and place of W. H. Campbell, resigned. (Gazetted March 7th, 1868.)

WALTER RUBIDGE, of Brantford, Esquire, to be Deputy Clerk of the Crown, and Clerk of the County Court, for the County of Brant, in the room and stead of John Harvey Goodson, Esquire, superseded. (Gazetted 6th June, 1868.)

COUNTY ATTORNEYS AND CLERKS OF THE PEACE.

JULIUS POUSSETT BUCKE, of the City of Ottawa, Esquire, to be County Attorney for the County of Lambton, in the room of Timothy Blair Pardee, resigned.

HENRY A. HARDY, of the City of Toronto, Esquire, Barrister-at-law, to be County Attorney and Clerk of the Peace in and for the County of Norfolk, in the room and stead of William Mercer Wilson, Esquire, appointed Judge of the County Court of the County of Norfolk;

WILLIAM DOUGLASS, of Chatham, Esquire, Barrister-at-law, to be County Attorney and Clerk of the Peace, in and for the County of Kent, in the room and stead of Alexander D. McLean, Esquire, deceased. (Gazetted, 6th June, 1868.)

WARD HAMILTON BOWLBY, Esquire, LL. B., of Osgoode Hall, Barrister-at-Law, for the County of Waterloo, in the room and stead of THOMAS MILLER, Esquire, resigned. (Appointed 24th December, 1867.)

CLERK OF THE DISTRICT COURT.

HENRY PILGRIM, Esquire, Clerk of the District Court for the District of Algoma, in the place and stead of SEPTIMUS RUDYERD PRINCE, deceased. (Appointed 22nd October, 1867.)

POLICE MAGISTRATE.

DONALD BETHUNE, Esquire, Q. C., Barrister-at-Law, for the Town of Port Hope. (Appointed 30th January, 1868.)

STIPENDIARY MAGISTRATE.

CHARLES WESTLEY LOUNT, of the City of Toronto, Esquire, Barrister-at-law, to be Stipendary Magistrate, for the Territorial District of Muskoka. (Gazetted 14th March. 1868.)

INSPECTOR OF REGISTRY OFFICES.

The Honorable SIDNEY SMITH, of the Town of Peterboro, to be Inspector of Registry Offices in and for the Province of Ontario. (Gazetted 14th March, 1868.)

REGISTRARS.

CHARLES LINDSEY, Esquire, to be Registrar for the City of Toronto, in the room and stead of Samuel Sherwood, Esquire, deceased. (Appointed December 24, 1867.)

CHARLES WESTLEY LOUNT, of the Territorial District of Muskoka, Esquire, to be Registrar of said Territorial District. (Gazetted 11th April, 1868.)

NOTARIES PUBLIC FOR ONTARIO.

DUNCAN DUGALL, of the Town of Windsor, Esquire, Barrister-at-Law;

SOLOMON WHITE, of the Town of Windsor, Esquire, Barrister-at-Law;

Appointments to Office.

ISAAC H. PRICE, of the City of Kingston, Attorney-at-Law;

JAMES KIRKPATRICK KERR, of the City of Toronto, Esquire, Barrister-at-Law;

ROBERT WALKER SMITH, of the City of Toronto, Attorney-at-Law;

JOHN BUTTERFIELD, of the Town of L'Orignal, Attorney-at-Law;

JOHN KLEIN, of the Township of Carrick;

BENJAMIN FRANKLIN FITCH, of the Town of Brantford, Esquire, Barrister-at-Law;

JAMES F. MACKLEM, of the Village of Chippewa, Gentlemen;

FRANCIS ALEXANDER HALL, of the Town of Perth, Gentleman;

JAMES FLEMING, of the Town of Brampton, Esquire, Barrister-at-Law;

SAMUEL McCAMMON, of Gananoque;

JAMES HARSHAW FRASER, of the City of London;

RICHARD H. R. MUNRO, of the City of Hamilton;

JOHN EDWARD ROSE, of the City of Toronto;

ELIJAH WESTMAN SECORD, of the village of Madoc;

LOUIS BERNARD DOYLE, of the town of Goderich;

JOHN BURNHAM, of the Town of Peterborough, for the Province of Ontario.

