DIARY FOR DECEMBER.

1. SUN .. *1st Sunday in Advent.*
2. Mon .. Paper Day, Q.B. New Trial Day, C.P.
3. Tues... Paper Day, C.P. New Trial Day, Q.B. Consolidated Statutes came into force 1859.
4. Wed... New Trial Day, C.P. Open Day, Q.B.
5. Thurs. Open Day. Re-hearing Term in Chancery commences.
6. Fri.... New Trial Day, Q.B. Open Day, C.P.
7. Sat.... Michaelmas Term ends. Open Day. Last day for Attorneys to take out Certificates.
8. SUN .. *2nd Sunday in Advent.*
10. Tues .. General Sessions and County Courts sittings in each County.
14. Sat.... Collectors rolls to be returned unless time extended.
15. SUN .. *3rd Sunday in Advent.*
21. Sat.... *St. Thomas.*
22. SUN .. *4th Sunday in Advent.*
23. Mon .. Nomination of Mayors in Towns, Aldermen, Reeves, Councillors and Police Trustees.
25. Wed... *Christmas Day.* Christmas vacation in Chancery begins.
26. Tues .. *St. Stephen.* Upper Canada constituted a Province, 1791.
27. Fri.... *St. John the Evangelist.*
28. Sat.... *Innocents.*
24. SUN .. *1st Sunday after Christmas.*

CONTENTS.

THE

Canada Law Journal.

DECEMBER, 1872.

TO OUR READERS.

With this number closes the eighteenth year of our existence. During that period we have sought, and, we think, not in vain, to promote the best interests of the profession; and we have suggested and to the best of our ability promoted various measures of law reform, which have since become law. We have struggled successfully against occasional discouragements, and surmounted many difficulties, financial and otherwise; and can now point to a large subscription list, rapidly increasing, and containing the names of the foremost members of the profession, as the best practical proof that we enjoy the confidence of the large majority of our brethren.

In the year 1865, an alteration was made in the size of the volume; and the *Local Courts' Gazette* was published in connection with the *Law Journal*. This change in many ways worked well; and if the support on which we *at first* mainly relied had continued and increased, it would not now be necessary to allude to this subject. But, from various causes, which it is not at present necessary to discuss, the subscriptions from Division Court and Municipal officers have fallen off. This loss has, on the other hand, been more than counterbalanced by a large additional support from the legal fraternity, especially during the last year. This is owing, doubtless, to the increased number of the profession, and the greater demand for information on subjects of legal interest, coupled with the efforts we have made to meet this demand.

The result of all this is that we have decided to discontinue the *Local Courts' Gazette*, and devote our energies to making the *Canada Law Journal* more acceptable and useful than ever to practitioners in Ontario and the sister Provinces.

With this in view we have made arrangements, (1) To obtain further assistance in the editorial departments; (2) To increase the size of the volume by adding a number of additional pages; (3) To improve its appearance

by the use of new type and more expensive paper.

This will of course involve a large additional outlay both in printing and paper, and in the necessary supply of matter. Partly from this cause and partly from the increased cost of production and management, we shall be compelled to do as the public press in the country has done, and increase our prices both for subscriptions and advertisements. From and after the 1st January next the annual subscription will be $5 00. The prices of advertising will be found stated in another place.

We have only space to notice briefly, with much regret, the fact that Mr. J. A. Boyd has resigned the office of Master in Chancery. Mr. Taylor, Referee in Chambers, succeeds him; and Mr. George S. Holmested has been appointed in the place of Mr. Taylor. The appointments are good ones, and satisfactory to practitioners. We are obliged to withhold further observations until next month.

We devote some space in this number to a reprint, from the Queen's Bench Reports, of the Brockville election case, decided under the Controverted Elections Act of 1871. We do this for the purpose of making our series complete, all the other cases deciding points of importance under this Act having already been reported by us, or being in course of preparation for publication in our columns. We also give a synopsis of the Monck election case, taken from the same Reports. All the decisions of our courts or judges on this important subject can, therefore, be ascertained by reference to our pages, and nowhere else.

Sir James Hannen, formerly one of the judges of the Queen's Bench, has been appointed Judge-Ordinary of the Probate and Divorce Courts, in the room of Lord Penzance. The English *Law Journal* highly commends the appointment. It says: "We know of no judicial office in which a moralist, an egotist, or a bigot could work so much mischief as in the office of judge of the Divorce Court, and we believe Sir James Hannen to be singularly free from the faults which characterise those three classes of men. He has to be weighed in the scale as against two such men as Sir Cresswell Cresswell and Lord Penzance, but we believe that he will not be found wanting, because he is endowed with the qualifications which rendered them successful."

The English correspondent of the *Albany Law Journal* waxes enthusiastic over the fact that he has discovered (apparently by evolution from the depths of his inner consciousness) the origin of the word "moot," after looking in vain for it "through the archives of the Inns of Court libraries." Any common English dictionary, say *The Imperial*, would have disclosed to him what he is at so much pains to elaborate. The word is a modification of the Anglo-Saxon "*mote*," probably by a simple euphonic change, such as we find in "Coke" and "Cook." It means originally "a meeting," and so by easy transition, "a contention." The expression "moot-court," which the correspondent says is a "blunder of the Frenchified Normans"(!) and should be only *moot* or *mote*, is just as correct as the phrase "moot-question" "moot-point," and others of like formation. "To hold a moot-court" is an expression which carries us back to the exercises in pleading mock causes, which were once practised in the Inns of Court.

The English *Law Journal* is in favour of the extension of the equitable doctrine of "undue influence" to cases of testamentary disposition of property, in the same way and to the same extent as it obtains in gifts *inter vivos*. It lays down—and we think with great good sense—that when the relation between the testator and the legatee is that of doctor and patient, or priest and penitent, then if the bequest is disputed, the burden of proof should be cast upon the recipient of the gift. As the law now stands, the *onus* is the other way—upon the person who calls the will in question. But, as the *Law Journal* puts it, there is no hardship in calling upon the legatee to explain the precise character of the influence which he brought to bear upon the testator. Then, when he had cleared himself of any imputation of undue influence, the burden of proof would be shifted to the person attacking the will.

THE NEW VICE-CHANCELLOR.

Whilst discussing recently the probable successor of Mr. Mowat, we expressed a hope that the appointment might be made without delay, and that political considerations might not influence the selection. The seat has been filled with promptitude, and by the choice of a gentleman opposed in politics to the Dominion Government.

Whilst admitting that the appointment of Mr. S. H. Blake was to us, as we believe to a large number in the profession, somewhat a matter of surprise, we are bound to say that the feeling did not arise in the least from any doubt as to his capacity for the office. It was rather that it was thought that some older member of the Bar, having at least equal claims, would have been appointed; and, on the other hand, that Mr. Blake would scarcely resign his lucrative practice at his time of life, for the hard work and bad pay of a Vice-Chancellorship.

But though young in years, Mr. Blake has had, during all the time he has been in practice, the management of a very large business; and upon him has devolved, to a great extent, the immense counsel business of his talented brother, which the latter handed over to him when he withdrew for a time from the active pursuit of the profession of which he is so great an ornament. It is a sign of no inconsiderable ability that he has been able, in a great measure, even for a time, to take his brother's place; therefore, judging of the future from the past, though success at the Bar does not necessarily imply a fitness for a judicial position, we can give the appointing power credit for having made a good selection from the Equity Bar.

Mr. Blake was called to the Bar in Hilary Term, 1860. On the 16th March last, he was given a silk gown by the Lieutenant-Governor of Ontario, at the same time as Dr. McMichael, Wm. Proudfoot, C. S. Patterson, E. B. Wood, John T. Anderson and Thos. Moss received the like distinction. The legality of this action on the part of the Local Government was called in question at the time, and we are free to confess that the arguments against it seemed to us unanswerable.

In his private capacity Mr. Blake bears an irreproachable character, and his liberality in religious and charitable undertakings is well known.

On Wednesday, the 11th inst., the new Vice-Chancellor was installed and took his seat on the Bench, after receiving the congratulations of the Chancellor and the senior Vice-Chancellor.

PROCEEDINGS IN CONVOCATION LAST TERM.

Much important business was done during the present Term. The usual *resumé* will be given next month. We can at present only refer shortly to matters of pressing interest.

Under recent regulations, articled clerks will be required to pass a preliminary examination as well as students. Notice is to be given by a Bencher in one Term for the next Term, but notice for the next February examination may be given by the 1st January next. Of this let those desiring to become articled clerks take due notice; for it is also provided that service under articles will only count from time of passing. The fees required will be one dollar with the notice, and forty dollars on presentation for examination.

Rules were also adopted for the establishment of a Law School. These will be published at length hereafter. Mr. Alex. Leith was elected President of the School and Lecturer on Real Property, at a salary of $1,000 per annum. The other lecturers appointed were: Mr. J. Bethune, on General Jurisprudence; Mr. Z. A. Lash, on Commercial and Criminal Law; and Mr. Charles Moss, on Equity, at salaries of $800 each.

Mr. Vankoughnet having resigned the office of Reporter of the Common Pleas, which he held under the old arrangement, Mr. George F. Harman was appointed in his place.

JUDGES RETURNING TO THE BAR.

In view of the resignation of the late Vice-Chancellor Mowat, and his acceptance of the office of Attorney-General for the Province of Ontario, which involves his return to the Bar, a good deal of attention has been directed to what the lay press has called "this unprecedented act." We give below, as promised in our last number, the examples which we have recollected or discovered, of Judges of the Superior Courts returning to practice.

By the aid of Mr. Foss's valuable volumes, one is able to make out a tolerably correct list of all such changes as have taken place at the

English Bar. Instances of the kind were common during the troublous times of Charles I., the Commonwealth, Charles II., James II., and William III. Since then no example has occurred in English History, though there is a very noticeable one in Scotland, to which we shall advert.

The earliest example is that of Sir Robert Heath, who was made Chief Justice of the Common Pleas by Charles I. in 1631. Three years afterwards he was discharged from his office, apparently without reason, and next term he took his place at the Bar as junior serjeant: *Cro. Car.* 375. He continued in practice till the same monarch restored him to the Bench in 1641. His memory is to be freed from the charges of "bribery and corruption," which at one time were made against him. One of his own rules of conduct is memorable: "to do justice for justice' sake, to do *justum juste;* for it is very hard for an ill man to be a good judge."

Prideaux and Browne, who were Lords Commissioners of the Great Seal, appointed by the Commons in 1643, were removed in 1646, and the custody of the Seal transferred to the Speakers of the Houses. Both of them thereupon resumed practice at the Bar. Next in chronological order is the great name of Sir Matthew Hale. He was upon the Bench in 1658, but at the death of Cromwell refused a new commission from his son Richard. Thereafter the better opinion appears to be that he practised till the Restoration, when he was made Chief Baron of the Exchequer.

We may next group a list of comparatively or positively insignificant Judges, who, having been appointed to office by the Parliament or by Cromwell, forfeited their judicial position on the accession of Charles II. to the throne. These Judges were Fountaine (Commissioner of the Great Seal), Glynne, Newdigate, Parker, Widdrington, Archer and Wyndham. These, at the Restoration, all returned to the Bar. Of these Archer was replaced on the Bench in 1663, and Wyndham in 1670.

Next comes the memorable name of Pemberton. He was first appointed Judge of the King's Bench by Charles II. in 1679, but was dismissed from office in less than a year, owing, it is said, to the intrigues of Scroggs, C. J. He at once returned to practice, and in about a year he was selected to supersede Scroggs in the Chief Justiceship. He was afterwards, at his own request, transferred to the head of the Common Pleas; but in 1683 the King, apparently for political reasons, dismissed him from this Court. Upon this he returned to the Bar a second time, where he continued in practice for fourteen years, till his death. The judgment of posterity upon this versatile judge may be expressed in the language of Macaulay (which Mr. Foss cites approvingly): that his memory is to be regarded with that respect which always accompanies moderation and independence.

In the time of James II. we have first Robert Atkyns. He was appointed Judge in 1672; but in 1680, being out of favour with the Government, he was either dismissed or he resigned. Afterwards he practised in the Courts till he was made Chief Baron by William III. in 1689. In 1687, Wythens, who had been appointed Judge of the King's Bench by Charles II., and continued in office by James II., was discharged because he had gone against the King's wishes. The very next day, it is told, he came to Westminster Hall and practised as a serjeant with immense popularity. About the same time (or rather in 1686) the Judge, Sir Creswell Levinz, so well known from his Reports, suddenly received a *supersedeas* from James II.; "whereto," in his own language, "he humbly submitted." He at once went back to the Bar, and continued in large and remunerative practice till his death in 1696.

We may now again form another group of Judges who forfeited their position at the Revolution. These were Lutwyche, Rotherham, Ingleby, and Jenner. Lutwyche not only returned to the Bar, but commenced a series of Reports, which have preserved his name from oblivion. The others also returned to the Bar, but none were ever replaced upon the Bench.

The last names of English Judges we have to mention are those of Anthony Keck and George Hutchins. They were both Commissioners of the Great Seal under William III. The former was discharged in 1690, and the latter in 1693, and both recommenced practice thereafter.

The one instance in Scotch history which we have been able to verify of a Judge returning to practice, is in the case of the Hon. James Erskine of Grange, brother of the Earl of Mar. He was in the high position

of Lord Justice Clerk in Scotland prior to 1734. Walpole, in that year, introduced the statute (7 Geo. II. c. 19) which incapacitated Judges from being members of Parliament, with the view, it was said, of fixing Lord Grange to his judicial duties. When that became law, the exasperated Judge resigned his dignities and entered Parliament in order to oppose Walpole's Government. Obtaining small success in this direction, he returned to practice at the Bar, and without obtaining further preferment died in London in 1754, in the 75th year of his age.

It will be seen that all these were cases of constrained or enforced abandonment of office, during the period when the duration of the Judge's office was *durante bene placito*, and was terminated by the demise of the Crown,—with the exception of the last, in which we have a voluntary resignation on the part of the Lord Justice Clerk, at a time when the Judges held office *quamdiu se bene gesserint*.

We know of no other examples in any of the Courts of Great Britain or her dependencies, and we do not propose to cite any instances from the Courts of the adjoining Republic.

SELECTIONS.

MR. JUSTICE ARCHIBALD.

Mr Archibald, of the Home Circuit, who has been appointed by Lord Selbourne to succeed Sir James Hannen as a judge in the Queen's Bench, is the second surviving son of the late Honourable S. G. W. Archibald, Master of the Rolls, and judge of the Vice-Admiralty Court of Nova Scotia, who was previously for nearly twenty years Speaker of the House of Assembly there, and whose name is to this day held in affectionate memory throughout the province. His elder brother is the present able Consul-General at New York, Edward Mortimer Archibald, Esq., C. B., whose services have frequently called forth the marked approval of the authorities at the Foreign Office, as well as the good will of the citizens of the United States.

