The Legal News.

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THE IRISH BAR.

It is stated that students who are desirous of being called to the Irish Bar, are required to keep a number of terms at one of the London Inns of Court, and also to pay certain fees which go into the funds of the Inns. But, notwithstanding this keeping of terms in England and contribution to English Bar funds, Irish barristers are not recognized by the London Inns, nor admitted to practice before the English Courts. An effort has been made recently to introduce reciprocity, but it has proved a failure. A proposal was made by the Benchers of King's Inn, Dublin, to admit English barristers to practice before the Irish Courts, on condition of a similar privilege being accorded to Irish barristers wishing to practice in England. It seems, however, that few or no English barristers are desirous of appearing in the courts of the sister isle, and the committee of the four London Inns of Court, believing that the advantages of such an arrangement would be all on the side from which the offer proceeded, rejected the proposal.

SELF-CRIMINATION.

A good deal has been heard lately about witnesses declining by their answers to furnish evidence against themselves. While the point is engaging attention, reference may be made to a somewhat dramatic incident which occurred a short time ago in a court of Tennessee. In a prosecution for murder, an over-zealous Attorney-General, with a view to establish that a foot-print, observed near the scene of the murder, was made by the prisoner, caused a pan of soft mud, which was proved by a witness to be of the consistency of the mud where the track was made, to be brought into court, and the prisoner was asked to put his foot in it. In complying with this invitation he might have done so in a double sense. At all events, the case was carried, on a writ of error, to the Supreme Court of the State, and that tribunal has held that, notwithstanding the trial court told the prisoner, he need not put his foot in the mud unless he chose to do so, the fact that the mud was brought into court, and the prisoner asked to put his foot in it, was calculated to influence the jury improperly against him, and was, therefore, error, for which the verdict against the prisoner should be set aside. The desired evidence might probably have been obtained without objection from a detective, or other intelligent witness, who had carefully compared the prisoner's boot or foot with the track.

A DIES NON.

Why the 29th of February should be blotted out from the book of days juridical it would be hard to guess. Coming only once in four years it might seem to be worthy of special honor. It might be conjectured that at some remote time it was regarded on that very account as a high festival, and therefore not to be counted as a business day. Cowell's Law Dictionary, however, states that it was to prevent ambiguity. Leap-year was called bissextile, "because the sixth day before the Calends of March is twice reckoned, viz., on the 24th and 25th of February: so that the bissextile year hath one day more than other years, and happens every fourth year: . . . and to prevent all ambiguity that might grow therefrom, it is ordained by the statute *De Anno Bissextili*, 21 H. 3, that the day increasing in the leap-year, and the day next before, shall be accounted but one day." The Supreme Court of Indiana, in the case of *Helphinstine* v. *The Vincennes National Bank*, had the point before it recently, and the ancient statute just referred to was quoted to support the rule followed by the Court. The action was to set aside a judgment in favor of the defendant, on the ground of insufficient service of summons. The service, it was admitted, would be good, if the 29th February, 1876, which intervened between the service and the return day, was to be counted as an ordinary day. The common law of England and statutes passed prior to 4th James I. being in force in Indiana, the judge held that the statute 21 Henry III. was in force in the State. By this statute, he remarked, it was provided, in refer-

ence to the 29th February, in leap-year, "*Et computitur dies ille, et dies proxime precedens, pro unico die*"—that day and the next preceding shall be counted as one day. This rule has been repeatedly laid down in the Courts of Indiana, and the Supreme Court, adhering to the previous decisions, declared the service insufficient.

REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Montreal, Sept. 12, 1878.

Present:—DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

McKINNON, appellant, and THOMPSON, respondent.

Insolvency—Appeal—Security for Costs—Assignee.

The appellant, defendant in the court below, appealing from a judgment against him, in favor of the respondent, who had become insolvent, moved that all proceedings on the part of respondent be suspended until he should have given security for costs, or until his assignee should have taken up the *instance*; and in default of this, that he (appellant) be permitted to proceed *ex parte*. *Held*, that the appellant was not entitled, under sec. 39 of the Insolvent Act of 1875, to demand security from an insolvent respondent, or to call upon the assignee to take up the *instance*, and in any case such motion could not be entertained without notice thereof to the assignee.

McKinnon, the appellant, who had been condemned in the court below to pay the respondent the sum of $400, appealed from the judgment. The plaintiff had become insolvent, and the appellant moved in the first place, that, inasmuch as the respondent was insolvent and an assignee had been appointed to his estate, the respondent be declared incapable of proceeding, and that, he, appellant, be permitted to proceed *ex parte*. This motion was rejected. He now moved that all proceedings on the part of respondent be suspended until he should have given security for costs, or until the assignee should have taken up the *instance*, and that in the event of security not being given, or the *instance* not being taken up, he be permitted to proceed *ex parte*.

The appellant relied on sec. 39 of the Insolvent Act of 1875.

DORION, C. J., said the section referred to enacted that an insolvent should not be allowed to sue out a writ, or commence or continue any proceeding, until he had given security. This was to prevent an insolvent from occasioning the other side useless costs. But the law nowhere said that if the opposite party is proceeding, he can call upon the insolvent to give security or the assignee to take up the *instance*. An assignee was not bound to take up the *instance* unless he considered it in the interest of the estate that he should do so. There was another fatal objection to the motion: the assignee had not received notice, and without notice he certainly could not be deprived of his right to intervene.

Motion rejected.

Wotherspoon, for appellant.

Butler, for respondent.

MONTREAL, Sept. 18, 1878.

RASCONY, (defendant in the court below) appellant; and THE UNION NAVIGATION COMPANY, (plaintiffs below) respondents.