HENRY PRESTON, of the Village of Clifton, Gentleman, and CHARLES TAIT SCOTT, of the Village of Wingham, Gentleman.

EDWARD STONEHOUSE, of the Village of Strathroy, Gentltman, Attorney-at-law.

HUBERT L. EBBELS, of Petrolia, Esquire, Barrister-at-law.

FREDERICK D. BARWICK, of the City of Toronto, Esquire, Barrister-at-law. (Gazetted 14th March, 1868.)

ALEX. S. CADENHEAD, of the Village of Fergus, Esquire. (Gazetted March 7, 1868.)

J. FLETCHER CROSS, of Fergus, Esquire, Barrister-at-law;

JOHN VANDAL HAM, of the Town of Whitby, Gentleman, and ROBERT COLIN SCATCHERD, of the Village of Strathroy, Esquire. (Gazetted 4th April, 1868.

ARTHUR S. HARDY, of the Town of Brantford, and DAVID HIRAM PRESTON, of the Town of Napanee, Esquires, Barristers-at-law. (Gazetted 18th April, 1868.

GEORGE TAILLOU, of the City of Ottawa, Esquire, Attorney-at-law; HENRY HAMILTON LOUKS, of the Town of Pembroke, Esquire, Barrister-at-law; and FRANCIS HOLMESTED, of the City of Toronto, Esquire, Attorney-at-law. (Gazetted 9th May, 1868.)

GEORGE KENNEDY, of the City of Ottawa, Esquire, Barrister-at-Law; THOMAS KENNEDY, of the City of Toronto, Gentleman, Attorney-at-law; DAVID CREASOR, of the Town of Owen Sound, Esquire, Barrister-at-law, and WILLIAM H. LOWE, of the Town of Bowmanville, Gentleman, Attorney-at-law. (Gazetted 6th June, 1868.)

WILLIAM ROBERTSON CHAMBERLAIN, of Napanee, Gentleman, Attorney-at-law. (Gazetted 13th June, 1868.)

JOHN WHITLEY, of the City of Toronto, Gentleman, Attorney-at-law. (Gazetted 20th June, 1868.)

ASSOCIATE CORONERS.

JOHN W. CORSON of the Town of Brampton, Esquire, M. D., for the County of Peel.

EDWARD PLAYTER, of the Township of King, Esquire, M. D., for the County of York.

J. D'EVELYN, of the Village of Woodbridge, Esquire, M. D., for the County of York.

WILLIAM JOHNSTON, of the Town of Brampton, Esquire, M. D.; JOHN GRANT, of the same place, Esquire, M. D.; and THOMAS GRAHAM PHILLIPS, of the Village of Grahamsville, Esquire, M. D., for the County of Peel.

CHARLES E. BONNELL, of the Village of Bobcaygeon, for the County of Victoria.

DONALD ROBERTSON, Esquire, of Queenstown, for the Town of Niagara. (Gazetted 7th March, 1868.)

GEORGE DICKINSON, of the Township of Russell Esquire, M.D.;

ROBERT A. ROE, of the Township of Clarence, Esquire, M.D., for the United Counties of Prescott and Russell;

JAMES FURGUSON, of the Township of Cumberland, Esquire, M.D., for the United Counties of Prescott.

T. F. CHAMBERLIN, of Morrisburgh, Esquire, M.D., for the United Counties of Stormont, Dundas and Glengarry;

JOHN MASSIE, of the Village of Colborne, Esquire, M.D. and AMOS E. FIFE, of the Village of Brighton, Esquire, M.D., for the United Counties of Northumberland and Durham;

SAMUEL RAE, of the Town of Whitby, Esquire, M.D., for the County of Ontario.