Mr. Archibald was called to the bar by the Society of the Middle Temple in 1852, after having practised for nearly eight years as a special pleader. He joined the Nothern Circuit immediately after his call, but in 1853 he changed to the Home, of which he has continued to be a member up to the present time. In February, 1868, he was appointed by Sir John Karslake, then Attorney-General, to succeed Mr. Justice Hennen as junior counsel to the Treasury, the duties of which important and responsible office he has, for nearly five years, discharged with very great ability and distinction. During his career at the bar, Mr. Archibald has enjoyed a very varied and extensive practice, and has been engaged in very many important cases. We may mention, among others, the great Shrewsbury case, where he was junior for the claimant (the junior opposed to, him being Mr. Hannen, whom he now succeeds); the case of *Tapling* v. *Jones*, in the House of Lords; the Fenian and Bribery Prosecutions; the Dundonald and Wicklow Peerage cases; besides Colonial, Indian, and Patent cases in the Privy Council, and nearly all the great Ecclesiastical appeals of recent years. A most useful reform, which has been productive of great relief to suitors against the Crown—we mean the Petitions of Right Act—ably carried through Parliament by the present Lord Chief Justice Bovill, was, we believe, suggested and drawn by Mr. Archibald. We may add that Mr. Archibald, like Mr. Justice Denman, has been connected with the *Law Journal* Reports: Mr. Archibald having done one of our Digests, and Mr. Justice Denman having been a reporter on the staff of the *Law Journal* Reports in the Court of Queen's Bench.—*Law Journal.*

ONTARIO REPORTS.

QUEEN'S BENCH.

(Reported by Chris. Robinson, *Esq., Barrister-at-Law.)*

In re the Election for the Town of Brockville and Township of Elizabethtown.

Controverted Election — Corrupt Practices — "Illegal and Prohibited Acts in reference to Elections"—Selling and giving Liquor — Carriage of Voters — Right to reserve questions of law—32 Vict., ch. 21, 34 Vict., ch. 3.

Upon questions reserved by the rota Judge under "The Controverted Elections Act of 1871," it appeared that H. and B. voted for Respondent. H. kept a saloon, which was closed on the polling day, but upstairs, in his private residence, he gave beer and whiskey without charge to several of his friends, among whom were friends of both candidates. B., who had no license to sell liquor, sold it at a place near one of the polls to all persons indifferently. This was not done by H. or B. in the interest of either candidate, or to influence the election, B. acting simply for the purpose of gain; and the candidate did not know of or sanction their proceedings.

Held, (though with some doubt as to B.) that neither H. nor B. had committed any corrupt practice within sec. 47 of 34 Vict., ch. 3, and therefore had not forfeited their votes; for they had not been guilty of bribery or undue influence, and their acts, if illegal and prohibited, were not done "in reference to" the election, which, under sec. 47 of 34 Vict., ch. 3, is requisite in order to avoid a vote.

The words "illegal and prohibited acts in reference to elections," used in sec. 3, mean such acts done in connection with, or to affect, or in reference to elections; not all acts which are illegal and prohibited under the election law.

The right to vote is not to be taken away or the vote forfeited by the act of the voter unless under a plain and express enactment, for it is a matter in which others beside the voter are interested.

One M., a carter, who voted for Respondent, at the request of P., the Respondent's agent, carried a voter five or six miles to the polling place, saying that he would do so without charge. Some days after the election, P. gave M. $2, intending it as compensation

for such carriage, but M. thought it was in payment for work which he had done for P. as carter. The candidate knew nothing of the matter.

Held, that there was properly no payment by P. to M, for any purpose, the money being given for one purpose and received for another; but that if there had been it was made after P.'s agency had ceased, and there was no previous hiring or promise to pay, to which it could relate back.

If such payment had been established as a corrupt practice, it would have avoided P.'s vote, but not M.'s; and it would not have defeated the election, for it was not found to have been committed with the knowledge or consent of the candidate, but the contrary.

Quære, whether, under 34 Vict., ch. 3, sec. 20, the Judge has power, before the close of the case, to reserve questions for the Court.

This was a case stated under the Controverted Elections Act of 1871, as follows:—

CASE.

IN THE QUEEN'S BENCH.

Controverted Elections Act of 1871.

Election for the town of Brockville, with the Township of Elizabethtown thereto attached, holden on the fourteenth and twenty-first days of March, A.D. 1871.

Court for the trial of an Election Petition for the town of Brockville, with the Township of Elizabethtown thereto attached, between Samuel Flint, *Petitioner*, and William Fitzsimmons, *Respondent*.

At the above court, holden on the 26th, 27th, 28th, 29th, and 30th days of June, and on the 5th and 6th days of July, A.D. 1871, before me, the Honourable John Hawkins Hagarty, Chief Justice of the Court of Common Pleas, and one of the judges on the rota for the trial of election petitions, the above-named petitioner charged by his petition that the said respondent was not duly elected or returned, and that the said election was void, by reason that the said respondent and his agents, with a view of promoting the election of the said respondent, caused certain hotels, taverns, and shops, in which spirituous or fermented liquor or drinks were, at the time of the said election, ordinarily sold, to be opened and kept open on the day of polling votes at said election, in the wards and municipalities in which said polls were held, and caused spirituous and fermented liquors and drinks to be sold and given to divers persons within the limits of the said town of Brockville and the township of Elizabethtown during the day of polling votes at the said election; and hired certain horses and vehicles, and promised to pay for certain other horses and vehicles, and did pay for the same, to convey voters to, or near, or from the polls or polling places, or the neighbourhood thereof, at the said election; and also by reason that divers persons who were guilty of the above practices voted at the said election for the said respondent. And the said petitioner by the said petition prayed the said seat, or a scrutiny, and that on such scrutiny the votes of the said persons who were guilty of the above corrupt practices should be struck off the poll.

Upon consideration of the evidence adduced on behalf of the petitioner as to the said charges, I find as follows:—

1. As to George Houston. I find that George Houston, one of respondent's voters, was a saloon-keeper in Brockville: that on the polling day his saloon was closed and locked: that up stairs, in a room in his private residence, he had beer and whiskey on a table: that many of his friends, perhaps to the number of twenty to thirty, were that day, at different times, up in this room, and had liquor: that no pay was taken or expected, nor any charge made for this: he told any of his friends who were in the habit of coming to his saloon that they could have a drink up stairs: that friends of both candidates were there on his invitation, and some not voters: that he was under the impression that so giving this liquor was not violating the law: that this was not done to influence any vote or voter by means of liquor: that it was not done in the interest of either candidate, nor to produce any effect in the election or its result: and that the respondent did not know of or sanction these proceedings.

2. As to Samuel Burns. I find that Samuel Burns had no license to sell liquors: that he voted for respondent: that he sold liquor to all persons that asked and paid for it on the polling day, at a place near one of the polls in the township: that he sold to persons, voters and others, without reference to their side or politics: that this was not done in the interest of either candidate, or to affect the election or its result, but simply for the sake of gain; and that the respondent did not know of or sanction these proceedings.

3. As to the charge of conveying voters to poll. I find that William McKay, a carter in Brockville, and a voter for respondent, did, at the request of Thomas Price, an agent of respondent, carry an old man named Paul, a voter for respondent, a distance of five or six miles to the polling place: that McKay was aware on the polling day that it was illegal to carry voters for hire, and had expressed his willingness to carry voluntarily and free of charge, being anxious to help the respondent: that when Paul was spoken of, Price asked McKay could he McKay, not carry him to the poll, and McKay said he would do so without charge, and that no hiring or payment was then contemplated between them: that some days after the election Price gave McKay $2, considering that McKay was a poor man, and that he ought to give him something, and paid him the money intending it as a compensation for so carrying the voter: that McKay did not receive it as such, but received it thinking it was in payment for some work he had done for Price as a carter in his ordinary business, and that there was an account between them for work in or about the amount of that sum: that when the $2 were paid, nothing was said about carrying the voter: that the respondent knew nothing of this matter, and never authorized or sanctioned it.

The opinion of the Court of Queen's Bench is requested:

1st. What is the legal effect of the payment by Price, an agent for respondent, to McKay, as found by me: whether it was a "corrupt practice," and, if so, did it avoid the vote of Price or McKay, or of both, as voters for respondent, or does it avoid the respondent's election?

2nd. Whether the giving or selling of liquors, as found by me, in such cases as Houston or

Burns, avoided the votes of the said persons, or either of them?

(Signed) John H. Hagarty, C.J., C.P.

In this Term, *Bethune* appeared for the petitioner. The question as to the votes of Houston and Burns, arises under the Ontario Act 32 Vict., ch. 21, sec. 66, which requires all hotels, taverns, and shops in which liquors are ordinarily sold, to be closed during the polling day, and forbids any liquor to be sold or given to any person within the municipality during such period, under a penalty of $100. The amending Act, 34 Vict., ch. 3, had two objects—to change the mode of trial, and more effectually to prevent corrupt practices at elections. In it, by sec. 3, a definition of corrupt practices is for the first time given, and it could hardly have been more comprehensive. It includes all "illegal and prohibited acts in reference to elections, or any of such offences, as defined by Act of the Legislature." The acts of both of them were clearly prohibited, and contrary to the statute, and were therefore corrupt practices: 1 *O'Malley* and *Hardcastle*, 134. Their votes are both bad, therefore, under sec. 47 of 34 Vict., which declares that any corrupt practice committed by an elector voting at an election shall avoid his vote. There is no clause expressly against "treating," as in the English Act, where it is provided for specially. Secs. 61 and 66 of our Act, 32 Vict., ch. 21, provide against it in effect, and are very stringent, making no exceptions even for medical purposes, though perhaps that might be implied. No question as to intention can arise under sec. 66, as under secs. 61, 63, 67, nor as to agency, as under sec. 71.

As to Price's conduct, the 34 Vict., ch. 3, sec. 47 avoids his vote. His act was one of agency on behalf of the respondent. The intent of the agent is of no consequence; and the principal is affected by his act, although the agent was not employed for the purpose in which he violated the Act: 1 *O'Malley* and *Hardcastle*, 107, 184, 201. His act was an offence against sec. 71. The payment he made after the election was intended as compensation for carrying the voter, and although the agency had terminated, yet such payment, being connected with the precedent act of the agent, related back to the time when the service was performed, by analogy to the doctrine of ratification: 1 *O'Malley* and *Hardcastle*, 261.

The statute, under the Interpretation Act, 31 Vict., ch. 1, sec. 7, sub-sec. 39, should be liberally construed, so as best to ensure the attainment of its object. Votes are given on certain conditions, which must be observed. [Wilson, J.—Is that so? Is it not rather a right, of which these provisions are merely safeguards?] If a prohibited act be done by a candidate, it avoids the election; if it be done by a voter, it avoids his vote; if done by another, it subjects the person to a penalty.

J. H. Cameron, Q.C., contra. It is not pretended the election can be avoided excepting by reason of the payment by Price. As to the matters relating to Houston and Burns: the acts prohibited by sec. 66, before referred to, are not necessarily connected with elections at all. Hotels, &c., are required to be closed during the polling day, and no liquor is to be sold or given that day under a penalty. The election may be over early in the day; but at whatever hour the poll is closed, the hotels, &c., must be kept closed the whole of that day, from the earliest hour in the morning till midnight. The illegal or prohibited act, to be a "corrupt practice," and to avoid a vote, must be an illegal or prohibited act "in reference to elections," which these acts were not. The heading of "Prevention of Corrupt Practices at Elections," before sec. 67, cannot be held to govern all the sections down to 74; for sec. 72 defines what shall be deemed to be "undue influence." There is no necessity to hold any act to be a *corrupt practice* unless it be expressly declared to be so, because all prohibited acts have some penalty or other attached to them. Houston and Burns may be subject to a penalty under sec. 66; but their votes are good, and cannot be disallowed.

As to Price's case. Agency, if established at the time he employed the team, must be shown to have continued up to the time when he paid the money. There was no proof of hiring under 32 Vict., ch. 21, sec. 71; and the act of payment was a voluntary act of Price after the election was over, made not on account of the service rendered, but from charity, and not for the candidate, but for himself, and in his business. There was no agency existing then. A *payment* must be the act and intent of both; such intent was absent from the minds of both, but if absent from the mind of one, that is sufficient to make it no payment. Price's act, if within sec. 71, merely destroys his vote, and subjects him to a penalty; it does not defeat the election. Nothing will avoid the election unless under the 46th sec. of 34 Vict., ch. 3, a corrupt practice be reported by the judge to have been committed by or with the knowledge and consent of the candidate. An election committee has much greater power in this respect under ch. 21, sec. 69. The argument may be thus shortly restated:—1. Price was not an agent at the time of the payment. 2. If he were, the payment was not with the knowledge and consent of the candidate. The election, therefore, cannot be avoided. 3. Price did not *hire* any team; his vote, therefore, cannot be struck off. Houston's and Burns's votes are good; at most their acts were prohibited, and they may be subject to a penalty. Where the Legislature have declared that a vote shall be lost for a particular cause, it does not intend that it shall be forfeited for any other cause.

Bethune, in reply. Selling or giving liquor does avoid the votes. As to what is undue influence, see *Huguenin* v. *Baseley*, 14 Ves., 272, and in 2 *White* and *Tudor*, L. C. 504, 3rd ed. It differs in its nature from an illegal or prohibited act. If the 47th section is not more extensive than the law was before, it is of no value.

Entertainment, it is not said shall avoid the election; but it does so because it is a prohibited act. The 43rd section of the Imperial Act, is the one which has not been adopted in our Act. As to Price's act, it avoids the whole election; but at any rate his vote is avoided by the 71st section. Most of the payments in such cases are made after the election. He referred to the cases already decided under this Act.

The *Glengarry Case*, before Hagarty, C. J.; *North York Case*, before Galt, J.; *Simcoe Case*, before Strong, V.C., and the *South Grey Case*, before Mowat, V. C.; 8 C. L. J. N.S.; and see *East Toronto case*, 8 C. L. J. N.S. 115.

Wilson, J.—The particular cases referred to us by the learned Chief Justice of the Common Pleas, are—1stly, that of George Houston. He voted for respondent: was a saloon keeper in Brockville. On the polling day his saloon was closed and locked Upstairs, in a room in his private residence, he had beer and whiskey on a table. He gave it to those who came without pay or expectation of it. It was not done in the interest of either candidate, nor to influence any vote or voter, nor to produce any effect on the election; nor did the respondent know of or sanction it.

2ndly. That of Samuel Burns. He had no license to sell liquors. He voted for respondent. He sold liquor on the polling day, near a poll in one of the townships, and charged for it. He sold it to persons without reference to their side or politics. In other respects, his case is similar to that of Houston.

These two cases may, therefore, be considered together.

The part of the 32 Vict., ch. 21, sec. 66, which applies to these cases, is the latter part of it: "And no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period," (*i.e.* during the day appointed for polling) "under a penalty of $100 in every such case."