Company, Subscription of Shares before formation of

A subscription of shares in a company to be formed is not binding.

The company sued the defendant, Rascony, for $500, calls due on stock subscribed by him. Rascony pleaded that he never subscribed for stock in the present company, but in an antecedent one which was being organized. The court below sustained the action.

TESSIER, J., said the question was whether the defendant was really a shareholder. In the case of the same company and Macdougall, Macdougall bought shares on which there were calls paid, and after the letters patent had been obtained. But in the case of Couillard, 21 L.C.J. p. 71, the court exonerated Couillard because he had in no way bound himself after the company was incorporated. He merely subscribed to a company to be formed. The court would follow the same principle as that laid down in Couillard's case, and under this Rascony must be exempted from liability. Consequently the judgment of the court below must be reversed and the action dismissed with costs.

Doutre, Doutre, Robidoux, Hutchinson & Walker, for appellant.

Jetté, Beique & Choquet, for respondent.

COOLEY, (plaintiff in the Court below), appellant, and THE DOMINION BUILDING SOCIETY, (defendant below), respondent.

Building Society—Note given as collateral security.

Held, that a note given by a buildin gsociety as collateral security for an advance to the society, is not an ordinary negotiable note, and if lost the holder is not compelled to give security before he can exact repayment of the advance.

The appellant, as sole executor and universal legatee, represented the late John Buxton, who had advanced to the Building Society $1,000, payable at the expiration of a year, with interest at 8 per cent. The Society admitted the indebtedness, but alleged that they had delivered to Buxton, as collateral security, a note for the $1,000, and that by the conditions they were entitled to get this note back before the amount was repaid. It appeared that the note could not be found among the papers of the deceased. The plaintiff offered to deposit Merchants' Bank stock to the nominal value of $1,500 in the hands of a third party, as security that the Society would not be troubled by reason of the note, but this offer was declined, and the Court below being of opinion that the security offered was insufficient, dismissed the action.

DORION, C. J., after stating the circumstances under which the action was brought, said the note here was not an ordinary negotiable note. By itself it was nothing. It was given as collateral security, and was nothing when the debt was acquitted. The appellant, therefore, could not be required to give security, but simply to give up the deposit book.

Judgment reversed.

Archibald & McCormick, for appellant.

Abbott & Co., for respondent.

Montreal, September 21, 1878.

BRAULT, Appellant, and BRAULT, Respondent.

Donation—Judicial Counsel.

Held, where a person had expressed an intention to make a particular donation, and subsequently, while afflicted with softening of the brain and of feeble intelligence, he made the donation with the assistance of a judicial counsel, that the donation was valid.

MONK, J., dissenting, observed that the appeal was from a judgment dismissing an action to set aside a donation from one brother to another, and excluding his brothers and sisters. The grounds on which the action rested were, first, that the deceased was in an unsound state of mind, secondly, that the donation had been obtained by manœuvres and undue influence. The Court below, although it was proved that the donor was suffering from the peculiar disease called softening of the brain, maintained the donation. His Honor thought it was proved beyond all doubt that for three or four years preceding the donation this man was in a state of imbecility, and was incapable of making a valid disposition. The matter was fully examined in the case of Flanigan and Sir George Simpson, which, however, differed from the present. Here the donor was in such a state of imbecility that he could not conduct his business, and his relations thought to improve the condition of things by giving him a judicial counsel. This was a mitigated form of interdiction, and the proof that the act was done in a lucid interval was on the other party. His Honor thought this appointment of a judicial counsel was for the express purpose of doing what they thought there was no chance of effecting otherwise, and of making the donation all right. The man was in a hopeless state of imbecility, and died of the disease. Under the circumstances, his Honor thought the donation should be set aside.

DORION, C. J., said that when the proof was contradictory, as to whether a person had intelligence enough to do an act, the Court must see whether the act was reasonable in itself, and if so, the Court might say that the man had sufficient intelligence to do it. In a case previously adjudged to-day, (*Chapleau* v. *Chapleau*, ante p. 473,) the testator was in *delirium tremens*, and the pretended will had been made only three days before his death. Here the circumstances were different. The donor was afflicted by a disease which did not render him mad or violent, or incapable of doing things. The act was the act of a man of feeble intelligence, but he had long before expressed the intention of doing this very thing, and was but carrying out a resolution formed years before. The donation would therefore be maintained.

M. E. Charpentier, for appellant.

C. Gill, for respondent.

SUPERIOR COURT.

[In Chambers.]

Montreal, September 30, 1878.

RAINVILLE, J.

In re MONTREAL CENTRE ELECTION.

Election—Count—Ballots Opened by Returning Officer.

Held, where the returning officer opened the envelopes containing the ballots as transmitted by the deputy returning officers, that the Judge could not re-count the ballots under section 55 of the Dominion Election Act.

An election having been held for Montreal Centre, and an application having been made under section 55 of the Election Act for a count of the ballots by a Judge, it appeared that the returning officer had removed the ballots from the envelopes in which they had been transmitted to him by the deputy returning officers, and had made them into two packages.

RAINVILLE, J., said the law was very clear and precise, that the ballots as transmitted by the deputy returning officers should remain in the same state until opened by the judge, on a demand being made for a count. The returning officer in the present case had, therefore, exceeded his duty in opening the envelopes. Under the circumstances, his Honor said he could do nothing, and he would declare the impossibility of taking any action, and leave the returning officer to adopt such course as he might be advised. Each party to pay his own costs on this application.

Devlin, and *Archambault*, *Q.C.*, for petitioner.
Lacoste, *Q.C.*, and *Curran*, *Q.C.*, for respondent.

THE LAW IN REGARD TO VESSELS PROCEEDING TO SEA, AND THE COMPULSORY EMPLOYMENT OF PILOTS.