His Excellency has also been pleased to accept the resignation of GEORGE EDWARD BULL, of the Village of Stirling, for the County of Hastings.

DONALD McMILLAN, of Alexandria, Esquire, M.D., and SAMUEL CAMPBELL, of Notfield, Esquire, M.D., for the United Counties of Dundas, Stormont and Glengarry;

ROBERT TRACY, of the Village of Seaforth, Esquire, M.D., for the County of Huron;

J. S. W. WILLIAMS, of Oakville, Esquire, M.D., for the County of Holton. (Gazetted 7th March, 1868.)

NIVEN AGNEW, of the T wnship of Delaware, Esquire, M.D., for the County of Middlesex;

JOHN MANSON, of the Village of Iona, Esquire, M.D.; WILLIAM McGEACHY, of the Village of Fingal, Esquire, M.D.; and GEORGE W. LING, of the Village of Wallaceburg, Esquire, M.D., for the County of Elgin;

ROBERT HENRY PRESTON, of Newboro', Esquire, M.D., for the United Counties of Leeds and Grenville;

NEIL FLEMING, of the Township of Culross, Esquire, M.D., for the County of Bruce;

ROBERT RENFREW SMITH, of the Townsbip of Lobo, Esquire, M.D., for the County of Middlesex.

JOHN WILTON KERR, of the Village ef Ainleyville, Esquire. M.D., for the County of Huron. (Gazetted 14th March, 1868.)

JAMES TURNER MULLEN, M.D., of Tullamore, and SAMUEL ALLISON, M.D., of Caledon East, Esquire, for the County of Peel;

FREDERICK HENRY SMITH, of the Township of Kaladar, M.D., Esquire, for the United Counties of Simcoe and Addington;

JOHN CARNEY, of the District of Algoma, Esquire, M.D., for the said District. (Gazetted 28th March, 1868.)

JOSEPH JOHNSON, of the Township of Winchester, Esquire, M. D. for the United Counties of Stormont, Dundas and Glengarry.

ANDREW MOORE, of Kincardine Esquire, M.D., for the County of Bruce;

THOMAS WHITE, jur., of the City of Hamilton, for the City of Hamilton. (Gazetted 4th April, 1868.)

REGINALD HERWOOD, M.D., and JAMES W. DIGBY, M.D., Esquires, of the Town of Brantford, for the County of Brant. (Gazetted 11th April, 1868.

ROBINSON BRITTON PRICE, Esquire, for the United Counties of Lennox and Addington. (Gazetted 1st April, 1868.)

SAYERS S. HAGAR, of the Township of Wainfleet, Esquire, for the County of Welland. (Gazetted 30th April, 1868.)

GEORGE NEIMIER, of the Village of Neustadt, Esquire, M.D., for the County of Grey;

ROBERT WILLIAM HILLARY, of Aurora, Esquire, M.D. for the County of York;

CHARLES WESTLEY LOUNT, of the Village of Bracebridge, Esquire, for the Territorial District of Muskoka. Gazetted 9th May, 1868.)

WILLIAM LAW, of the Village of Duke Hill, Esquire, M.D., for the County of Middlesex. (Gazetted 16th May, 1868.)

HENRY WILLIAM DALTON, and ALEXANDER STEWART, of Albion, Esquires, M.D.; and J. KNIGHT RIDDELL, of Alton, Esquire, M.D., for the County of Peel;

CHARLES McKENNA, of Loretto; THOMAS TURNBULL, of Mono Centre; and JAMES HENRY, of Orangeville, Esquires, M.D., for the County of Simcoe;

DANIEL BEATTY, of the Village of Richmond, Esquire, M.D.. for the County of Caledon. (Gazetted 6th June, 1868.)

THOMAS ARMSTRONG, Esquire, M.D., for the County of Ontario. (Gazetted 20th June, 1868.)