And it was argued that because they had infringed the provisions of this section, the one by *giving* and the other by *selling* liquor, they had not only incurred a penalty, but had forfeited their votes: that such giving and selling were prohibited acts, and were within the provisions as to corrupt practices.

The deprivation of the right to vote, or the forfeiture of a vote already given, is not to be imposed as a penalty upon any one, unless under the express enactment of the legislature. There are other persons interested in and affected by that vote beside the voter. The candidate for whom he has voted is interested in it, and so are the whole body of electors who have voted for the same candidate. One vote has and may again influence or change the result of an election, and that is not to be brought about by merely inferential or argumentative legislation, or as to what the Legislature must have intended. There must be a plain enactment declaring that the vote shall be rejected if tendered, or shall be struck off if given, to justify the disallowance of it, and, as a consequence, to double the penalty on the voter, and so seriously to affect the rights, privileges and interests of others dependent on the vote.

What then has the statute said on this point?

32 Vict., ch. 21, sec. 70, declares that on its being proved before any election committee that any elector voting was *bribed*, his vote shall be null and void.

What *bribery* is under that Act, is explained by sections 67 and 68; the acts stated are not acts of bribery; the first of these sections has the caption of "Prevention of Corrupt Practices at Elections."

The 34 Vict., ch. 3, sec. 3, declares that "'corrupt practices' or 'corrupt practice,' shall mean bribery and undue influence, and illegal and prohibited acts in reference to elections, or any of such offences, as defined by Act of the Legislature."

The 47th section enacts that, "If on the trial of any election petition, it is proved that any corrupt practice has been committed by any elector voting at the election, his vote shall be null and void." It is under this section that the votes of Houston and Burns are said to be void. It is said they have each been guilty of a *corrupt practice*, not by reason of having committed bribery, but by reason of their having exercised undue influence, or from their having done illegal and prohibited acts, in consequence of the one having given liquor, and the other having sold it on the polling day.

It is quite plain that undue influence and illegal and prohibited acts in reference to elections must be corrupt practices when the Legislature has declared they shall be so.

Firstly. Were the giving and selling of liquor acts of *undue influence?* The meaning of that term is explained and defined by the 32 Vict., ch. 21, sec. 72, and it is quite manifest that the acts charged against Houston and Burns are not within that category.

Secondly. Were the giving and selling of liquor, as before stated, "illegal and prohibited acts in reference to elections?"

It is necessary to settle what the meaning is of "illegal and prohibited acts in relation to elections." Does the expression mean generally all illegal and prohibited acts *under the election law;* or does it mean illegal and prohibited acts when and because they are done in connection with, or to affect, or in reference to, elections?

In the one case, giving and selling liquor, however disconnected with the election they may be, will, if done within the municipality during the election, be illegal and prohibited acts, and as a consequence will be corrupt practices.

In the other case, such acts will not constitute corrupt practices, unless they are shown to have been done to influence or to affect the election, or in some way to have been done in connection with it.

The section in which the illegal and prohibited acts in relation to elections are named, contains the election law offences of bribery and undue influence, both of which acts have and must necessarily have a direct and inseparable relation to the actual electoral contest, and to the proceedings anterior to it. Bribery and undue influence in general are not prohibited, but bribery and undue influence in relation to elections only. Why then should any greater effect be given to the other words of the section, "and all illegal and prohibited acts," and more especially as the words "in reference to elections," have been superadded?

It will be found also that the offences of entertaining electors, furnishing colors or badges, and carrying or wearing them, relate in like manner to the elections.

The election law morality is very different from what morality is under the general law.

The election law does not prohibit stealing, but it does prohibit the wearing of a party badge within the electoral division on the day of election or polling, or within eight days before such day, or during the continuance of the election. The thief may have on his person at the time he votes the watch of the returning officer, or of the candidate whom he supports, but he is an innocent man by the election law, and a good voter; while the elector who has worn a party badge but for five minutes anywhere in the electoral division, miles away from the polling place, within eight days before the election, is a criminal by the election law, and an illegal voter, although in fact a very honest respectable man. The vote of the one, though not his person, will stand the strictest scrutiny. The vote of the other must fail. The thief has been guilty of no corrupt practice, but the wearer of the badge has. This cannot then be a law to *be enforced, unless the enactment* be a plain and positive one.

I do not think we should call every illegal and prohibited act by this special statute, which is intended to operate for a limited time, on a peculiar occasion, and for a particular purpose, a *corrupt practice*, against the provisions of that law, unless the act be shown to have been done in some way or other with a view to the election, or to bear upon it, or as connected with it, or in relation to it, or as calculated or intended so to operate. If any other construction be given to the statute, it will be attended with very oppressive and needless consequences of punishment and forfeiture.

A general state of drinking and drunkenness at the time of the election among the electors and inhabitants of the locality, resulting from the dispensation of liquor, might well be deemed to be a dispensation of such liquor in relation to the election, although it were made without any special reference to the election. The state of mind, the influence and general condition of things it would induce, would tend naturally to disorder the proceedings, and to cause an untrue and improper expression to be given of the sober popular will. That was the case in *O'Malley* and *Hardcastle*, 85.

But the giving or selling of liquor in consequence of a horse trade, or in payment of an old bet, or from mere friendship, or to test the quality of it as a medicine, or to be shipped abroad, or for any other purpose not "in reference to the election," would not, in my opinion, be an illegal or prohibited act, so as to be a corrupt practice within the meaning of the statute. Nor do I think the giving or selling of liquor, though on the polling day, but after the poll was closed, and miles away from where the poll was held, would necessarily be an illegal and prohibited act in reference to the election, so as to amount to a corrupt practice: *Coventry Election Petition*, 20 L. T. N. S. 405.

The 61st section of the 32 Vict., ch. 21, permits the candidate and others acting for him, even with intent to promote his election, to furnish entertainment to the electors, so long as it is done at the usual place of residence of the candidate, or of those who furnish it for him. Such *entertainment*, it would be difficult to say, should not include even a single glass of wine.

The statutes contain many illegal and prohibitory acts besides the giving and selling of liquor on the day of the poll, and to hold them to be corrupt practices, although *not* done in reference to the election, would be hurtful to all parties, and utterly unreasonable.

By 32 Vict., ch. 21, sec. 57, sub-sec. 3, any person disturbing the peace and good order may be imprisoned by the returning officer or his deputy, for a time not later than the final closing of the poll. Is the vote of that person to be rejected, or afterwards struck off, although his act had no reference to the election, but was occasioned by some great wrong done or provocation given to him?

By sec. 60 every person convicted of a battery committed during any part of the election or polling day, within two miles of the place of election or poll, is to forfeit $50. Is that person also to forfeit his vote, although the battery had nothing whatever to do with the election, or happened after the election was over?

It appears to me these cases plainly answer themselves, and enable the matter with respect to the giving and selling of liquor to be as easily answered.

The penalties are already quite severe enough, without increasing them against the voter, and extending them to the candidate, and to the other electors of the constituency, who suffer as well as the voter by the disallowance of his vote, unless we are obliged by the most explicit enactment of the law to do so.

In my opinion, on the case stated with respect to these persons, we are not required, and would not be justified, in avoiding their votes.

The facts show that the giving and selling of the liquor were not acts done in reference to the election.

On this point, I may however say that I am more satisfied with my conclusion as to the act of Houston, as to the giving of the liquor, than I am with respect to Burns, who sold the liquor in a place and under circumstances giving rise to some degree of suspicion.

The other part of the case relates to the act of Price.

His conduct is complained of on the ground of its having been an illegal and prohibited act in reference to the election, contrary to the 32 Vict., ch. 21, sec. 71. That section declares, so far as is applicable here, "that the hiring or promising to pay, or paying for, any horse," &c., "by any candidate, or by any person on his behalf," to convey voters at any election, shall be an illegal act, and the person offending shall incur a penalty of $100; and any elector who shall hire any horse, &c., for any candidate or for any agent of a candidate, for the purpose of conveying electors, &c., "shall *ipso facto* be disqualified from voting at such election, and for every such offence shall incur a penalty of $100."

The section, it will be observed, is in two parts. The first part affects the candidate and his agent, by subjecting them to a penalty. The second part affects the electors, and besides subjecting them to a penalty it disqualifies them from voting.

Price was an agent of the candidate, and so, as to the penalty, is within the operation of the

first branch; but he was also an elector, and so he is within the operation of the second branch, as to the loss of his right to vote.

The case finds there was no hiring of McKay to carry Paul, the voter. McKay carried Paul at Price's request, but he carried him "voluntarily and free of charge." Some days after the election, Price, as compensation to McKay, gave him $2 for carrying the voter. McKay did not receive it as compensation, but in payment of work he had done for Price in his ordinary business as a carter.

I do not see how McKay can be within the operation of the section at all. The hiring, or promising to pay, or paying for any horse, &c., applies to the candidate, and to any person on his behalf. That will extend to Price if he hired, or promised to pay, or paid McKay for any horse, &c.; but it cannot extend to McKay, as he was at most the person hired, promised to be paid, or paid. Nor does the second branch apply to him, for that extends to the electors who hire others, and not to those who are hired.

The case has to be considered, then, with regard to Price alone.

At the time he voted—for I assume he did vote, as I gather so from the first question put in the case, and from the argument of counsel, though the case itself does not say he did,—he was under no disqualification; for he had not hired, promised to pay, or paid McKay, and there was no agreement or understanding to do so, but the contrary; the service was to be, as in fact it was at the time performed by McKay, free of charge.

In my opinion, the agency of Price terminated with the election,—the occasion and the purpose for which he was employed. His subsequent payment was an unauthorized act as to his principal. It can relate back to nothing, for there was no hiring or promise to which it could attach. But as a fact it was not a payment; that must be the act and by the assent of both parties. When Price gave the money for one purpose, and McKay received it on another account, and in respect of a different transaction, that was not a payment for the purpose that Price intended it for, more than it was a payment on the account for which McKay received it. It was properly not a payment to or for either one purpose or the other: *Thomas* v. *Cross*, 7 Ex. 728.

In no view of the case, as the learned Chief Justice has found that the respondent knew nothing of the matter between Price and McKay, and never authorized or sanctioned it, could it be possible to avoid the election, even if Price's act had been determined to be a corrupt practice. For under the 46th section of the 34 Vict., ch. 3, the learned Chief Justice, to affect the return, would have to find that "the corrupt practice had been committed by or with the knowledge and consent of the candidate," whereas he has distinctly negatived that fact.

I am not quite satisfied, as I stated during the argument, however convenient the practice may be, and however desirable it is that the law should be so, that the rota Judge has power, until he is in a position to grant his certificate, under the 34 Vict., ch. 3, sec. 20—that is, until the close of the case—to reserve a question for the Court.

Such question is to be reserved "in like manner as questions are usually reserved by a Judge on a trial at Nisi Prius," and no Judge at Nisi Prius can stop a case in the middle, and adjourn it until he has some intermediate difficulty cleared out of his way by a reference to the Court. If there be any doubt in this respect, the Act should be amended.

Assuming that the case is regularly before us, I shall answer the questions submitted as follows:—

1. That there was no *payment* made by Price to McKay. If it were a payment, it was made by Price at a time when he was not an agent for the respondent, and with respect to a matter to which it could have no proper relation, for there was no antecedent hiring or promise to pay. The matter was, therefore, not a corrupt practice.

If it had been a corrupt practice, it would have avoided Price's vote, but not McKay's vote, for he was the person hired, if there had been a hiring, and such a person is not deprived of his vote.

This act. if it had been established to have been a corrupt practice, would not have defeated the election, because it has not been found to have been "committed by or with the knowledge and consent of the candidate;" on the contrary, the very opposite fact has been found for the candidate.

2. That the giving of liquor, as found by the case, by Houston, does not avoid his vote. I have more doubt as to the selling of liquor by Burns, but I am not so free from doubt as to find against him, on the case submitted.

I am of opinion, therefore, that neither of their votes has been avoided.

Morrison, J., concurred.

Draper, C. J. of Appeal, was not present during the argument, and took no part in the judgment.

In re Election for the Electoral Division of the County of Monck

32 Vict., ch. 21, ss. 57—List of Voters not delivered in time—Wrong list used—Amendment of petition.

[32 U. C. Q. B., 147.]

The 32 Vict., ch. 21, sec. 7, and sub-sec. 1, enacts that the clerk of each municipality shall, in each year, make from the assessment rolls a list of the persons entitled to vote therein, and deliver it to the Clerk of the Peace on or before the 15th August. By sub-sec. 3, this period shall be directory only to the clerk, "and the said lists shall be valid and effectual for the purposes of this Act, even though not so completed and delivered by the said period of time;" and by sub-sec. 10, no person shall be admitted to vote unless his name appears on the last list of voters, delivered to the Clerk of the Peace "*at least one month before the date of the writ to hold such election.*"

The writ to hold the election was tested on the 25th February, 1871. The list of voters for one of the townships in the Electoral Division was made up from the assessment roll of 1870, and sworn to on the 13th August; but it was not

delivered to the Clerk of the Peace until the 17th March, 1871. The list for 1869 had been delivered on the 19th August of that year.

Per *Richards, C. J.*, and *Morrison, J.*, the list of 1869 was the one which should have been used.

Per *Wilson, J.*, that of 1870 was properly used; for that the month should be construed to mean a month from the 15th August, when the roll should have been, or any earlier day when it may in fact have been, delivered; that the roll, though delivered too late, would not otherwise be "valid and effectual for the purposes of this Act;" and the neglect of the clerk should not be allowed to disfranchise voters.

There were 41 voters on the list of 1869 who were not on that of 1870, but it was not shown that the vote of any one entitled to vote by either list had been rejected; nor was it shown or suggested that the use of one roll instead of the other could have in any way affected the result of the election. *Held*, that the election was not avoided.

Held, also, that the Judge had power to amend the petition by allowing the insertion of an objection to the roll used.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS

FOR MAY, JUNE AND JULY, 1872.

(*From the American Law Review.*)

Absolute Gift.—*See* Construction, 1.

Abuttor.—*See* Highway.

Accounts.—*See* Letters Patent, 2; Pleading, 1; Practice, 2.

Ad Damnum.—*See* Practice, 1.

Ad Filum Viæ.—*See* Highway.

Administration.

1. Administration will not be granted to a person having no interest in the estate, even though all the next of kin desire his appointment. Under 20 & 21 Vict. ch. 77, § 73, administration must be offered to each of the next of kin qualified successively, and afterwards to other persons interested.—*Teague et al.* v. *Wharton*, L. R. 2 P. & D. 360.

2. L. assigned what he supposed was a certain interest in an estate. He had in fact no interest at the time, but afterwards acquired the same interest in another way. He executed the deed of assignment in his supposed capacity, and not in that by virtue of which he afterwards became entitled. *Held*, that his assignee was not entitled to be limited administrator, but must apply to chancery to secure his rights in the estate of his assignor.—*Bardon* v. *Morgan*, L. R. 2 P. & D. 371.

Administrator. — *See* Executor and Administrator.

Admissibility.—*See* Confession; Evidence, 1.