There have recently been several note-worthy cases decided in regard to points connected directly with compulsory pilotage, which indirectly touch upon and make clearer the general law in regard to the employment of pilots, and especially as to their employment in vessels proceeding to or from sea. The most recent of these cases—which are of no little importance in maritime law—is *The Princeton*, 38 L. T. Rep. N. S., 261, which gives yet a larger authority to the principles enunciated in the cases lately but previously decided. The first, and perhaps the most important point which has been raised, and more or less set at rest by these recent decisions, is the meaning of the term "proceeding to sea," or of the reverse one, "proceeding into port" or "into dock." It is true that these questions have been raised primarily on certain statutes, but as a matter of fact they have, in regard to this point, turned upon the meaning which is to be attached to these words. Nor is it indeed necessary to regard them as confined merely to such sentences as we have set out above; had they been so limited they would have had no more general importance than any case decided upon the construction of a particular statute. But they have a wider bearing than this, for, assuming that pilotage is compulsory on a vessel going out to sea, they have made it clear what time and what events are to be included in this process, and they must consequently have a bearing upon cases which may involve other points than those touching simply on compulsory pilotage. No actual principle in so many words has been laid down in regard to this matter; but, comparing the various decisions, we should formulate one somewhat in this form: A vessel is proceeding to sea from the moment she leaves the dock till the moment she reaches the open sea, except during such intervals as she is voluntarily stationary for purposes other than those connected with and necessary for the actual transit from dock to sea. And equally, of course, this definition will apply to the opposite movement, that is, from the open sea to the dock. We do not say that this definition might not be improved; but it is what may be termed a good working principle, and embodies in a reasonably concise form the result of the cases which serve as examples of it, and to which some reference must be made.

The first case of importance occurred in the Common Law Courts, and that is of *Rodrigues v. Melhuish*, 10 Ex. 110. The question arose out of an accident in the river Mersey. On the 2nd of December the ship went out of dock, and the pilot went on board on the 3rd; the master was not on board, the riggers were completing the rigging out of the ship, which lay

at anchor with the pilot in charge, and during this period the plaintiff was injured. The point immediately arose on the construction of 5 Geo. 4, c. 73, s. 35, by which pilotage on the Mersey was then regulated, and which, so far as is necessary to the present examination, ran: "That in case the master or commander of any ship or vessel outward bound," etc., * * * "*shall proceed to sea*," and so on. The question arose whether, under the above circumstances, this ship was proceeding to sea, so as to bring her within the above clause as regards the compulsory employment of a pilot, so that the liability of the owners for the injury done to the plaintiff would be taken away. The Court decided that the ship was not proceeding to sea, for the reasons well and concisely put by Chief Baron Pollock. "If this vessel," he said, in delivering judgment, "had all her cargo on board, and she had had everything ready to commence her voyage forthwith, and had left her berth with that intention, it might no doubt have been said that she was proceeding to sea from the time she first left her berth;" but under the circumstances, the Chief Baron could not hold that she was so proceeding. Here, then, it will be observed, was an interval during which the vessel in question was stationary in the river for a purpose other than that connected with her actual transit from dock to sea, namely, to place her in a proper condition to proceed to sea at all. Thus, when she went out of dock she was unfit to go to sea, and consequently the transit could not have commenced—she was in no sense *in itinere* when stationary in the Mersey. Let us now turn to a case which resulted in the reverse way, and which, while it still further supports our proposition, affords an instance of a vessel proceeding to sea. The case is that of *The City of Cambridge*, 30 L. T. Rep. N. S. (Privy Council) 439; L. Rep. 5 P. C. 451; and was decided in 1874. On the night of the 20th Feb. the City of Cambridge left the dock in charge of a licensed pilot, fully equipped and prepared for sea. Having been taken out of dock she anchored in the Mersey ready to cross the bar by the next tide, and this wait between tide and tide for the purpose of crossing the bar was absolutely unavoidable for every ship drawing the water which the City of Cambridge did. During the time that the vessel was thus stationed in the river she drifted, and then committed the damage which was the subject of the action. The following passage from the judgment of Sir Montague Smith explains the result very clearly: "The question is, whether this vessel was proceeding to sea, so that the employment of a pilot was compulsory before and at the time of the collision. When the ship left the dock the object of the master was to prosecute his voyage by getting to sea as soon as he could. It is true it had been arranged between the pilot and himself that the vessel should anchor in the Mersey for the night, but that was done to further the object of getting out to sea by going so far on the way as would enable her to cross the bar on the next morning's tide, which the vessel could not have done if she had remained in dock, or at least she could not have crossed it so early. Their Lordships think that under the circumstances the ship was proceeding to sea at the time she left the dock, and that the anchoring was not a discontinuance of her progress to the sea, but an act proper and reasonable to be done in the course of it." Here, then, we have a stoppage for a purpose directly connected with the transit from dock to sea, namely, until sufficient water was over the bar. It is true it may be called a voluntary stoppage; but it is only so far voluntary in that it was immediately so, but proximately the cause of it was one over which those in charge of the ship had no control—the state of the tide. Therefore there was not, as in *Rodrigues v. Melhuish*, any voluntary stoppage for a purpose not connected with, and necessary for, the actual transit from dock to sea. A question in the case also arose as to the consequence of certain payments to the pilot; but, for all practical purposes, the extract which we have given from the judgment of the court sets out the cardinal point of the case, the one upon which it really turned, and shows its bearing upon the proposition which we have already laid down.

