DIARY FOR FEBRUARY.

1. Thur..Last day for collector to return roll. Attorneys Examinations.
2. Frid..Examination for call to the Bar.
3. Sat....Examination for call with honors.
4. SUN..*Sexagesima.*
5. Mon..Hilary Term begins. Law Society Convocation meets.
6. Tues..Law Society Convocation meets.
10. Sat....Law Society Convocation meets.
11. SUN..*Quinquagesima.*
13. Tues..Last day to move against Municipal election.
15. Thur..Rehearsing term in Chancery. Last day for Assessors to begin to make rolls.
16. Frid..Law Society Convocation meets.
17. Sat....Hilary term ends.
18. SUN..*Quadragesima.*
24. Sat....St. Matthias.
25. SUN..*2nd Sunday in Lent.*
27. Disraeli's Ministry formed, 1868.

CONTENTS.

THE

Canada Law Journal.

Toronto, February, 1877.

It will be well to note that *Abell* v. *Church*, 26 C. P. 338, has been reversed by a majority of the Supreme Court at Ottawa (Strong, J., dissenting). This restores the original decision of the Court of Common Pleas.

The firm of solicitors alluded to in our last issue (p. 2) writes us, saying, "We were as much surprised as you could have been, and more disgusted, at seeing that our names had been appended to the advertisement referred to in your January number." We were satisfied that so respectable a firm could not have consented to such an improper use of their names, and have much pleasure in publishing their statement that the circular was issued without their authority, and that they have taken means to repress it.

Judge Willard, of the Supreme Court of South Carolina, is in a fair way to acquire name and fame by the boldness of his judicial deliverances. He seems to go deep into the roots of things, and proposes to revive the primitive conception of law as expounded, for instance, by Sir Henry Maine. This author informs us that when a judgment was pronounced, in the early ages, by a king, the supreme law-giver, it was assumed to be the result of a direct divine inspiration. The Carolina judge in ordering a mandamus to issue against one of the canvassers, made use of the following language in commenting on the power of the court: "It is clothed with majesty. We do not speak the voice of men; we speak in judgment, and judgment is the voice of God." How awkward it would be if this divine occupant of the bench happened to be reversed in appeal!

ALTERATIONS AT OSGOODE HALL.

Some time ago when enquiries were made as to the possibility of Osgoode Hall being provided with some of the necessaries, not to say conveniences, which are to be found in public buildings in these days, we were told to wait until the proposed addition should be built, and that then we should see what we should see. It was thought by some that it would be a simple matter to provide a tap, a pump, or a fountain, where one could get some cold water to drink; others thought it would be an inexpensive luxury to add to the water some soap and towels wherewith to perform the simple operation of washing ones' hands; it occurred to others again, who had not recently come from the free backwoods, that a water-closet would not be amiss. There was, moreover, a serious want of some accommodation in the way of barrister's consultation rooms, where arbitrations of a certain class could occasionally be held, a law reporter's room, a room for short-hand writers, &c. It was also felt to be a want that there was no place where a cup of coffee and a crust of bread could be obtained within the walls of the building by a famished profession. These and many other things were spoken of as being in prospect when the millenial time of the new addition should come. But the additions have been made, and we are amazed and disappointed to find that in no one respect have the above mentioned requirements been supplied. This is bad enough, but there are other matters which we fear will hereafter be sources of discomfort and consequent complaint.

The sum of $25,000 was appropriated by the Province by a vote of the House of Assembly for additional accommodation, mainly for the use of the Court of Appeal, but partly also with reference to the requirements of the Court of Chancery. The appropriation was supplied by the unclaimed balances in the latter Court and accumulated interest. The authorities of the Court of Chancery thought, under the circumstances, that this money should be applied towards providing increased accommodation for that Court and greater security for their records. It was thought proper, however, to use the money for both purposes, and one flat of the new building has been devoted to the use of the Master's Office, giving ample accommodation to the officials of that important department. The sum expended has been about $18,000. The further sum of $4,500 was placed in the estimates for general repairs, and devoted to painting the hall and Courts.

No one passing the front of the hall along Queen street would suppose that such a large sum had been expended, inasmuch as the addition has been placed directly in rear of the centre of the old building This has probably been done with a view to connect the Court room of the highest court in the Province with the hall from which it opens. This was a laudable object in itself, but the effect has been disastrous, in reference to some consequent details. (1) It has destroyed the previous convenient arrangements for the accommodation of the Common Law Judges; (2) The addition is practically inaccessible from the main building; (3) The effect would have been vastly better and the expense but little, if anything, more if the new building had been placed in rear of the Court of Chancery with its face towards College Avenue. This would also have obviated what cannot but be looked upon as the unfortunate results of its present location, hereafter referred to. It was, we believe, the practical suggestion of the present learned Chief Justice of Ontario, while a Senator, to make arrangement with the county to build a

proper Court house in rear of Osgoode Hall; and whether that idea be carried out or not, it is most probable that at some future day it will be necessary to add more buildings, and these being in rear of the eastern wing, and facing the east, as a corresponding block to that suggested on the west, would, with the other parts, make a grand whole, which would be a worthy temple of justice for this Province, and continue to be, as the centre building of Osgoode Hall has been, a credit to the Dominion at large.

The arrangement which has been adopted leads to several serious inconveniences which now seem difficult of adequate remedy. The Judge's library having been turned into a Court room for the Court of Appeal, and the new library being immediately in rear of it, and the office of the clerk of the Court being in rear of that again, it is manifest that the only access to the clerk's office is by passing first through the Court of Appeal and then through the Judge's library. The Judges of the Queen's Bench must perform part of the same journey to arrive at their new library, whilst their brethren of the Pleas must also go through the Court of Appeal, or make use of a glass passage way or gallery, which runs from their room, outside the windows of the Court of Appeal, and which, by the way, there is no provision for heating in winter time.