Adoption of Suit.—*See* Solicitor, 3.

Adultery.—*See* Divorce, 1, 2; Evidence, 2.

Advance Shares.—*See* Executor and Administrator.

Advancement.—*See* Hotchpot.

Affidavit.—*See* Evidence, 1.

Agreement.—*See* Railway, 2; Statute of Frauds.

Agreement to Sell.—*See* Purchase-Money.

Amalgamation.—*See* Company, 1.

Annuity.—*See* Forfeiture, 1; Legacy, 2.

Answer.—*See* Pleading, 1; Practice, 4.

Anticipation, Power of.—*See* Estate for Life.

Appeal.—*See* Practice, 2.

Arbitrator.—*See* Evidence, 4.

Assignee.—*See* Administration, 2; Bankruptcy, 3.

Assignment.—*See* Power of Sale.

Assignment of Contract.—*See* Vendor and Purchaser, 2.

Assignment of Freight.

W., a ship-owner, assigned unearned freight to plaintiff. Afterwards, with knowledge of the assignee, W. mortgaged the ship without notice to the mortgagees of the assignment of freight. *Held*, that the mortgagee was entitled to the freight.—*Wilson* v. *Wilson*, L. R. 14 Eq. 32.

Auction.

Plaintiff and M. were partners, and gave authority to defendant, an auctioneer, to sell partnership goods on premises which had been occupied by M., and in respect of which he owed rent. It was a condition of the sale that at the fall of the hammer, each lot should be at the risk of the purchaser, and the auctioneer should not be responsible for loss after that time. After the sale, the landlord refused to let some goods go unless the rent in arrears was paid. The auctioneer paid the amount to release the goods. *Held*, that as the property, subject to existing liens, had passed to the purchaser, the auctioneer was liable to the plaintiff for the amount paid.—*Sweeting* v. *Turner*, L. R. 7 Q. B. 310.

Award.—*See* Evidence 4; Lien.

Bailment.—*See* Bailor and Bailee.

Bailor and Bailee.

Plaintiff, a cab-driver, got a horse and a cab from a cab-master, the master to pay for the horse's feed, and the driver to pocket all he earned beyond eighteen shillings. The horse was unfit for the work, and threw the driver out and injured him. *Held* (Willes, J., dissenting), that the parties were in the relation of bailor and bailee, and the master was responsible.—*Fowler* v. *Lock*, L. R. 7 C. P. 272.

Bank Book.—*See* Donatio Causa Mortis.

Bankrupt.—*See* Forfeiture, 1.

Bankruptcy.

1. The Court of Bankruptcy has no power to set aside a deed given to the receiver and trustee, as security for costs, after a composition, although the deed be alleged to have been obtained by duress or pressure.—*Ex parte Lyons, In re Lyons*, L. R. 7 Ch. 494.

2. W. D. assigned his property in bankruptcy. He did business in England under the name of D. & Co., and in Brazil under that of D., L. & Co. In Brazil he went through a proceeding corresponding to bankruptcy, according to which the creditors of D., L. & Co. would have priority. Holders of bills drawn by D., L. & Co. upon D. & Co., and accepted by the latter, proved in Brazil and received a dividend. They then claimed to prove in England. *Held*, that they could receive nothing further, till the other creditors in England had received a proportionate dividend.—*Ex parte Wilson, In re Douglas*, L. R. 7 Ch. 490.

3. Defendant's assignee of a lease became bankrupt, and the trustee in bankruptcy disclaimed the lease under section 23 of the Bankruptcy Act, which enables trustees of bankrupts' property to disclaim and surrender, among other property, an unprofitable lease. In an action by the original lessor, *held*, that the lessee was liable for rent.—*Smyth* v. *North*, L. R. 7 Ex. 242.

See Forfeiture, 2, 3; Mortgagor and Mortgagee.

Bargeman.—*See* Common Carrier.

Barrister.

N. being a barrister and advocate in India, was reported to the high court of judicature, by the judge of the district court, as guilty of professional misconduct. Upon an order to him to show cause, it was shown that he had procured a client of his to write a letter to a firm of bankers asking for a loan on her indigo business, with a view to getting some of his fees out of said loan; and also that he had procured his said client to indorse some promissory notes as administratrix, on the strength of an application he had made for her appointment as such, which application afterwards failed, for the reason that she was not legally eligible to the office. *Held*, that his conduct did not amount to that degree of *mala praxis* sufficient, in India, to warrant a suspension from practice for five years.—*Newton* v. *The Judge of the High Court, North-western Provinces*, L. R. 4 P. C. 18.

Bequest.—*See* Construction, 1; Will, 4, 6, 7.

Belligerent Waters.—*See* Construction of Statute.

Bigamy.

A. having a wife living, went through a due form of marriage with a former wife's niece. *Held*, that he was guilty of bigamy, notwithstanding the fact that the attempted marriage would have been void, *in seipso*.—*The Queen* v. *Allen*, L. R. 1 C. C. R. 365.

Bill in Equity.—*See* Equity.

Bill of Lading.—*See* Freight.

Blockade.—*See* Contract, 1.

Breach of Covenant.—*See* Landlord and Tenant, 1.

Breach of Trust.—*See* Equity.

Builder.—*See* Liability of Builder.

Burden of Proof.—*See* Practice, 6.

Buyer and Seller.—*See* Sale.

Cab-Driver.—*See* Bailor and Bailee.

Carrier.—*See* Common Carrier.

Charitable Fund.—*See* Cy Pres.

Charity.—*See* Cy Pres; Will, 9.

Charterer.—*See* Salvage, 1.

Charter-Party.

Plaintiffs made a charter party with the defendant that the latter's ship should proceed to a certain port and load with coals, and deliver the same at a given place on being paid a fixed freight. Until the end of September the ship was to load with A. or B., at captain's option; after September with B. In September plaintiffs refused to load with A. *Held*, that the refusal discharged defendant from the charter-party entirely.—*Bradford et al.* v. *Williams*, L. R. 7 Ex. 259.

See Contract, 1; Freight.

Check.—*See* Donatio Causa Mortis.

Children.—*See* Will, 10.

Christian Religion.—*See* Custody of Child.

Civil Code of Lower Canada.—*See* Liability of Builder.

Codicil.—*See* Legacy, 1.

Collateral.—*See* Company, 4.

Collision.

1. The sixteenth article of the Admiralty Rules, which provides that "every steamship when approaching another ship so as to involve risk of collision, shall slacken her speed," applies only to cases of continuous approach; and when one of two steamers which "are meeting end on end so as to involve risk of collision," duly ports her helm so as to bring them port light to port light, she need not slacken speed, and is not to blame for collision.—*The Owners of the Screw Steamship Jesmond* v. *The Owners of the Screw Steamship Earl of Elgin*, L. R. 4 P. C. 1.

2. A steamer moved from her moorings at night, and lay athwart the stream, so that her

regulation lights could not be seen by a sailing vessel coming up the stream; a common lantern was hung out on the side towards the sailing vessel, but it was not seen by those on the latter. *Held*, that the steamer should have exhibited her riding lights, or used as a warning signal the very best lights she had on board; and that the failure so to do was negligence.—*The John Fenwick*, L. R. 3 Adm. and Ec. 500.

Comity.—*See* Foreign Judgment.

Common Carrier.

Defendant owned barges, and let them to carry goods between various termini. The goods of one customer only were carried at a time, and the customer fixed the termini of the trip in each instance. *Held*, a common carrier. —*Liver Alkali Co.* v. *Johnson*, L. R. 7 Ex. 267.

Company.

1. Company A. was amalgamated with company B, and the shareholders of company A. were at liberty to take shares in the new company. A shareholder applied for shares, agreeing to take the same, and asking to have his name inserted in the shareholders' register, and he was duly allotted shares. He subsequently withdrew his application. *Held*, on the winding up of the new company, that he was a shareholder, and that the directors had no right to release him.—*In re United Ports Company*, L. R. 13 Eq. 474.

2. An insurance company, unregistered and limited, became insolvent, and registered as an unlimited company. *Held*, that the shareholders were not liable beyond the amount of their shares, except for the costs of winding up.—*Lethbridge* v. *Adams*, L. R. 13 Eq. 547.

3. A. transferred to B. shares in a joint-stock company, numbered as stated in the transfer. A. had no shares thus numbered, but was owner of the same number of shares bearing different numbers. *Held*, that the transfer was good, and that B. was a contributory.—*In re International Contract Company*, L. R. 7 Ch. 485.

4. A railway company loaned money to a hotel company to build a hotel at the terminus of the railway, and took as security shares in the hotel company, which were placed in the hands of trustees, who had power to sell them and pay off the debt. The railway company afterwards purchased the hotel, and the hotel company was wound up. *Held*, that the railway company were creditors and not shareholders in respect of the loan, and the shares deposited with trustees.—*In re City Terminus Hotel Company*, L. R. 14 Eq. 10.

See Equity; Railway, 1; Ultra Vires.

Compensation.—*See* Damages, 2.

Competency.—*See* Evidence, 3.

Composition.—*See* Bankruptcy, 1.

Condition.—*See* Condition Precedent.

Condition Precedent.

The words of a Railway Act as to damages were affirmative, that upon notice to treat, agreement and award, and payment or tender of the award, the latter should vest the power in the company. *Held*, that notice to treat and the subsequent proceedings were not a condition precedent to the rights of the company conferred by the Act.—*Jones* v. *Stanstead, Shefford, & Chambly R. R. Company*, L. R. 4 P. C. 98.

See Charter-Party.

Confession.

Two boys, eight and nine years old, were apprehended for misdemeanor, and the mother of one said to them in presence of the policeman, "You had better, as good boys, confess." Whereupon they confessed. *Held*, that the confession was admissible. — *The Queen* v. *Reeve et al.*, L. R. C. C. R. 362.

Conflict of Laws.—*See* Bankruptcy, 2.

Consideration.—*See* Contract, 3; Deed.

Construction.

1. Testator by apt words devised all his personal and real property absolutely to S., a married woman, and added a trust as to the real estate, and wound up with this clause: "And as to the personal property so given, as aforesaid, to the said S., to and for her sole and proper use and benefit for ever. . . the proceeds to be applied" in bringing up her children. *Held*, an absolute gift as to the personalty.

2. A testatrix, in a document styled her "last will and testament," named an executor, and gave certain legacies, among them this: "To W. and E.'s three children £10 each, and my furniture to be equally divided amongst them." She wound up thus: "After these legacies are paid I leave to my sister S. to be equally divided amongst her children or grandchildren." W. and E. had four children. *Held*, that each child of W. and E. took £10 and a quarter of the furniture, and that the last clause was a good gift of the residue.—*In re Bassett's Estate, Perkins* v. *Fladgate*, L. R. 14 Eq. 54.

3. The words "legal representatives in due course of administration," in a marriage settlement, were *held* to mean next of kin, and not executors and administrators,—*Briggs* v. *Upton*, L. R. 7 ch. 370.

4. A gift for life of a business and perishable

stock necessary to carry it on, confers a life interest in the latter, and the stock must be kept good. A gift purporting to be for life of consumable goods unconnected with a business is absolute.—*Cockayne* v. *Harrison*, L. R. 13 Eq. 432.

See Collision, 1; Condition Precedent; Contract, 4; Debt; Forfeiture, 3; Hotchpot; Legacy, 1, 2; Sale; Will, 2, 3, 7.

Construction of Statute.

1. For the owners of an English tug to engage in towing a prize vessel, with prisoners and a detached prize crew, from English into belligerent waters, where the prize would be safe in the hands of the government to which the captors belonged, was *held* "dispatching a ship for the purpose of taking part in the naval service of a belligerent" within the meaning of the Foreign Enlistment Act of 1870.—*Dyke* v. *Elliott, The "Gauntlett,"* L. R. 4 P. C. 184.

2. A company granted to a licensee "the sole and exclusive right, license, and authority" to carry on a certain business within certain limits, and agreed to furnish him with material. The company had no legal control in respect of said business over the limits described. The licensee paid £1,500 down, and agreed to pay the balance of the consideration (£6,000) in monthly instalments, of £1,000 each. *Held*, that for the purpose of the Stamp Act, the license was not a "conveyance on sale," and that the monthly payments of £1,000 were "periodical payments." — *Limner Asphalte Paving Company* v. *Commissioner of Internal Revenue*, L. R. 7 Ex. 211.

3. One section of the Contagious Diseases Act says: any person "shall be deemed guilty . . . unless he show to the satisfaction of the justices before whom he is tried," &c.; another fixed the penalty for any person "guilty of any offence against this act;" another provides for appeal in case he feels "aggrieved by . . . adjudication of the justices with respect to any penalty under this act," &c.; but no jurisdiction is expressly conferred upon the justices. *Held*, that two justices could summarily convict under the act.—*Cullen* v. *Trimbles et als.* L. R. 7 Q. B. 416.

See Municipal Election.

Consumable Goods.—*See* Construction, 4.

Continuing Guarantee.—*See* Guarantee.

Contract.

1. Defendants by a charter-party agreed to proceed with reasonable dispatch to a spout, load with coal, and go thence as soon as wind and weather should permit to H. There was the usual exception as to delay from restraint of princes. Before any breach, and before any thing was done under the charter-party, H. was blockaded, and defendants refused to proceed to the spout. *Held*, in a suit for damages, that defendants were not liable, it having turned out that the blockade was still subsisting at the time defendants would have reached H. had they proceeded with reasonable speed.—*Geilpe* v. *Smith et al.*, L. R. 7 Q. B. 404.

2. Plaintiff entered the employ of defendants under a written agreement, dated April 13, 1871, stipulating that he should receive "a salary of £2 per week, and house to live in from the 19th of April, 1871." *Held*, a hiring from week to week, and that evidence of a verbal understanding, that the engagement was for a year, was inadmissible.—*Evans* v. *Roe et al.*, L. R. 7 C. P. 138.

3. The substance of a guarantee to plaintiff signed by defendants was as follows: "In consideration of your withdrawing the petition you have presented . . . we agree to pay you all costs you have incurred. . . . We further agree to guarantee to you the payment within 18 months . . . of . . . your debt of £722." Plaintiff asked for leave to withdraw the petition in question, which the court did not expressly grant, but ordered plaintiff to pay the costs of the petition. Within 18 months plaintiff presented another similar petition. *Held*, that the consideration was good, that it applied to both parts of the guarantee, and that there had been performance of the condition by plaintiff.—*Harris* v. *Venables*, L. R. 7 Ex. 235.