A somewhat earlier case, *The Woburn Abbey* (20 L. T. Rep. N. S. 621), affords a useful instance of vessels going in the contrary direction, that is, from sea to port; but, as in the case of *Rodrigues* v. *Melhuish*, there was a stoppage which caused a break in the transit. The ship was moored in the Mersey on the after-

noon of the 27th, and the collision took place on the evening of the 29th. There was no cause shown for so long a delay as this in the transit, no storm occurred, and no evidence was given that the Woburn Abbey could not have gone into dock. Therefore, here was a delay for a purpose other than one connected with the immediate transit from sea to dock. The very latest case of all, that of *The Princeton*, (38 L. T. Rep. N. S. 261), shows circumstances as regards the delay almost similar to those which happened in the case of the Woburn Abbey, and as in that case so in this, the vessel was inward bound. But here the delay occurred from a *vis major*, for the weather was so tempestuous that, after the first mooring, the vessel could not proceed with safety into dock. Consequently the court held that the pilot was not, as in the Woburn Abbey, *functus officio*, and that the delay was due to causes over which those who had charge of the vessel had no control. Therefore, it is obvious, as expressed in the proposition already given, that the Princeton was not voluntarily stationary for a purpose unconnected with and necessary for the actual transit. During the first part of the period during which the ship was moored she was stationary for purposes connected with her entry into dock, during the latter part on account of the stormy state of the weather. It is true that both these cases turned, to some extent, on certain acts of Parliament; but they do not affect the principle—they are connected more with the actual engagement of a pilot. Thus it seems clear that we are now, by an analysis of the facts of the four cases touched upon, enabled to extract a safe principle in regard to vessels proceeding from or to sea—a principle alike sensible and just, and one which a careful examination of the cases which we have cited as examples should make perfectly plain.—The London *Law Times*.

GENERAL NOTES.

PROFESSIONAL ETIQUETTE IN THE UNITED STATES.—We are afraid our excellent contemporary, the *Chicago Legal News*, has, "put its foot in it." The *Solicitors' Journal* having innocently said something about its being difficult for the "popular mind to grasp the idea of the majesty of the law as personified, for instance, in the American courts, which, according to the description of a recent writer, consists of 'an elderly gentleman sitting on a cane bottom chair and expectorating thoughtfully,'" the *Legal News* read "our learned and respected contemporary" a lecture, and informs it among other things that, "There is no country in the world where the judges of inferior courts of record preside with more dignity and indulge less in wrangles with attorneys, and are more respected by the bar and people, than in America." This is all well enough, if it be true, and it ought to be; but we doubt if it will have its due weight on the mind of "our learned and respected contemporary," for in the very next article in the *Legal News*, we are given an account of "professional etiquette on the frontier," wherein is stated the cause of the great unpopularity of Judge Beck, "Judge of Wyoming." We quote:

> "He even carried his whim of professional propriety so far as to prohibit swearing in court, and is said to have fined a lawyer who swore at a witness during his cross-examination. Another peculiarity of this judge is a dislike of seeing attorneys, when arguing a case before him, pass around a bottle of whisky, and he is said to be violently opposed to lawyers treating the jury to "drinks" while a trial is in progress. Judge Beck is said to have violated common decency by refusing to proceed with a case until the attorneys engaged in it should put out their pipes; and a community once rose in indignation when he ordered a lawyer to remove his feet from the judge's desk."

This was all, no doubt, very difficult for the "popular mind" to submit to, but when Judge Beck instructed the grand jury "to indict every man who indulged in gambling, or sold liquor without a licence, the outraged public demanded his removal." As is usual under like circumstances in this country, the Legislature was "seen," and the result was that a "redistricting act" was passed, and Judge Beck was assigned to a district without "a town or a court house, and entirely uninhabited, except by military garrisons, Indians and wild beasts." The "popular mind" was thereby satisfied. Of course, Judge Beck was not a "politician"—a "machine politician"—or he never would have so run counter to the "sense of the people"—and this suggests the wonder, how, not being a "politician," he got his appointment—but however that may be, the *Legal News* should have remembered that the degenerate foreigner is not up in these matters, and should have kept its lecture and Judge Beck's case apart. By

the way, we believe that women are voters and "lawyers" in Wyoming.—*Albany Law Journal.*

MISTAKE IN SEARCH.—In *Siewers* v. *Commonwealth*, 6 Week. Not. Cas. 17, recently decided by the Supreme Court of Pennsylvania, it is held that, while a recording officer who furnishes a search is not liable for a mistake in it, except to the person who employs him, he may by affirming its correctness to another become liable for a mistake therein to such other. In this case a prothonotary made a search for one Anthony who desired to borrow money. Anthony paid for the search and took with it the certificate of the prothonotary to its correctness to one Beck from whom, as agent for one Housman, he expected to borrow the money. Beck not relying on the search went with Anthony to the prothonotary who reaffirmed its correctness, and at Beck's request made a new search of his index, and returned the search to Beck again, affirming its correctness. Beck thereupon lent the money upon the security of a judgment note. It turned out that there was a judgment against Anthony which was omitted from the search. It was held that there was a republication of the original search rendering the prothonotary liable to Housman for the injury resulting to him from the omitted judgment. See, as to the general rule limiting the responsibility of the searching officer to the person for whom the search is made, *Commonwealth* v. *Harmer*, 6 Phila. 90; *Housman* v. *Girard Mut. Build. Assoc.*, 31 P. F. Smith, 256; *Hood* v. *Fahnstock*, 8 Watts, 489; *Brocken* v. *Miller*, 4 W. & S. 110.

COURTS.—Court, says Cowell, is the house where the king remaineth with his retinue; also, the place where justice is administered. These two meanings were in the beginning closely connected. For, in early English history, when the king was actually the fountain and dispenser of justice, nothing could be more natural than that subjects aggrieved by the conduct of powerful barons, or complaining of each other's shortcomings or misconduct, should use the expression "the court," in speaking of the journey to the place where the king was domiciled, and the application to him preferred, usually, in the court (*curia* or *curtis*) of the palace for interference and redress. Anciently, the "court," for judicial purposes, was the king and his immediate attendants; later, it meant, in the judicial sense, those to whom he had delegated the authority to determine controversies and dispense justice, but who still sojourned or travelled with him. It was an important stipulation in Magna Charta, that the court (speaking judicially) should no longer migrate with the royal progresses, but should be held at some settled place; which was carried into effect by the organization of *aula regia*, q. v. Now, the word court might well have been changed for some more appropriate substitute. But names are more enduring than things. Court continued in use in the sense of a tribunal of justice; an authority organized to hear and determine controversies in the exercise of judicial power.—*Abbott's Law Dictionary.*

DIGEST OF ENGLISH DECISIONS.

[Continued from p. 492.]

Company.—2. The plaintiff brought an action to recover the sum paid for shares in the defendant company, proving that he was induced to take the shares by fraud of the directors. A resolution had been passed for voluntarily winding up the company; and the assets, including the uncalled capital, were insufficient to pay its debts. *Held*, that the plaintiff had no case.—*Stone* v. *The City & County Bank, Limited. Collins* v. *Same*, 3 C. P. D. 282.

3. In 1872, one E., having contracted with J., the owner of a colliery, to get up a company to purchase the colliery, for which J. was to have £4,500 cash and £11,000 shares, made an arrangement with S. that S. should get up a company to purchase the colliery for £25,000 cash and £25,000 shares, the balance to be divided equally between E. and S. S. started the company, and got the six directors to act, and undertook that they should be at no expense. J. and E. contracted to sell the property to a trustee for the company on the terms agreed by E. and S. A clause in the company's articles stated that the directors were "authorized and empowered" to repay themselves out of the capital all the "expenses whatsoever incurred in the formation of the company." The qualification of a director was fifty shares paid-up stock. By an agreement between S. and the directors, S. received £3,500 "for pre-

liminary expenses." The directors received no vouchers for these expenses, and they knew nothing about the arrangement between S. and E., under which S. actually received £3,200. Out of the £3,500 S. paid the calls on the shares held by the directors. On the winding up of the company, *held*, that the payment of the £3,500 was, under the circumstances, a "misapplication" of the funds of the company under the Companies Act, 1862, c. 165, and the directors must repay it to the company.—*In re Englefield Colliery Co.*, 8 Ch. D. 388.

4. A company allotted A., proprietor of a newspaper, seventy-five "fully paid-up" shares, in consideration that the newspaper would advertise the company's prospectus for three months. The allotment was made April 7, and the first advertisement was inserted April 8. No contract was registered as required by the Companies Act, 1867. *Held*, that the shares were not paid for in cash, and the holder must be placed on the list of contributories as a holder of shares not paid for. *Spargo's Case* (L. R. 8 Ch. 412) distinguished.—*In re Church & Empire Fire Insurance Fund. Andress' Case*, 8 Ch. D. 126.

Compounding Felony.—See *Surety.*

Compromise.—See *Company*, 1.

Concealment.—See *Surety.*

Condition.—See *Sale*, 3; *Waiver.*

Consideration.—See *Sale*, 4; *Settlement*, 1.

Construction.—See *Annuity*, 1; *Bequest*; *Contract*, 1; *Landlord and Tenant*, 1; *Railway*, 2; *Taxes*; *Will*, 1, 2, 3, 4.

Contract.—1. Contract in writing, by plaintiffs to cut and lengthen and repair defendants' ship, "to enable the vessel to be classed 100 A 1" at Lloyd's, for £17,250 and the old material. Reference was made for details to specifications annexed to and forming part of the contract. These specifications consisted of two items, headed respectively "lengthening" and "iron work." Under the first were particulars stating, among other things, that all the "iron and wood work" of certain portions of the vessel named was to be "new and complete," and every way "in accordance with Lloyd's rules to class the vessel A 100." The other item read as follows: "The plating of the hull to be carefully overhauled and repaired [but if any new plating is required, the same to be paid for extra]. Deck beams, ties, diagonal ties, main and spar deck stringers, and all iron work, to be in accordance with Lloyd's rules for classification." The words standing above in brackets were erased, but left legible, and were signed by certain initials. *Held*, in an action for extra pay for new plating, that, if new plating was required to render the ship 100 A 1 at Lloyd's, the plaintiffs were obliged, according to the contract, to furnish it without extra pay, and that the erased words could not be used as proof of the intention of the parties.—*Inglis* v. *Buttery*, 3 App. Cas. 552.

2. Action for specific performance of an agreement by defendant to take at par 2,000 shares in the plaintiff company, at such times as should "be required for the purposes of the company." At the time of the above agreement, the directors of the company agreed to pay the defendant, "in consideration of his services," £4,000, by draft payable in twelve months from date, and to be dated on the day when he should pay for the said 2,000 shares in full. The directors had no authority to issue shares below par. The defendant set up in defence that he had rendered no services to the company, and that the object of the two agreements was to issue shares to him at a discount; that the two agreements formed in fact only one contract, and the two parts were made separate, in order to enable the directors to evade said limit in their powers, and he asked to have his name removed from the list of subscribers. *Held*, that he must take and pay for the shares in full. He could not set up the fraud of the directors, in which he had colluded, in order to invalidate the contract, and the contract was divisible. He was left to another action to recover his £4,000, if he could.—*Odessa Tramways Co.* v. *Mendel*, 8 Ch. D. 235.