4. Defendant wrote to plaintiff as follows: "Ship me 500 tons sugar, say 26*s.* 9*d.* for Nos. 10 and 12, to cover cost, freight, and insurance; 50 tons more or less of no moment, if it enables you to get a suitable vessel; provide insurance; draw on me for costs, as is customary. I should prefer option of sending vessel to London, Liverpool, or Clyde; but if not compassable you may ship to either London or Liverpool." In a telegram sent afterwards, "the ship" was ordered to call at a good port for orders. Plaintiff, in his reply, spoke of the order as for "a cargo about 500 tons," and of "your remarks regarding the destination of the vessel." Plaintiff procured 393 tons, and shipped it, intending to procure and ship the balance as soon as he was able to do so. *Held* (Byles, J., dissenting), that defendant was bound to accept the cargo. Whether the relation of plaintiff and defendant was that of principal and agent, or of vendor and pur-

chaser, *quære.*—*Ireland* v. *Livingston*, L. R. 5 H. L. 395.

See Charter-Party; Insurance; Sale.

Conveyance on Sale.—*See* Construction of Statute, 2.

Conversion of Shares—*See* Will, 1.

Copy.—*See* Covenant.

Co-respondent.—*See* Costs; Divorce, 3.

Costs.

Costs against the co-respondent in trial for divorce on the ground of adultery, where a decree *nisi* was granted, will not be remitted, although a petition to make the decree absolute is dismissed on the ground of subsequent adultery of the petitioner.—*Hulse* v. *Hulse et al.*, L. R. 2 P. & D. 357.

See Company, 2; Divorce, 2; Letters-Patent, 2.

Counsellor.—*See* Barrister and Advocate.

Covenant.

A legal and reasonable covenant in a separation deed will be enforced, although some parts of the deed are invalid. A husband cannot keep and use copies of his wife's private papers, which he has covenanted in a separation deed to give up:—*Hamilton* v. *Hector*, L. R. 13 Eq. 511.

See Construction of Statute, 2; Injunction, 3; Landlord and Tenant, 1, 3; Railway, 1.

Creditor.—*See* Company, 4; Proof of Claim.

Criminal Law.—*See* Indictment.

Crown.—*See* Prerogative of Crown.

Cumulative Legacy.—*See* Legacy, 1.

Curator Bonis.—*See* Lunatic.

Custody of Child.

The appellant was widow of a British subject in India, professing the Christian religion, and of their marriage the child in question was born. After the death of the husband, appellant lived with a man professing the Christian religion, and having a Christian wife. Subsequently appellant and the man with whom she lived professed the Mahomedan faith, and a Mahomedan marriage was alleged to have been performed. The child remained with her mother until ordered by the judge at Meerut to be given into the custody of a Christian guardian. She was then fourteen years of age, and professed the Mahomedan religion. *Held*, that the order be confirmed, and the appeal from it dismissed.—*Skinner* v. *Orde et al.*, L. R. 4 P. C. 60.

Cy Près.

A fund was raised to build a church for persons who could not speak English, where service might be held in *Gaelic*. No *Gaelic* clergyman could be found, and not persons enough speaking that language to attend the service, and the fund was used to found the *Caledonian Asylum*. Petition was afterwards made setting forth that a Gaelic-speaking clergyman and audience were forthcoming if there were a church. *Held*, that the fund should not be diverted from the Asylum.—*Attorney-General* v. *Stewart*, L. R. 14 Eq. 17.

Damages.

1. Defendant unlawfully washed his van in the street, and let the water run off into a grating twenty-five yards distant. The grating, unknown to defendant, was frozen over, and the water ran into the street and formed ice. Plaintiff's horse fell thereon and broke his leg. Damage *held* too remote to make defendant liable.—*Sharp* v. *Powell*, L. R. 7 C. P. 253.

2. Plaintiff was owner of a mansion, in the rear of which was a garden running down to the Thames, and separated from it by a wall. At high tide the water came up to the wall, so that boats could be loaded and unloaded at a door in the wall. At low tide he reached the water by a paved jetty running from the door to the water, and kept in repair at his expense. The river was filled up by a company under authority of Parliament, a strip of dry land formed between the water and the garden wall, and on the side of this strip, next the water, a road was opened. The claim for compensation was referred to an arbitrator, who took into account the loss of privacy and quiet by reason of the loss of the river frontage, the loss of said frontage, and the great amount of noise and traffic and dust on the road, thus arriving at a conclusion as to how much less on the whole a man would give for the property for the only use it could be put to with profit, than it would have fetched before the alterations. *Held*, that the award must be sustained.—*The Duke of Buccleugh* v. *The Metropolitan Board of Works*, L. R. 5 H. L. 418.

See Proximate and Remote Cause.

Debt.

A husband under a power of apportionment in a marriage settlement afterwards appointed a sum to a son. Upon the husband's death his executors claimed that this sum was a *debt* of the deceased, and it was so *held.*—*The Lord Advocate of Scotland* v. *Hogart*, L. R. 2 H. L. (Sc.) 217.

See Will, 5.

Decree Nisi.—*See* Costs; Divorce, 2.

Deed.

G. while in prison on a charge of murder executed a voluntary deed under the apprehension that he might be convicted and suffer forfeiture. He was acquitted as being insane. *Held*, that the deed was void as being without consideration, and executed by an insane man. —*Manning* v. *Gill*, L. R. 13 Eq. 485.

Deed of Gift.—*See* Undue Influence.

Defective Foundation.—*See* Liability of Builder.

Delay.—*See* Undue Influence.

Delivery.—*See* Sale.

Demurrer.—*See* Pleading, 1, 2.

Deposit of Title-Deeds.—*See* Vendor and Purchaser, 2.

Descriptio Personarum.

It is not fatal misdescription in a transfer of stock to call a journeyman butcher "gentleman."—*In re European Bank*, L. R. 7 Ch. 292.

Deviation.—*See* Freight.

Devise.—*See* Will, 4, 6.

Director.—*See* Ultra Vires.

Disclaimer.—*See* Bankruptcy, 3.

Discovery.—*See* Pleading, 1; Practice, 5.

Discretion.—*See* Lunatic.

Discretion of Trustees.—*See* Forfeiture, 1.

Documents.—*See* Practice, 3, 5.

Domicile.—*See* Will, 9.

Donatio Causa Mortis.

Deceased gave a cheque and his bank book to his nephew, intending to make the latter a present of the amount of the cheque. Next day, before the cheque was presented, the uncle died. *Held*, not a valid gift.—*In re Beale's Estate*, L. R. 13 Eq. 489.

Duress.—*See* Bankruptcy, 1.

Ejectment.—*See* Landlord and Tenant, 1.

Equitable Mortgage.—*See* Vendor and Purchaser, 2.

Equity.

A company made an unauthorized loan to a society. When the loan was called in the society gave a cheque for the amount to its agent, who was also a manager in the company. He embezzled it. *Held*, that the company could maintain a bill for the recovery of the money.—*Hardy* v. *Metropolitan Land and Finance Company*, L. R. 7 Ch. 427.

See Cy Pres; Pleading, 1; Prerogative of Crown; Scandalous Matter; Vendor and Purchaser, 2.

Equity Pleading.—*See* Pleading.

Equity Practice.—*See* Practice.

Estate for Life.

Testator gave an estate to trustees in trust for his granddaughter, and directed that if she married under twenty-one the estate should be settled on her for life to her separate use without power of anticipation, remainder to her children. The trustees were authorized to give her husband a life-estate from her decease, and either with or without impeachment of waste. *Held*, that an estate to her "without impeachment of waste," was inconsistent with the other provisions as to the estate.—*Clive* v. *Clive*, L. R. 7 Ch. 433.

See Will, 7.

Estate Tail.—*See* Statute of Limitations.

Evidence.

1. An exhibit annexed to an affidavit, of a statement alleged to have been made by A. inconsistent with an affidavit made by him, is not admissible in evidence.—*Hanning* v. *Maddick*, L. R. 7 Ch. 395.

2. On a hearing to show cause why a decree of divorce *nisi* should not be made absolute, evidence was offered by the Queen's proctor, that a man giving the name and address of the petitioner had been living with a woman named, at a specified place and time since the decree *nisi*. Petitioner offered no evidence in rebuttal. *Held*, sufficient *prima facie* evidence of identity to warrant a dismissal of the petition.—*Hulse* v. *Hulse et al.*, L. R. 2 P. & D. 357.

3. Where a man is indicted and tried with others, his wife cannot testify for them any more than he can himself.—*The Queen* v. *Thompson et al.*, L. R. 1 C. C. R. 377.

4. An arbitrator may be a witness as to the proceedings before him up to the time he made his award, in a proceeding to enforce the same, but cannot be asked how the award was arrived at, or what items it included, or what meaning or effect he intended to be given to it. —*The Duke of Buccleugh* v. *The Metropolitan Board of Works*, L. R. 5 H. L. 418.

See Confession; Contract, 2; Injunction; Legacy, 12; Practice, 5–7; Railway, 2; Undue Influence; Will, 2.

Executor.—*See* Executor and Administrator.

Executor and Administrator.

An executor, as such, may mortgage property by power-of-sale mortgage to a building society, wherein he takes "advance" shares, for which he agrees to pay, with all fines for non-payments within a certain time, according to the rules of the society, such arrangement being made a part of the condition of the mortgage, and as part consideration for the loan.—*Cruikshank* v. *Duffin*, L. R. 13 Eq, 555.

See Construction, 3; Partnership, 1; Will, 5.

Executory Contract.—*See* Contract, 1.

Digest of English Law Reports.

Exhibit.—*See* Evidence, 1.

Extension of Patent.—*See* Letters-Patent, 1.

Extrinsic Evidence.—*See* Legacy, 1, 2; Will, 2.

Failure of Trust.—*See* Will, 6.

Fee in Street.—*See* Highway.

Firm Name.—*See* Partnership, 2.

Forbearance.—*See* Contract, 3.

Foreclosure.—*See* Mortgage.

Foreign Court.—*See* Foreign Judgment.

Foreign Judgment.

A foreign judgment of a competent court may be impeached if there is error on the face of it, or if it is shown to have been obtained by fraud, or is opposed to natural justice; it cannot be enforced against those not parties to it, unless it be in *rem.*—*Messina* v. *Petrococchino*, L. R. 4 P. C. 144.

Forfeiture.

1. A testatrix gave her husband an annuity for life, with discretion in the trustees to withhold it, and allow it to fall into the general fund if they saw fit, and with a proviso, also, that if the husband should become bankrupt, or do any acts which, if the annuity were his absolutely, would vest it in any other person, payment of it should cease in the same manner as if he were dead. The testatrix knew that her husband was bankrupt at the time she made the will. *Held*, that the annuity fell into the general fund.—*Trappes* v. *Meredith*, L. R. 7 Ch. 248.

2. A testator gave a fund to trustees to pay the income to R. "so long as" he "should not do any act to deprive" himself "of the benefit thereof." In that event the income was thenceforth to be paid to others. R. became bankrupt, and the trustees paid the income into court for several years; R. finally assigned to the assignee in bankruptcy all the accumulated dividends and obtained his discharge. On a petition to have the accrued dividends paid to the assignee, and the future ones to himself, *held*, that there had been a forfeiture. —*In re Parnham's Trusts*, L. R. 13 Eq. 413.

3. A testator provided that the life-estate should be forfeited if the tenant for life should "assign over, assure, mortgage, or in any manner incumber, or by any instrument in writing, parol agreement, or otherwise howsoever part from" the proceeds. *Held*, that a petition for arrangement under the Bankrupt Act by the tenant for life worked a forfeiture.—*In re Amherst's Trusts*, L. R. 13 Eq. 464.

See Landlord and Tenant, 1.

Frauds, Statute of.—*See* Statute of Frauds.

Fraudulent Conveyance.—*See* Stat. of Frauds, 2.

Freight.

An English cargo was shipped on board a Prussian ship, under a charter-party and bill of lading, by which she was to proceed to Falmouth for orders to proceed to any one safe port in Great Britain, or on the continent between Havre and Hamburgh, and there deliver the cargo. The ship reached Falmouth July 10th. The master there heard rumors of war between France and Germany. On the 11th consignee ordered him to proceed to Dunkirk and discharge. He arrived off Dunkirk on the night of the 16th, where a pilot boarded him, and told him war had been declared two days before. Thereupon he put back to The Downs, where he could learn nothing. On the 18th he was told by the German consul at Deal, where he went ashore, that war had been declared. He then telegraphed the owners for orders, who forbade him to go to Dunkirk. On the 19th he put into Dover, the nearest port, and on that day war was declared. On the 23rd, the consignees ordered him to Dunkirk, and on his refusing to go, required him to deliver the cargo at Dover. This he refused to do unless his freight was paid. *Held*, that he had committed no improper deviation, and no breach of contract, and that freight must be paid.—*Duncan* v. *Koster*, "*The Teutonia*," L. R. 4 P. C. 171.

See Assignment of Freight.

Fund in Court.—*See* Solicitor, 4.

Future Church.—*See* Will, 4.

General Guarantee.—*See* Guarantee.

Gift for Life.—*See* Construction, 4.

Gift of Residue.—*See* Construction, 2.

Gift to a Class.—*See* Construction, 2.

Guarantee.

W. had overdrawn £3,000 at his bank, and wished for more credit. The bank took as security a note for £2,000 signed by W.'s father, a deposit of some title-deeds, and a guarantee under seal by the latter, whereby he agreed that the said deeds should remain with the bank as security for the payment "of all money due or to become due" from the son. *Held*, a continuing guarantee for all sums advanced to the son. *Semble*, that a general guarantee under seal can be terminated.—*Burgess* v. *Eve*, L. R. 13 Eq. 450.

Guardian and Ward.—*See* Custody of Child.

Heir-at-Law.—*See* Purchase-Money.

Highway.

It is doubtful whether there is any presumption of law that an abuttor on a highway owns

the fee *ad medium filum viæ*.—*Beckett* v. *The Corporation of Leeds*, L. R. 7 Ch. 421.

Hotchpot.

J. devised and bequeathed real and personal estate to trustees for conversion after the death or marriage of his widow. The widow was to occupy his business premises, and use the property therein during her life, or till her marriage. Trustees were to sell the "personal trust property not invested," and pay the widow the income of the proceeds during life or until marriage. They were further directed to hold the trust property in trust for the children living at the death or marriage of the widow, and their issue then living of children dying before that time, such issue to take "according to the stocks, and not to the number of individuals composing a class." His real estate was to be considered converted at the time of his death. No child to whom testator had made an advance during his lifetime was to share in the trust property "without bringing the portion so paid . . . into hotchpot." A daughter died after testator, leaving issue. *Held*, that such issue could not be brought within the hotchpot provision.—*Hewitt* v. *Jardine*, L. R. 14 Eq. 58.

Husband and Wife.—*See* Bigamy; Evidence, 3.

Identity.—*See* Evidence, 2.

Indictment.

By a statute it was provided that any one convicted of a certain crime "after having been previously convicted of felony," should suffer a certain punishment. Prisoner was proved to have been before convicted of felony but the indictment failed so to state. *Held*, that the statute did not apply.—*The Queen* v. *Willis*, L. R. 1 C. C. R. 363.

Infant.—*See* Solicitor, 3.

Infant, Custody of.—*See* Custody of Child.

Infringement of Patent.—*See* Practice, 2.

Injunction.

1. The Court of Chancery will not enjoin the Bank of England from requiring more evidence of a death than the court itself is in the habit of considering sufficient in similar cases.—*Prosser* v. *Bank of England*, L. R. 13 Eq. 611.

2. The court will not enjoin the publication of an alleged libellous document, at least when it is reasonably certain that there is no malice.—*Mulkern* v. *Ward*, L. R. 13 Eq. 619.

3. T. sold his rights in a manor to D. & F., who sold it to the Board of Works, for the purpose of converting it into a metropolitan common under the act giving the Board power to lay out commons. In the conveyance to D. and F. there was a stipulation, that if within five years the manor should not be used for a common without buildings upon it, T. might repurchase what he had sold at a stated price. The Board proposed, in a petition to the Inclosure Commissioners, to lay out the common, and on one portion of it build houses, the rent of which would help pay the expenses. The commissioners drafted a scheme in conformity to the proposal of the Board. In order for this scheme to go into effect, it was necessary that it should go before Parliament. *Held*, that injunction would lie in favor of T. against the Board to prevent it from doing anything contrary to the original stipulation between T. and D. & F.—*Telford* v. *Metropolitan Board of Works*, L. R. 13 Eq. 574.

See Prerogative of Crown; Scandalous Matter.

Insanity.—*See* Deed.

Insurance.

A. wrote to a mutual company for insurance, and agreed to be governed by the rules thereof. A policy duly stamped was issued to him, containing no allusion to the rules, and when that expired another like it issued. *Held*, that A. was bound by the rules.—*In re Albert Average Association*, L. R. 13 Eq. 529.

See Mortgagor and Mortgagee; Sale.

Intention.—*See* Will, 2, 8.

Interrogatories.—*See* Privilege.

Iron Mines.—*See* Surface Lands.

Issue.—*See* Will, 10.

Joint Tenant.—*See* Will, 3.

Joint Trial.—*See* Evidence, 3.

Judgment.—*See* Foreign Judgment.

Jure Coronæ.—*See* Prerogative of Crown.

Jury.—*See* Practice, 8.

Landlord and Tenant.

1. In a lease from plaintiff to C., the latter covenanted not to allow a sale by auction on the premises. On non-payment of rent, or breach of covenants, there was a proviso for re-entry. C. mortgaged goods on the premises with power in the mortgagees, on breach of condition, to sell by auction on the premises. C. afterwards mortgaged the premises to defendant by a sub-lease, with provision that C. should remain in possession. He afterwards assigned all his property for the benefit of creditors. There was breach of condition in both mortgages, and the mortgagees of the goods sold the same by auction on the premises, with C.'s consent, but without that of plaintiff. In ejectment by the plaintiff he assigned as breaches the auction sale; and also failure to pay rent since the sale. A judge's order directed a stay of proceedings on pay-

ment of the rent. The rent was refused by plaintiff, and it was paid into court. *Held*, that there was a forfeiture under the proviso not to allow an auction sale, notwithstanding C.'s assignment of his property; and that the claim of breach for non-payment of rent accruing subsequently, did not amount to a waiver of such forfeiture.—*Toleman* v. *Portbury et al.*, L. R. 7 Q. B. (Ex. Ch.) 344.

2. Statute of 4 Anne, ch. 15, § 10, protects tenants in respect of payments of rent made before notice of assignment of the reversion. L. demised premises to defendant for five years from July, 1864, at a rent of £55 per annum, payable quarterly; but paid down £170 as advance rent. L. subsequently mortgaged the premises to plaintiff. Afterwards B., claiming under a prior mortgage, commenced an action of ejectment against defendant, but abandoned it. Whereupon plaintiff's attorney wrote to defendant, saying that B. had abandoned his suit, and demanding the rent then due. *Held*, that in spite of the advance on account of rent, the defendant was liable to plaintiff from the time of demand, which, under the circumstances, was sufficient notice under the statute. —*Cook* v. *Guerra*, L. R. 7 C. P. 132.

3. Defendant in a conveyance to himself in fee covenanted for himself and his assigns, that the premises should not be used for a beer-shop. He subsequently leased the premises, and lessee covenanted not to carry on certain callings, not including that of selling beer, and defendant made a covenant for quiet enjoyment. Plaintiff, as assignor of this lease, opened a beer-shop on the premises, and defendant's vendor got an injunction from the chancery court to restrain him from carrying on the trade of selling beer. In an action on the express or implied covenants in defendant's lease, *held*, that the covenant for quiet enjoyment did not guarantee to the tenant that he might use the premises for any purpose not mentioned in the restriction in the lease.—*Bennett* v. *Atherton*, L. R. 7 Q. B. (Ex. Ch.) 316.

4. Plaintiff being an outgoing tenant, agreed with the incoming tenant for the value of certain things to be left on the place. It was the custom in such cases for the outgoing tenant and the landlord to make such an arrangement, the latter taking and paying for the things. The landlord informed the incoming tenant that rent was due from the outgoing tenant, and requested the former to pay the amount of valuation to him, the landlord, as was done. In an action by the outgoing tenant to recover that amount from the incoming tenant, *held*, that there must be nonsuit.—*Strafford* v. *Gardner*, L. R. 7 C. P. 242.

See Bankruptcy, 3.

Lease.—*See* Bankruptcy, 3; Landlord and Tenant, 3; Statute of Frauds, 1.

Legacy.

1. Testator left two codicils. In the first he gave certain legacies, to each of his servants a year's wages, and to D. W. £2,000. In the second he gave a less sum to three of the legatees named in the first codicil, a year's wages "literally interpreted" to each of his servants, £2,000 to a new legatee, W. E., and D. W. was not mentioned. In other respects the two codicils were alike. A letter from testator's solicitor was offered at the probate, advising the testator to copy the first codicil. *Held*, that the legacies were cumulative, and the letter inadmissible.—*Wilson* v. *O'Leary*, L. R. 7 Ch. 448.

2. Testator *inter alia* directed his trustees to pay £100 to his wife yearly during her life, so long as she and his son E. should live together, "but if they should cease to reside together," payment to cease. The widow and son lived together until his death. *Held*, that the payment did not cease at his death.—*Sutcliffe* v. *Richardson*, L. R. 13 Eq. 606.

3. A testator gave power to his trustees to sell real and personal estate, if they should think fit, and out of the residue of his real and personal estate to pay certain legacies. *Held*, that from the four corners of the will, it was a case for the payment of legacies out of both real and personal *pro rata*.—*Allan* v. *Gott*, L. R. 7 Ch. 439.

See Will, 9.

Legal Representative.—*See* Construction, 3.

Legatee.—*See* Will, 6.

Lessor and Lessee.—*See* Bankruptcy, 3.

Letters. — *See* Practice, 4; Statute of Frauds, 1.

Letters-Patent.

1. An American patented his invention in America, France, and England in the same year. The patent had run out in France, and was nearly out in America. *Held*, that it was not policy to renew it in England.—*In re Winan's Patent*, L. R. 4 P. C. 93.

2. On an application for an extension the judiciary committee required an intelligible statement of previous profits and losses on the patent to be filed, and without such statement refused to prolong the patent. Costs were awarded the *bona fide* opponents of the petition in the lump.—*In re Wield's Patent*, 4 P. C. 89.

Lex Domicilii.—*See* Will, 9.

Lex Loci.—*See* Will, 9.

Liability of Builder.

The civil code of Lower Canada, art. 1686, provides that "if a building perish in whole or in part within ten years from a defect in construction, or even from the unfavourable nature of the ground, the architect superintending the work and the builder are jointly and severally liable for the loss." W., a builder, contracted prior to the passage of the code to build Christ Church Cathedral in Montreal, according to plans furnished by an architect, and upon a foundation laid by a previous contractor, and approved by an architect having charge of the work. Before the cathedra was finished the tower sank and damaged the building. The sinking was caused by defects in the nature of the soil under the foundation. *Held*, that the builder was responsible for the sinking, and the damage it caused.—*Wardle* v. *Bethune*, L. R. 4 P. C. 33.

Liability of Shareholder.—*See* Company, 2.

License.—*See* Construction of Statute, 2.

Lien.

The owner of land taken by a railway under the Lands Clauses Act has no lien on the land for the cost of the award by which the price to be paid was fixed.—*Ferres* v. *Stafford & Uttoxeter Railway Company*, L. R. 13 Eq. 524.

See Assignment of Freight; Auction 1, 2; Solicitor, 1–4.

Life Estate.—*See* Estate for Life.

Life Insurance.—*See* Mortgagor and Mortgagee.

Limitations, Statute of.—*See* Statute of Limitations.

Limited Administration.—*See* Administration, 2.

Limited Liability.—*See* Company, 2; Jurisdiction.

Loan.—*See* Company, 4.

Lords of the Treasury.—*See* Mandamus.

Lunatic.

G. became insane in France, and a *curator bonis* was appointed by the court there. A sum of money to which G. was entitled was paid into the English court under the Trustees Relief Act. The French *curator bonis* applied for this fund. *Held*, that the court had discretion, and would order payment of the income merely.—*In re Garnier*, L. R. 13 Eq. 532.

Mahomedan Religion.—*See* Custody of Child.

Mala Praxis.—*See* Barrister.

Manager.—*See* Partnership, 2.

Mandamus.

The Annual Appropriation Act set apart a portion of the money granted to the Queen to the payment of costs of "prosecution, hitherto paid out of county rates." Costs of certain prosecutions, were duly taxed and paid by the county treasurer, who sent the bill with his vouchers to the lords of the treasury. They returned the bills in part disallowed. A rule *nisi* for a mandamus to the lords of the treasury, commanding them to pay the said sums to the persons entitled having been obtained, *held*, that there was no such relation between the lords of the treasury as servants of the crown, and the payees of the money as would sustain mandamus, though the lords had erred in not paying the bills without questioning their correctness.—*The Queen* v. *The Lords Commissioners of the Treasury*, L. R. 7 Q. B. 387.

Marriage—*See* Bigamy.

Marriage Settlement.—*See* Construction, 3; Debt.

Married Woman.—*See* Evidence, 3; Municipal Election.

Marshalling Assets.—*See* Will 9.

Master and Servant.—*See* Bailor and Bailee.

Misdescription.—*See* Descriptio Personarum.

Misjoinder.—*See* Pleading, 2.

Mistake.—*See* Vendor and Purchaser, 1.

Mortgage.

B. and H., mortgagees in possession, having a power-of-sale mortgage, filed a bill for foreclosure, and notified the parties interested of the hearing thereon. They then filed a petition in the matter of 25 and 26 Vict. 108, for leave to sell the surface lands apart from the mines. Granted.—*In re Wilkinson's Mortgaged Estates*, L. R. 13 Eq. 634.

See Assignment of Freight; Executor and Administrator; Landlord and Tenant, 2; Power of Sale; Vendor and Purchaser, 2.

Mortgagor and Mortgagee.

A holder of a policy on his own life, mortgaged it, and then became bankrupt, but continued to pay the premiums until his death. *Held*, that the premiums so paid should be deducted from the policy-moneys in favor of mortgagor's representatives as being in the nature of salvage-moneys.—*Shearman* v *British Empire Mutual Life Assurance Company*, L. R. 14 Eq. 4.

Mortmain Acts.—*See* Will, 4.

Multifariousness.—*See* Pleading, 2.

Municipal Election.

Married women cannot vote at municipal elections under 32 & 33 Vict. ch. 55, § 9, which provides, that in the Municipal Corporation Act the phrases indicating the male sex shall embrace persons of the female sex, for all purposes of voting provided for in that Act; and the Married Woman's Property Act, 33 and 34 Vict. ch. 93, confers no political rights, by

implication or otherwise.—*The Queen* v. *Harrald*, L. R. 7 Q. B. 361

Mutual Company.—*See* Insurance.

Necessaries.—*See* Solicitor, 4.

Negligence.—*See* Collision; Partnership, 2; Proximate and Remote Cause.

Next Friend.—*See* Solicitors.

Next of Kin.—*See* Administration, 1; Construction, 3.

Non-Joinder.—*See* Pleading, 2.

Notice.—*See* Condition Precedent; Landlord and Tenant, 2; Vendor and Purchaser, 2.

Notice to Treat.—*See* Railway, 2.

Obscene Publication.

One George Mackay was tried for selling under the direction of a religious society a book called "The Confessional Unmasked," consisting of extracts from Roman Catholic theologians and divines. The book was condemned as immoral and obscene. The society then published a "Trial of George Mackay," in which said book somewhat expurgated, but still offensive, was set forth as part of the proceedings. *Held*, that the publication was not privileged from being part of a judicial trial, and that the new issue should be suppressed. *Steel* v. *Brannan*, L. R. 7 C. P. 261.

Onus Probandi.—*See* Practice, 6.

Order of Inspection.—*See* Practice, 3.

Papers in Suit.—*See* Solicitor, 1.

Parent and Child.—*See* Undue Influence.

Parol Evidence.—*See* Contract, 2.

Parties.—*See* Pleading, 2.

Partner.—*See* Partnership, 1.

Partnership.

1. A., B. and C. were partners under articles which provided that, upon the death of one partner, the others should continue the business, and pay a portion of the profits to the representatives of the deceased. There was no capital in the firm, except about £100 worth of office furniture. After the death of A. his executors continued to receive a share of the profits, and to demand account of the business. *Held*, that they were not liable as partners.—*Home* v. *Hammond et al.*, L. R. 7 Ex. 218.

2. A manager of a partnership business agreed to act in the discharge of his functions "without infringing the copartnery rights of" a certain partner. Trustees representing three-fourths of the property authorized the manager to sign the partnership name. *Held*, that he must have the consent of the remaining partners whose rights he had agreed not to infringe. It is acting in excess of a general manager's legitimate powers to increase the wages of employés or to substitute new and expensive machinery, and negligence in him to deposit large sums of cash in banks, or to sign blank checks for clerks to fill up.—*Beveridge* v. *Beveridge*, L. R., 2 H. L. (Sc.) 183.

See Pleading, 1.

Partnership Books.

A defendant in a personal suit cannot be required to produce the books of a firm to which he belongs without the consent of his partners.—*Hodley* v. *McDougall*, L. R. 7 Ch. 312.

Patent—*See* Letters-Patent, 1, 2; Practice, 2.

Payment into Court.—*See* Jurisdiction.

Periodical Payment.—*See* Construction of Statute, 2.

Performance.—*See* Contract, 3.

Perpetuities, Statute of.—*See* Statute of Perpetuities.

Personal Estate.—*See* Legacy, 3; Will, 1, 9.

Plea to Jurisdiction.—*See* Practice, 4.

Pleading.

1. A bill to dissolve partnership, and for accounts, set forth a deed which showed that a certain sum had been put in by defendant. The bill said the sum named in the deed was incorrect, but did not pray that the accounts concerning it might be opened. Defendant said in his answer, that the accounts were looked upon as settled at the time of the deed, on the basis there set forth, and refused to give the items in reply to interrogatories. *Held*, that defendant need not demur under the circumstances, but might include all his defence in the answer.—*Wier* v. *Tucker*, L. R. 14 Eq. 25.