3. The plaintiff wrote the defendant's agent for the sale of a leasehold as follows: "In reference to Mr. J.'s premises.... I think £800 .... about the price I should be willing to give. Possession to be given me within fourteen days from date.... This offer is made subject to the conditions of the lease being modified to my solicitor's satisfaction, which I am informed can be done." A few days afterwards the agent wrote: "We are instructed to accept your offer of £800 for these premises, and have asked Mr. J.'s solicitor to prepare contract." The lease was modified as required by plaintiff's solicitor.

Held, that the two letters formed a complete contract.—*Bonnewell* v. *Jenkins*, 8 Ch. D. 70.

Contribution.—See *Salvage*, 2.

Contributory.—See *Company*, 1, 4.

Conversion.—See *Insurance*; *Settlement*, 2; *Will*, 1, 5.

Copyright.—Defendant adapted a play from a French novel and drama, in which it was found as a fact that he had introduced two unimportant "scenes or points" or "scenic representations" already used by plaintiff in an adaptation previously made by him, but which had no counterpart in the French original. *Held*, that, under the Dramatic Copyright Act, 3 & 4 Wm. 4, c. 15, § 2, the defendant was not liable, inasmuch as the portions taken were not material and substantial.—*Chatterton* v. *Cave*, 3 App. Cas. 483; s. c. L. R. 10 C. P. 572; 2 C. P. D. 42.

Corporation.—By act of Parliament, it was provided that every contract above £50, made by a public corporation like the defendant, should "be in writing, and sealed with the common seal" of the corporation. The jury found that the defendant corporation verbally authorized its agent to order plans for offices of the plaintiff; that the plans were made, submitted, and approved; that the offices were necessary, and the plans essential to their erection; but the offices were not built. *Held*, that the plaintiff could not recover. Distinction between trading and public corporations.—*Hunt* v. *The Wimbledon Local Board*, 3 C. P. D. 208.

Costs.—Where a defendant admitted his liability for the debt sued on, and set up a counter claim exceeding the plaintiff's in amount, the defendant was refused security for costs against the plaintiff, as being a foreigner, residing out of the jurisdiction.—*Winterfield* v. *Bradnum*, 3 Q. B. D. 324.

Covenant.—See *Landlord and Tenant*, 1, 3; *Partnership*, 1.

Damages.—In an action for damages, injury to plaintiff's buildings by the withdrawal of lateral support through mining operations carried on by the defendant on the adjacent land, a referee found £400 damages already accrued, and £150 prospective damages. *Held* (Cockburn, C. J., dissenting), that prospective damages could be recovered. *Backhouse* v. *Bonomi* (9 H. L. C. 503) and *Nicklin* v. *Williams* (10 Ex. 259) discussed.—*Lamb* v. *Walker*, 3 Q. B. D. 389.

Deed.—See *Mortgage*, 2.

Delivery.—See *Railway*, 3; *Sale*, 2.

Demurrer.—Claim that the defendants, by placing refuse and earth on their land, caused the rain-water to percolate through and flow upon the plaintiff's adjoining land and into his house, as it would not naturally do, and that substantial damage was caused thereby. *Held*, not demurrable.—*Hurdman* v. *The North-Eastern Railway Co.*, 3 C. P. D. 168.

Devise.—See *Trust*, 1; *Will*, 1.

Director.—See *Company*, 3.

Discount.—See *Bank*, 2.

Discovery.—See *Attorney and Client*, 1, 2.

Discretion of Trustees.—See *Trust*, 2.

Distribution.—See *Annuity*, 2.

Divisible Contract.—See *Contract*, 2.

Documents, Inspection of.—See *Attorney and Client*, 2.

Evidence.—See *Contract*, 1; *Slander*; *Will*, 1.

Execution.—Sect. 87 of the Bankruptcy Act, 1869, provides that "where the goods of any trader have been taken in execution for a sum exceeding £50" within a specified time before bankruptcy, proceedings on it shall be restrained. Appellants got judgment for £54, but indorsed the writ for £43 only. *Held*, that the execution was good for that sum, notwithstanding the judgment for more than £50.—*In re Hinks. Ex parte Berthier*, 7 Ch. D. 882.

Fraud.—See *Company*, 2; *Contract*, 2; *Sale*, 1, 4.

Frauds, Statute of.—See *Sale*, 3.

General Average.—See *Shipping and Admiralty*.

Husband and Wife. — 1. A wife's property was, on her marriage, settled to her separate use, without power of anticipation. A judgment was obtained in the Queen's Bench against her for debts contracted previous to her marriage; and, in an action in the Chancery Division, to enforce this judgment against her separate estate, *held*, that the judgment debt and costs should be recovered against her separate estate, in spite of the restraint against anticipation in the settlement, under the Married Women's Property Act, 1870, which provides that "the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such

debts [contracted before marriage] as if she had continued unmarried."—*London & Provincial Bank* v. *Bogle*, 7 Ch. D. 773.

2. When a wife sues for separate estate, the husband should be made a defendant, not a plaintiff. The Judicature Act has not changed the practice.—*Roberts* v. *Evans*, 7 Ch. 830.

3. Under the Married Women's Property Act, 1870, the husband must still be joined as defendant when an action is brought against the wife to charge her earnings in a pursuit carried on by her apart from her husband.—*Hancocks* v. *Demeric-Lablache*, 3 C. P. D. 197.

See *Married Women.*

Infant.—By the marriage settlement, made under the direction of the court, of a young lady then "an infant of seventeen years and upwards," certain property of hers was vested in trustees, among other things to reinvest the same, "with the consent of" the said infant and her husband, and after the death of either with the consent of the survivor, and after the death of the survivor, at the discretion of the trustees. The wife had the first life-interest. *Held*, that the wife, though an infant, could give her "consent" to a reinvestment, as contemplated by the settlement. She could exercise a power, though coupled with an interest. —*In re Cardross's Settlement*, 7 Ch. D. 728.