2. Bill filed by plaintiffs on behalf of themselves and all other owners and occupiers of land, other than waste land within the forest of E., except such owners and occupiers as were made defendants, the lords of manors within the forest, persons claiming waste lands which they had enclosed, the attorney-general, and all others interested. Plaintiffs set forth that they were owners and occupiers within the limits of the forest, that the crown had reserved rights therein, to which the rights of the manors were subject, that the forest courts had had jurisdiction immemorially, and that by the forest laws owners and occupiers had enjoyed common of pasture, appendant and appurtenant, in said waste lands from time immemorial. An injunction to restrain defendants from inclosing said waste lands was prayed, together with a general declaration of rights. *Held*, on demurrer, that there was equity in the bill, as being a claim for a general right against several persons claiming particular rights, that there was no misjoinder of

owners and occupiers, that the bill was not multifarious, and that the joinder of "others interested," either as plaintiffs or defendants, was not essential.—*Commissioners of Sewers of the City of London* v. *Glasse*, L. R. 7 Ch. 456.

See Indictment; Practice, 4; Statute of Frauds, 2.

Policy.—*See* Insurance; Mortgagor and Mortgagee.

Power of Anticipation.—*See* Estate for Life.

Power of Directors.—*See* Ultra Vires.

Power of Sale.

D. mortgaged an estate to I., with power of sale. I., after the mortgage became due, assigned it to K. and R. In this assignment the deed from D. was recited, and there was added: "but the said power has not been, and is not intended to be exercised." The recitals set forth also that K. and R. were to pay the mortgage on receiving an assignment of the security. I., at the request of D., assigned and confirmed to K. and R., the money due on the mortgage, and all "powers . . . for recovering the same . . . and every covenant and security therein . . . contained." I. also conveyed to K. and R. in mortgage with a new stipulation, as to time of payment of the debt, and with power of sale on default. D. confirmed the latter deed. *Held*, that the power of sale in the original mortgage from D. to I. was not lost by the subsequent assignments, and new covenants and recitals.—*Boyd* v. *Petrie*, L. R. 7 Ch. 583.

See Executor and Administrator; Mortgage.

Practice.

1. In an action against a foreign ship the præcipe laid the damages at £500, for which the owners gave bail. Judgment was given for £452 2s. 8d., with £432 10s. 3d. costs. Defendants paid the £500, and refused to pay more. The court ordered a writ to issue for the seizure of the ship, for payment of the balance.—*The Freedom*, L. R. 3 Ad. & Ec. 495.

2. In a suit for infringement plaintiffs obtained a verdict, and an order for an account of profits. Defendants appealed from the verdict, and on the hearing to take an account of profits refused to produce their books. *Ordered*, that the books be produced without awaiting the determination of the appeal.—*Saxby et al.* v. *Easterbrook, et al.*, L. R. 7 Ex. 207.

3. In an action against ship agents for damages for having been induced to take passage in an unseaworthy vessel, inspection of certain letters alleged to have been written by plaintiff's fellow-passengers to defendants, complaining of the condition of the vessel; and of letters of the masters and agent, written after the complaints, were asked for, on the ground that they contained information necessary to the cross-examination of witnesses of defendants. *Held*, no ground for inspection.—*Richards* v. *Gellatly et al.*, L. R. 7 C. B. 127.

4. The respondent to a divorce suit pleaded want of jurisdiction, and delayed filing an answer on the merits during the pendency of the hearing on said plea. *Held*, that she should have pleaded the facts as to jurisdiction in her answer on the merits, and filed her answer within the proper time.—*Wilson* v. *Wilson, et al.*, L. R. 2. P. & D. 341.

5. Two of the testator's three executors were, with others, his partners in business, where part of his property remained for some time after his decease. On a bill for an account of administration, *held*, that the books of the firm must be produced.—*Vyse* v. *Foster*, L. R. 13 Eq. 602.

6. A suit *in rem*, by the owners of ship A., was brought against ship B., in consequence of a collision. Afterwards a suit *in rem* against ship B. was brought by the owners of the cargo on ship A. *Held*, that an application for permission to use, in the second suit, the evidence adduced in the first could not be granted without the consent of the defendants.—*The Demetrius*, L. R. 3 Ad. & Ec. 523.

7. A view may be allowed the jury after the summing up of the judge.—*The Queen* v. *Martin et al.*, L. R. 1 C. C. R. 378.

See Evidence, 1, 2; Letters-Patent, 3; Mortgage; Solicitor, 4.

Precedent Condition.—*See* Condition Precedent.

Premium.—*See* Mortgagor and Mortgagee.

Prepayment of Rent.—*See* Landlord and Tenant, 2.

Prerogative of Crown.

An action of trespass was begun by the copyholder and terre-tenant of lands, in respect of which the Queen as lady of the manor had granted a license to enter and dig for minerals, against the licensees. The Queen, by her attorney-general, filed a bill on the equity side, asking that the action at law might be restrained. *Held*, that the Queen being interested in the proceedings, had a right *jure coronæ*, to be a party thereto; and therefore equity had jurisdiction, and the injunction must go.—*Attorney-General et al.* v. *Barker et al.*, L. R. 7 Ex. 177.

Presumption.—*See* Highway,

Prima Facie Proof.—*See* Evidence, 2.

Principal and Agent.—*See* Contract, 4.

Priority.—*See* Assignment of Freight; Solicitor, 4.

Privilege.

A defendant declined to give certain information obtained from letters of his partner, although the letters were sent to him, for him to make use of in his defence. *Held*, that he was privileged with respect to the information contained in the letters.—*Phillips* v. *Routh*, L. R. 7. C. P. 287.

See Obscene Publication.

Prize.—*See* Construction of Statute, 1.

Probate.—*See* Administration, 1, 2; Will, 8.

Procheni Amy. —*See* Solicitor, 3.

Production of Documents.—*See* Partnership Books.

Professional Advice.—*See* Undue Influence.

Professional Misconduct.—*See* Barrister.

Profits.—*See* Partnership, 1.

Prohibition, Writ of.—*See* Jurisdiction.

Proof of Claim.

By the custom of Cornwall, a shareholder in a mine conducted on the cash-book plan, upon giving up his shares and paying calls, is entitled to his share of the stock and plant. A year after P., a shareholder in a Cornish mine, had relinquished his shares as above, without being paid his share in the stock and plant, the company was wound up. *Held*, that P. might prove a claim for his share of the stock and plant, as a creditor.—*In re Prosper United Mining Company*, L. R. 7 Ch. 286.

See Bankruptcy, 2.

Proof of Death.—*See* Injunction, 1,

Provision for Children.—*See* Debt.

Proxies.—*See* Practice, 6.

Proximate and Remote Cause.

Defendants were negligent in allowing their vessel to strike on a bank; she was driven thence against the plaintiff's sea-wall, as was inevitable, after she had once struck the bank. *Held*, that defendants were liable.—*Romney Marsh* v. *Trinity House*, L. R. 7 Ex. 247; s. c. L. R. 5 Ex, 204.

See Damages, 2.

Public Safety.—*See* Liability of Builder.

Punishment.—*See* Indictment.

Purchase-Money.

H. agreed to purchase real estate, and died before the purchase was completed, and the vendor neglected to enforce specific performance. *Held* that the heir-at-law of H. was entitled to the purchase money.—*Hudson* v. *Cook*, L. R. 13 Eq. 417.

Quiet Enjoyment.—*See* Landlord and Tenant, 3.

Railway.

1. A railway company covenanted with parties who built refreshment saloons along the line, that all trains, "except . . . those not under the control of the company," should stop ten minutes at a certain station. The post-office department required the company to run a mail train, stopping five minutes at said station. *Held*, in an action on the covenant, that such train was not under the control of the company."—*Phillips* v. *The Great Western Railway Company*, L. R. 7 Ch. 409.

2. Plaintiff agreed with defendant company to sell it eleven acres of land, from a tract containing two hundred acres, at an agreed price; and it was further stipulated, that if the company wanted more land, it should pay at the rate of £100 per acre for it. The agreement was to be supplemental to the Lands Clauses Acts. The company took the eleven acres, and before the expiration of the power to take land given under its Acts, it gave notice to treat for three acres without mentioning the agreement. Subsequently the company abandoned its proposal to treat, and claimed under the agreement. The engineer testified that the three acres were needed for the business of the road. *Held*, that the company could take only a necessary quantity under the agreement, that it was not estopped from asserting the agreement by its notice to treat, that the engineer's word was *prima facie* evidence of what quantity of land the road needed; and that it should have the three acres at £100.—*Kempt* v. *Southeastern Railway Company*, L. R. 7 Ch. 364.

See Condition Precedent; Lien.

Ratability.—*See* Surface Lands.

Real Estate.—*See* Legacy, 3; Will, 9.

Realty and Personalty.—*See* Legacy, 3.

Rebuttal.—*See* Evidence, 2.

Recitals.—*See* Power of Sale.

Referee.—*See* Evidence, 4.

Remoteness.—*See* Will, 10.

Renewal of Patent.—*See* Letters Patent, 2.

Rent.—*See* Auction; Landlord and Tenant, 2, 4.

Residuary Legatee.—*See* Will, 6.

Restraint of Princes.—*See* Contract, 1.

Restriction as to Particular Trade.—*See* Landlord and Tenant, 3.

Resulting Trust.—*See* Statute of Frauds, 2.

Risk.—*See* Sale.

Rule in Shelley's Case.—*See* Trustee, 2.

Sale.

Plaintiffs, according to their custom, sold defendant sugar on these terms: "Prompt at one

month; goods at seller's risk for two months." "Prompt" meant on the Saturday after the expiration of one month. The sugar was in "fillings," *i. e.*, separate lots finished on different days, each filling consisting of about 300 "tytlers" or loaves. The sugar was to remain in the seller's warehouse two months, unless the buyer wished it sooner, in which case he sent orders for so much as he wished, and if it was not all delivered on the "prompt" day, an approximate sum was paid, and after the remaining sugar was weighed to ascertain the balance due. Plaintiffs had floating policies of insurance on their stock, including goods in the warehouse "sold and paid for, but not removed." Defendant had nothing to do with this insurance. More than two months after a sale of four fillings to defendant, part of which he had removed and paid for, leaving an unascertained balance to be weighed and removed, a fire consumed the warehouse and its contents. *Held*, that the loss fell on the buyer, and that he had no claim for any insurance. Cockburn, C. J., thought the property in the goods, though they were undelivered, had passed.—*Martineau et al.* v. *Kitching*, L. R., 7 Q. B. 436.

See Auction.

Scandalous Matter.

The statement that defendant is dealing with the shares which are the subject of controversy, for the purpose of "rigging the market," that is creating a fictitious value to them by pretended sales and purchases, is irrelevant, and hence scandalous in a bill which set forth that plaintiff was entitled to the shares, and that they had been placed in defendant's hands to dispose of as he should think fit, and praying for an injunction to restrain defendant from selling the same until plaintiff should be secured. —*Rubery* v. *Grant*, L. R. 13 Eq. 443.

Seal.—*See* Guarantee.

Separation Deed.—*See* Covenant.

Servant of the Crown.—*See* Mandamus.

Settlement.

P., a spendthrift, upon the suggestion of trustees made over a part of his property to them with power to invest the fund and pay the income to him or any child of his, during his life, and at his death to hold the fund in trust for any widow during her life, according to his appointment, and subject to her right, in trust for his child, if he had any, as he should appoint, and in default of appointment to any child who should attain twenty-one, and failing such child, in trust for a cousin's children. *Held*, that the settlement was not so unreasonable that the settlor could set it aside.—*Phillips* v. *Mullings*, L. R. Ch. 244.

Share in Profits.—*See* Partnership, 1.

Shareholder.—*See* Company 2, 4.

Shelley's Case, Rule in.—*See* Trustee, 2.

Shipment.—*See* Contract, 4.

Signature of Firm Name.—*See* Partnership.

Solicitor.

1. A client neglected to furnish funds for costs on application of his solicitor, and the latter declined to go on. Client thereupon obtained other solicitors, who applied to the former solicitor for the papers in the suit, agreeing to return them without prejudice to his lien for charges. *Held*, that the papers must be given up.—*Robins* v. *Goldingham*, L. R 13 Eq. 440.

2. A solicitor employed in a special case by a company required security for costs, and the company gave him a charge on debts due it. There was a directory clause in the Company's Act that such charge should be registered. *Held*, that the solicitor had no lien, as it was his business to see that the directions of th Act were carried out.—*In re Patent Bread Machinery Company*, L. R. 7 Ch. 289.

3. In 1863 a bill was filed in a friendly suit by the next friend of a minor beneficiary under a will, asking that a guardian be appointed for said minor and his brothers and sisters, for an order for allowance for maintenance and education, for proper accounts, and for a receiver of the income under said will. Action was taken on all these points, and one J. acted as solicitor, being employed by said next friend. In 1866, J., died. In 1867 said minor came of age, and soon after sold the real estate which had come to him under said will. In 1868 he had the receiver discharged, and changed his solicitors. The executrix of J. petitioned for a declaration that the real estate was subject to a lien for J.'s charges as solicitor on the ground that it was properly "preserved" by his skill. *Held*, that the proceedings were necessary, the solicitor duly employed, the action taken ratified by said minor coming of age, and that the lien was good.—*Baile* v. *Baile*, L. R., 13 Eq. 497.

4. A solicitor incurred costs in successfully defending a vessel in a suit against her. Afterwards various suits for necessaries were brought against the vessel, judgment was given against her, and the judge ordered her to be sold, and the proceeds brought into court. Some of the charges were for necessaries supplied before the institution of the first suit, and some after that time. On motion of the solicitor in the

first suit it was *held* that he was entitled to his costs out of the proceeds of the vessel in priority to all claims for necessaries supplied after the institution of that suit, but not to claims for necessaries supplied before that date.—*The Heinrich*, L. R. 3 Ad. & Ec. 505.

See Undue Influence.

Sovereign.—*See* Prerogative of Crown.

Specific Performance.—*See* Covenant.

Spendthrift.—*See* Settlement.

Stamp Act.—*See* Construction of Statute, 2.

Statute, Construction of.—*See* Construction of Statute.

Statute of Frauds.

1. D. had a verbal agreement with P. for the lease of a house for seven years. Afterwards D. wrote to P., stating certain conditions upon which he would take the house. P. replied, not agreeing to all the conditions. D. ultimately refused to take the house, and P. brought a bill for specific performance. *Held*, that the transaction was within the statute of frauds.—*Nesham* v. *Selby*, L. R. 7 ch. 406.

2. Plaintiff conveyed an estate to defendant by what purported to be an absolute deed. No money however was paid, and plaintiff denied that the conveyance was in trust. Defendant claimed that plaintiff made the conveyance through fear of creditors, and that he was to account for the rents until he paid the purchase-money or reconveyed the estate, and he set up the statute of frauds. *Held*, that if defendant chose to rely on "his own scoundrelism," he must aver it more distinctly, that the statute did not apply to protect fraud, that there was a resulting trust, and defendant must reconvey.—*Haigh* v. *Kaye*, L. R. 7 ch. 469.

See Contract, 2.

Statute of Limitations.

By a private Act of 2 & 3 Ph. & M. ch 23, estates were given to N. and others successively in tail male. On failure of all other limitations there was a final limitation to the crown. There was also a provision that no "act . . thereafter . . suffered" by any of the persons named, "or by any of the heirs male of their several bodies . . should . . put from entry . . any of the heirs in tail," or the crown. In 1781, a lease of said lands was made by the tenant in tail. Since the expiration of the lease in 1832, more than twenty years ago, defendant, and those whom he claimed through, had held the lands adversely. In an action by the heir in tail male, *held* (Bramwell, B., *dissentiente*), that plaintiff was not barred by the statute of limitations of 3 & 4 Wm. IV. ch. 27, under which a lapse of twenty years after a tenant in tail is dispossessed and has a right of entry, is a good defence in ejectment.—*Earl of Abergavenny* v. *Bruce*, L. R. 7 Ex. 145.

Statute of Perpetuities.—*See* Will, 10.

Street.—*See* Highway.

Surrender of Lease.—*See* Bankruptcy, 2.

Taxing Costs.—*See* Mandamus.

Tenant in Common.

A tenant in common of a farm entered on the land, put a lock on the entrance gate, cut the grass, made it into hay, and carried the hay away. *Held*, that the co-tenant could maintain neither trespass nor trover.—*Jacobs* v. *Seward*, L. R. 5 H. L. 464.

Tender.

Defendants gave notice that they had tendered in court a certain sum without costs of suit, but did not state the grounds upon which they claimed that plaintiff was not entitled to costs. *Held*, a bad tender.—*The Thracian*, L. R. 3 Ad. & Ec. 504.

Termini.—*See* Common Carrier.

Testamentary Intention.—*See* Will, 2.

Trade-Mark.

R. J. had a secret preparation which he called "R. J.'s Horse-Blister." R. J. J. learned the secret in the course of his employment, and after the death of R. J. began to manufacture what he called "R. J.'s Horse-Blister." *Held*, that he might do so, but could be enjoined from saying in his advertisements that the manufacture of R. J.'s regular successors was spurious, or that his own was the "only genuine."—*James* v. *James*, L. R. 13 Eq. 421.

Transfer of Shares.—*See* Company, 3; Descriptio Personarum.

Trespass.—*See* Tenant in Common.

Trover.—*See* Tenant in Common.

Trust.

A testator after making certain bequests, and disposing of the residue of his estate, continued: "I further will and desire that my executor do pay the trustees of" a charity "a further sum of £1,000 . . for the following use, that is, to pay the required amount" to keep his gravestone in repair, "yearly if required," and to give the balance to the said charity as he directed. *Held*, that though the sum needed for such repairs was uncertain, the gift to the charity was good, and the trust to make the repairs honorary merely.—*Hunter* v. *Bullock*, L. R. 14 Eq. 45.

See Construction, 1; Equity; Statute of Frauds, 2; Will, 4.

Trust for Sale.

Two tenants in common of freehold hereditaments conveyed to plaintiff in trust to sell or exchange for other real estate, and hold the proceeds to their use. Subsequently L. and S. made an agreement reciting the deed to plaintiff, and directing that plaintiff should allot the hereditaments enumerated in the first schedule annexed thereto to L. as his part, and those in the second schedule to S. for her part, and that plaintiff should continue to stand possessed of the property as trustee. In both instruments it was provided that the interest of S. should be held to her sole and separate use. S. married an alien, and died leaving a will, in which she gave her husband, *inter alia*, a life-interest in "all my landed property," describing the foregoing hereditaments. In a bill filed to carry out the trusts raised by the two deeds mentioned, *held*, that the second agreement put an end to the trust for sale, and the property must still be considered real estate; but even if the trust for sale still existed, S. by her will had elected to consider it real estate, and therefore the husband, being an alien, could not take under the will, the Naturalization Act of 1870 not being retrospective.—*Sharp* v. *St. Sauveur*, L. R. 7 ch. 343.

Trustee.

1. Trustees under a marriage settlement were authorized to invest in such real or personal securities as they should think fit. On a legal separation taking place, the trustees applied for directions as to a note of hand for the sum of £2,500, given by the wife to the husband before marriage. *Held*, that it might remain, on the husband's giving bonds for that amount with interest at five per cent.—*Pickard* v. *Anderson*, L. R. 13 Eq. 608.

2. Conveyance to B., his heirs and assigns, to the use of C. for life, then to the use of B., his heirs and assigns, upon trust to pay the income to M. for her life, and at her death B. to stand seized to such uses as M. should appoint, and in default of appointment, to the use of the heirs and assigns of M. for ever. *Held*, that the legal estate in fee was in B., and the equitable estate in fee was, by virtue of the rule in Shelley's case, in M. *Aliter* in case of a will.—*Cooper* v. *Kynock*, L. R. 7 Ch. 398.

3. A trustee reconveyed property of which he had a mortgage to the mortgagor, and appropriated the money to his own use. The mortgagor mortgaged the property to other parties, the trustee assisting him to conceal both the first mortgage and the conveyance back. *Held*, that the *cestuis que trust* had no priority over the second mortgagees. The same trustee took a conveyance in fee from his mortgagor, and, suppressing the mortgage made an abstract of title ending in himself, which was acceptable to the conveyancing counsel of the chancery court, and mortgaged the property to other trustees. *Held*, that having no notice they took a good legal title. *Pilcher* v. *Rawlins*, L. R. 7 Ch. 260.

4. Trustees held property in trust for E., wife of W., during his life, and on her death for W., and on his death, for such as she should appoint, and in default of appointment, for W., his executors and assigns. E. by will directed that W. should receive the income for life, subject to some annuities. One half of the principal she gave to W., and the other half she gave in legacies to be paid at his death. She made him executor. *Held*, that the trustees were justified in paying over the whole of the fund to W. at once.—*Hayes* v. *Oatley*, L. R. 14 Eq. 1.

See Bankruptcy, 3; Forfeiture, 1; Will, 4

Ultra Vires.

The directors of the N. Company (limited), were empowered "to enter into, alter, rescind, or abandon contracts in such manner as they should think fit." *Held*, that they acted within their powers in releasing their secretary, in consideration of his resigning his office, from an engagement to take 150 shares.—*In re Nanteos Consol Company*, L. R, 13 Eq. 437.

Umpire.—*See* Evidence, 4

Unauthorised Loan.—*See* Equity.

Undue Influence.

A father had a life-interest in certain property, reversion to his son. Part of the property came from the father's ancestor, and part from the mother's. The son, who lived with his father and step-mother, had a large income of his own. When twenty-one years old the son, without professional advice, made a deed giving his step-mother and her daughter the reversion in all of said reversionary property, and also giving the father a power to appoint as to that part coming from grantor's mother's side, to any third wife. The son lived five years more with his father, during which time he spoke, when in a passion, of setting the deed aside. He afterwards had solicitors, and the question of setting the deed aside was discussed with them, but the bill to set aside was not brought until nine years after he left his father's house. *Held*, that the circumstances and the nature of the deed were evidence enough of undue influence, but as through the unreasonable delay in bringing

the bill the step-mother and her daughter had reasonably expected to come into the income, only the power in the father to appoint to a third wife should be set aside.—*Turner* v. *Collins*, L. R. 7 Ch. 329.

Vendor and Purchaser.

1. Four years after a conveyance, grantee brought a bill praying that a certain reservation in the deed might be corrected on the ground of mistake. Grantor denied the mistake, and died before making oath to his denial. *Held*, that as in the opinion of the court there was mistake, grantee might have the deed corrected or set aside.—*Bloomer* v. *Spittle*, L. R. 15 Eq. 427.

2. F. made a contract with P. to sell him a leasehold estate, with a stipulation that the purchase-money should be paid at different times, and that the deeds should not be delivered till the money was all paid. P. paid part of the purchase-money, and with F.'s consent made a lease of the premises. P. afterwards deposited his contract from F. with a bank as security for a debt due the bank from him, and at the same time made an agreement in writing to make "a valid assignment of my contract with F. . . by way of mortgage" for further security "upon request" of the bank. Notice of P.'s transaction with the bank was given F. by the bank, couched in the language of the above agreement, and F. acknowledged service thereof Two months after the time limited for the completion of the sale from F. to P., the latter paid the balance of purchase-money due, £10,000, and F. delivered the deeds of assignment to him. No notice was taken of the bank's claim. *Held*, that the agreement to assign to the bank upon request, amounted neither to an absolute assignment nor to an equitable mortgage, and that the notice to F. was insufficient to put him in the position of a trustee for the bank for the balance of the purchase money.—*Shaw* v. *Foster et al.*, L. R. 5 H. L. 321; s. c. L. R. 5 Ch. Ap. 604, *nom. McCreight* v. *Foster*.

See Auction; Contract, 4; Injunction, 3; Sale.

Vendor's Lien.—*See* Lien.

Verbal Agreement.—*See* Statute of Frauds, 1.

Vices du Sol.—*See* Liability of Builder.

View.—*See* Practice, 8.

Voluntary Deed.—*See* Deed.

Voluntary Settlement.—*See* Settlement.

Waiver.—*See* Landlord and Tenant, 1; Railway, 2.

War.—*See* Freight.

Waste, Impeachment of.—*See* Estate for Life.

Weekly Hiring.—*See* Contract, 2.

Wife.—*See* Evidence, 3.

Will.

1. Testator gave his real estate to one, and his personal to another. He had two shares in a navigation company, which was real estate; but some years before his death, by an Act of Parliament, the navigation company had been merged in a railway company, but testator had never either conveyed his navigation shares to the railway, or taken stock in the latter, though the Act gave the option. *Held*, that the shares were personal property.—*Cadman* v. *Cadman*, L. R. 13 Ev. 470.

2. About a year before his decease testator executed an instrument with due formality of a will, beginning: "I have given all that I have to" B. C., J. C., and H. C. One of the attesting witnesses was directed to take the paper to the trustee named "as soon as the breath was out of his (testator's) body." *Held*, a will, notwithstanding the words "have given," instead of "give."—*In the Goods of W. Coles*, L. R. 2 P. & D. 362.

3. A gift to a wife, "for the use and benefit of herself, and of all" testator's children, *held*, to make the wife and children joint tenants.—*Newill* v. *Newill*, L. R. 7 Ch. 253.

4. M. bequeathed a sum to trustees, to be applied "in aid of a Welsh church now in course of erection at A.," and the residue of her personal property "upon trust, to be by them applied in aid of erecting or endowing an additional church at A. aforesaid." There was a church at A., besides the Welsh church mentioned, and no immediate prospect of any other being built. *Held*, that the latter bequest was intended for any future church, and was not to be confined to any existing before testatrix's death, that the gift was not void under the Mortmain Act, but that it was doubtful whether the court would hold the fund indefinitely, or apply the doctine of *cy pres* to it, there being no reasonable prospect of carrying the purpose of the gift into execution.—*Swinnett* v. *Herbert*, L. R. 7 Ch. 232.

5. If a trustee named in a will is not required either expressly or by necessary inference to pay the debts of the estate, the court will not appoint him executor.—*In the Goods of Punchard*, L. R. 2 P. & D. 369.

6. A testator gave property to trustees in trust for his children, born or *en ventre sa mere* at his death; failing that trust, to such of his two brothers as should be living at the time of the said failure of said trust "ascertained." He left a widow, but no children were ever

born to them either before or after his death. *Held*, that the trust failed immediately upon his death, and that "ascertained" meant "made certain."—*Sidebottom* v. *Sidebottom*, L. R. 2 P. & D. 365.

7. T. gave property by will to trustees, to pay the income to S., until M. should become twenty-one, or until she should marry under that age with consent of her guardians, then to pay the income to M. He also gave a sum absolutely to M., and at the end of his will spoke of what he had done for her as his "provision" for her. M. had reached advanced years unmarried. *Held*, that she took a life-interest, subject to modification in the future if she should marry.—*Savage* v. *Tyers*, L. R. 7 Ch. 536.

8. In the blanks of a printed form of a will, the testatrix had written some words partly in ink and partly in pencil. The words in ink, taken in connection with the printed part, made sense; some of the words in pencil were under those in ink, and some were partially rubbed out. The witnesses did not see the paper when they signed. *Held*, that the printed part, and the words in ink, should be admitted as the will.—*In the Goods of Adams*, L. R. 2 P. & D. 367.

9. By the Indian Succession Act, no man having a nephew or niece, or any nearer relative, can give any property to a charity, by a will made twelve months before his death. By said act, immovable property in India follows the law of the place, movable property the law of the domicile. Testator having his domicile in Scotland, gave by will, duly executed, all his property, consisting of real and personal estate, to executors to turn into money, and to pay over the money to trustees in Scotland. The latter he directed to apply the said sum to a charitable purpose. He died within a few days of the date of the will, leaving sisters. There was more than the amount given to the charity of each kind of property in India. In the Scotch law, the English rule against marshalling assets in favour of a charity does not obtain. *Held*, that the whole sum devoted to the charity might be paid out of the Indian movable property.—*Macdonald* v. *Macdonald*, L. R. 14 Eq. 60.

10. A testator created certain limitations and entails, and on their failure directed the property to be paid to the children (except J. G.) of A. then living, and the issue of such of them as should be then dead leaving issue, and the issue of J. G.; the issue of A. to have no greater share than their, his, or her parents would have had, if living; and the issue of J. G. no greater share than the issue of the children of A. would have had in case of the decease of their, his, or her parents. At the end of the will there was a clause, "to prevent all doubts," to the effect that if the money should ever come to the issue of A., or the issue of J. G., or any of them, and any of them should be dead, having left issue, the issue of such issue so dead should have the share which their, his, or her parent would have been entitled to, if living. *Held*, that the "issue" of A.'s grandchildren meant children; that the children of a grandchild of A., which grandchild died before the making of the will, were entitled to the share their parent would have taken, had he been alive at the time of division; and that the clause at the end of the will was not void as being too remote.—*Heasman* v. *Pearse*, L. R. 7 Ch. 275.

See Construction, 1–3; Estate for Life; Forfeiture, 1, 2; Hotchpot; Legacy, 1–3.

Witness.—*See* Evidence, 3.

Words.

"*Children.*"—*See* Will, 10.

"*Control.*"—*See* Railway, 1.

"*Gentleman.*"—*See* Descriptio Personarum.

"*Have Given.*"—*See* Will, 2.

"*Issue.*"—*See* Will. 10.

"*Provision.*"—*See* Will, 7.

"*Rigging the Market.*"—*See* Scandalous Matter.

Writ of Prohibition.—*See* Jurisdiction.

Written Contract.—*See* Contract, 2.

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