Injunction.—See *Partnership*, 2; *Trade-mark; Way.*

Insurance.—By the terms of a lease, dated September 29, 1870, the lessee had the option to purchase the premises at an agreed price, by giving notice before Sept. 29, 1876, of his intention to do so. The lessor covenanted to insure, and did insure. May 6, 1876, the buildings were burnt down, and the lessor received the insurance money. Sept. 28, 1876, the lessee gave notice of his intention to purchase, and claimed the insurance money as part payment. The lease contained nothing as to the disposition of the insurance money. *Held*, that the lessee was not entitled to it. *Lawes* v. *Bennett* Cox 167) criticised; *Raynard* v. *Arnold* (L. R. 10 Ch. 386) explained.—*Edwards* v. *West*, 7 Ch. D. 858.

Interest.—See *Waiver.*

Joint Tenant.—See *Trust*, 1.

Judgment.—The plaintiff sued defendants, to recover a penalty for violation of the Sunday statute, 21 Geo. 3, c. 49. The action was brought Aug. 17, 1877, in respect of a violation of Sunday, August 15. October 20, one R. brought suit against the defendants to recover for all the Sundays from and including August 15, to the date of the writ. Judgment in this suit went by default, and was pleaded in bar by defendants when plaintiff's suit came up. It appeared that defendants' attorney got R. to allow the use of his name to bring the suit, in order to cut off suits by others for the penalty, and in order to gain time to apply to the Home Secretary for a remission of the penalties; that R. never intended to enforce the judgment, or to have any thing further to do with the matter, but that he did not know of the suit brought by the plaintiff. *Held*, that R.'s judgment was obtained by covin and collusion, and could not be pleaded in bar of plaintiff's suit; and, moreover, the claim of plaintiff for the penalty became a debt from the date of his writ, and was not affected by subsequent suits. — *Girdlestone* v. *The Brighton Aquarium Co.*, 3 Ex. D. 137.

Jurisdiction.—See *Arbitration.*

Laches.—See *Principal and Agent.*

Landlord and Tenant.—1. In a lease of a large new warehouse, the lessor covenanted that he would "keep the roof, spouts, and main walls and main timbers of the said warehouse in good repair and condition." There was also a provision, that, "in case the said warehouse..... shall.....be destroyed or damaged by fire, flood, storm, tempest, or other inevitable accident," there should be a reduction or discontinuance of rent until the building should be again tenantable. While the warehouse was being used by the tenant in a reasonable manner for the purpose which it was let for, the upper-floor beams broke, and two of the outer walls cracked and bulged, so that extensive repairs were made by the lessor, during the progress of which the tenant could not occupy the building. The lessor brought an action against the lessee for the amount expended in repairs, and the latter made a counter-claim for the rent paid by him under protest in respect of the time consumed in making the repairs. *Held*, that the covenant to keep "in good repair" meant such a condition as such buildings must be in, in order to answer the purpose for which they are used. If this particular building was in poor repair when leased, it was not

enough to keep it merely in that condition. The lessee could not claim a rebate of rent under the clause "or other inevitable accident," nor any damages for occupation during the repairs, as the covenant to repair implied leave to enter for that purpose.—*Saner* v. *Bilton*, 7 Ch. D. 815.

2. A tenant is bound to keep the boundary between his landlord's land and his own distinct and well defined during the continuance of the lease, as well as to render it so at the end of the lease.—*Spike* v. *Harding*, 7 Ch. D. 874.

3. Lease by defendant to plaintiff of a basement, "together with the full and undisturbed right and liberty to store cartridges therein." The lessor covenanted to keep the premises and the landing-pier adjoining in proper repair and condition "for storing, landing, or shipping away cartridges;" and there was a covenant for quiet enjoyment. Before the lease ran out, the Explosives Act, 1875, rendered it no longer lawful to keep cartridges in the premises. Defendants gave plaintiff notice to remove the cartridges; and plaintiff refusing, defendant removed them himself. Plaintiff brought an action on the lease to restrain defendant from obstructing the storing of the cartridges, and to require him to render it possible for cartridges to be lawfully stored on the premises, and for damages. *Held*, reversing the decision of FRY, J., that judgment must be for the defendant.—*Newly* v. *Sharpe*, 8 Ch. D. 39.

Lease.—See *Insurance; Landlord and Tenant; Negligence*, 2; *Partnership*, 2; *Way.*

Legacy.—See *Will*, 5.

Libel.—See *Slander.*

Luggage.—See *Railway*, 1, 3.

Market Overt.—See *Sale*, 1.

Marriage Settlement.—See *Infant; Settlement.*

Married Women.—1. A testatrix bequeathed to her "niece M. J., the wife of R. H.," a share in a fund resulting from real and personal estate, after the termination of a life interest in the same. The testatrix further declared that every provision made for any woman in the will was made and intended to be for her sole and separate use, without power of anticipation, and that her receipt alone should be a sufficient discharge for the same. The tenant for life died before the testatrix, and the fund had been ascertained and paid into court. *Held*, that it should be paid out to her on her separate receipt.—*In re Ellis's Trusts*, (L. R. 17 Eq. 409) commented upon.—*In re Croughton's Trusts*, 8 Ch. D. 460.

2. T. was married in 1846, and became insolvent in 1861, and had no assets. In 1876, his wife became entitled under her father's will to £500 a year for life, remainder to her children. The will did not settle the income to her separate use, and there was no marriage settlement. The husband contributed nothing to the wife's support. The general assignee claimed half the income for the crediters. *Held*, that the court could settle it all on the wife, in its discretion; and such settlement was made.—*Taunton* v. *Morris*, 8 Ch. D. 453.

Misapplication of Funds.—See *Company*, 3.

Mortgage.—1. A mortgagor was obliged to take out letters of administration, in order to perfect the title of the mortgaged premises to the mortgagee. In an action for foreclosure and payment of the sum due on the mortgage, *held*, that the mortgagor was not entitled to have the costs of taking out the letters paid out of the mortgaged property.—*Saunders* v. *Dunman*, 7 Ch. D. 825.

2. *Held*, that a person mentioned in a deed with two others, as a party to it, but who never executed it, could not maintain an action to have the deed declared void. *Held*, also, that one of three co-mortgagees could not maintain an action to foreclose, making the mortgagor and his two co-mortgagees defendants.—*Luke* v. *South Kensington Hotel Co.*, 7 Ch. D. 789.

Negligence.—1. The defendant used his premises for athletic sports. A private passage, having a carriage-track and footpath, ran by his place, the soil of which passage belonged to other parties, but over which there was a right of way. In order to prevent people in carriages from driving up the road to his place to see the sports over the fence, the defendant, without legal right, and, as found by the jury, in a manner dangerous to persons using the road, barricaded the carriage-road by means of two hurdles, one placed on each side of the road, leaving a space in the centre, which was ordinarily left open for carriages, but on occasion of the games was closed by a bar. Some person unknown moved one of the hurdles from the carriage-road to the footpath alongside. The plaintiff, passing over the road on a dark night in a lawful manner, and without negli-

gence, came in contact with the obstruction on the footpath, and had an eye put out thereby. *Held*, that the defendant was liable for the injury.—*Clark* v. *Chambers*, 3 Q. B. D. 327.

2. The plaintiff and the defendant company were tenants of adjoining land under the same lessor, and the company's lease required it to maintain a fence around its land, for the benefit of the lessor and his other tenants. Twenty years ago, the predecessors of the company in title built a wire fence about the land, and the company repaired it from time to time; but in lapse of time the wires rusted, and pieces fell off into the grass on the plaintiff's land, and plaintiff's cow grazing there swallowed a piece from the effects of which she died. *Held*, that the company was liable for the value of the cow.—*Firth* v. *The Bowling Iron Company*, 3 C. P. D. 254.

Notice.—See *Bank*, 2.
Officer.—See *Quo Warranto.*
Onus Probandi.—See *Slander.*
Option to Purchase.—See *Insurance.*
Original Gift.—See *Will*, 3.
Ostensible Partner.—See *Partnership.*
Particular Average.—See *Shipping and Admiralty.*

Partnership.—1. By partnership articles between the plaintiff and the defendant, the defendant covenanted not to "engage in any trade or business except upon the account and for the benefit of the partnership." After the partnership had been dissolved, the plaintiff learned that the defendant had been, during the partnership, a partner in another business, and had realized profits from it; and he thereupon filed two bills, one for an account of defendant's profits in the other business, and another for a declaration that defendant's interest in the other business was assets of the partnership with himself. The first bill was dismissed without costs. If the plaintiff had any case, it was a case for damages. The second bill was dismissed with costs.—*Dean* v. *McDowell*. *Same* v. *Same*, 8 Ch. D. 345.

2. In 1861, partnership articles were entered into between the plaintiff and the defendant to carry on the business of ironmongers, for twenty-one years, at the R. premises, "or in such other place or places as the said parties hereto may agree upon." In 1863, the partners agreed that thenceforth the business should include that of iron-founders; and they purchased foundry works at Q., where the foundry business was carried on until 1876, when the lease of the Q. premises ran out. The plaintiff declined to renew the lease, and wished to give up the foundry business. The defendant thought otherwise, and finally took a lease of the Q. premises in his own name, but, as he said, for the firm, and proposed to continue the foundry business there. Plaintiff moved for an injunction and for a dissolution of the partnership and for a receiver. *Held*, that the defendant had no authority to renew the lease, and the plaintiff was entitled to an injunction against carrying on the foundry business in the name and with the assets of the firm. Receiver refused.—*Clements* v. *Norris*, 8 Ch. D. 129.

3. In 1875, the firm of H., C., & P. was dissolved, and notice was given by them that the business would be carried on by P. alone. P. undertook to pay H. a balance due him from the old firm. From that time, the business was carried on under the name of P., Son & Co. The bank account was in that name; and the son drew and accepted bills, negotiated loans, and sometimes ordered goods, in the name of the firm, and performed all these acts with authority. He never sold goods. On the outside of the premises the name P. alone appeared. In 1877, the firm failed, and the creditors prepared a petition in bankruptcy against P., trading as P., Son & Co.; but it was finally decided to file the petition against P. and the son, as joint traders, and a resolution for liquidation by arrangement was registered. P. had no separate estate apart from his interest in the business; and H., being the only separate creditor, appealed from the order to register, and the registration was cancelled. A firm creditor then filed a petition in bankruptcy against P. and the son, as a firm, and they were adjudged bankrupt, with their consent. An application by H. to annul the adjudication was refused, and no appeal taken. H. then applied for a declaration that the assets of the business be declared separate estate of P. Both P. and the son testified that the son was not a partner, though he took the position of partner, and that it was the intention to make him one if the business turned out profitable; as, however, was not the case. The petitioning creditor and eight other creditors (there being eighty-two in all) testified that they always considered P. & Son as partners, and the petitioning creditor said the debtors had told him they were partners. P. told a creditor on one occasion that his son had married a lady of means, and on that ground asked for further credit, which was given him. *Held*, that there was a partnership, and the assets must be treated as joint estate.—*Ex parte Hayman. In re Pulsford*, 8 Ch. D. 11.