The new offices for the Master of the Court of Chancery are on the ground floor, and are fine commodious apartments. They are, however, even more hopelessly inaccessible than that of Mr. Grant. It will be possible occasionally, if the door be not locked, to peep into the Judge's library, and if not met by a judicial frown, to steal with noiseless steps across the learned carpet, and so reach the haven of Mr. Grant's room. But the unfortunate Chancery practitioner who has business *hither* (in the office of Records and Writs, or the Registrar's or Referee's office) and *thither* (in the Master's office) must don his snow-shoes, ulster and cap, or erect an umbrella, as the case may be, and take a constitutional round half the square before he can reach Mr. Taylor or Mr. Ross, and so back and forth, much to the good of his health, but sadly to the waste of his time. We must not omit to mention that Mr. Grant can be reached in the same circuitous manner with the aid of a back stairs which connects the two flats. The Practice Court room has been made much larger (which by the way was quite unnecessary), and the windows are at the side only and none facing the benches, and in this respect it is improved. The appartment to be occupied by the Court of Appeal is a fine room in itself, but looks insignificant after seeing the handsome and spacious halls devoted to the Common Law Courts.

The retiring room of the Judges of the Queen's Bench has been divided into two small rooms, one for each Puisne Judge, with a passage way taken off which connects these rooms with the Court of Appeal. The Chief takes the room recently occupied by the Appellate Judges.

Such are the alterations and additions which have been made. We trust that a remedy may still be found for some of the defects and deficiencies, though it is impossible to rectify what we hold to be the radical mistake—placing the new building in its present inconvenient position.

APPEALS UPON EVIDENCE.

Now that there are so many Courts of Appeal, it is of no small consequence to have it clearly ascertained in how far our higher Courts will entertain appeals which depend chiefly, or entirely, on the effect to be given to the testimony which has been adduced in the Court below. The last reported judicial utterance upon this question has been that of Mr. Justice Burton in the important case of *Davidson*

v. *Ross*, 24 Gr., at p. 50. He states the rule thus: "In a case wherein there is a conflict of testimony, where the evidence on each side is evenly balanced, the value of seeing the witnesses and observing their demeanour cannot be over-estimated, and in such a case, when the Judge has come, on the balance of testimony, to a clear and decisive conclusion, it would require, as it has been said, a case of extreme and overwhelming preponderance to induce a Court of Appeal to interfere with the decision of the Judge." We propose to consider how far, in the light of authority, this language correctly represents the practice as followed in appellate tribunals, at the present day, where a Judge has passed upon the evidence in the Court below.

The language of the learned Judge is evidently drawn from the decisions of the Privy Council, and particularly those reported in Admiralty appeals. Reference may be made for confirmation of this, to the case of the *India*, 14 Moo. P.C. 210, and the case of the *Alice*, L.R. 2 P.C. 295, which followed the former case and wherein the exact expressions made use of by Mr. Justice Burton may be found. Very much the same rule was laid down, but not so inflexibly in *Day* v. *Brown*, 18 Gr. 681, in appeals from the Master. Payment was there sworn to by three witnesses, who gave time, place and circumstances, in corroboration of each other. It was sought to reverse the Master's conclusion by circumstances which threw suspicion upon the fact of the alleged payment. The Court held that the circumstances were not of such a nature as to outweigh the direct evidence of payment, but it was also laid down that the conduct and circumstances proved might be such as to overturn the mere oral testimony that such and such a thing had occurred. The exception indicated in *Day* v. *Brown* was acted upon in *Chard* v. *Meyers*, 19 Gr. 358, where Strong, V.C., held that though the direct testimony was conflicting and balanced, yet the circumstances of the case were against the Master's conclusion. The same Judge also held in *Morrison* v. *Robinson*, 19 Gr. 480, that the rule in *Day* v. *Brown* applied only where the evidence being directly contradictory, there were no circumstances pointing to the probability of one statement rather than to that of the others, thus very much limiting the general expressions in the earlier judgment. In *Orr* v. *Orr*, 21 Gr. 451, Blake, V.C., (sitting in the Court of Appeal) expressed his views against extending the rule beyond this: that when it was merely the question of the credibility of one witness as against another, or of several witnesses as against others, there the finding of the Judge of the first instance should be followed.

In a case before the Lord Justices, on an appeal in a case of nuisance from the Master of the Rolls, before whom the witnesses had been cross-examined, Mellish, L.J., observed, "I think great weight must, in cases of this kind, be given to the decision of the Court below; and unless we can see plainly to our minds that there is a wrong inference drawn on a point of fact, we ought not to interfere with the decision:" *Salvin* v. *The North Brancepeth Coal Company*, 22 W.R. 907. In the Court of Appeal, in England, as lately constituted, the Judges had recently to consider the decisions of the Privy Council in an appeal which was also from the Admiralty Division. The judgment of the Court was delivered by Baggallay, J. A., who said that the parties to the cause were entitled, as well on questions of fact as on questions of law, to demand the decision of the Court of Appeal, and that the Court could not excuse itself from the task of weighing conflicting evidence, and drawing its own inferences and conclusions, though it should always bear in mind that it has neither heard nor

seen the witnesses, and should make due allowance in this respect. And then the previous rule was modified to this extent: that the Court of Appeal will be disinclined to interfere when the Judge hearing the witnesses has come to his decision upon the credibility of witnesses as evinced by their demeanor, but otherwise in cases where it depends upon the drawing of inferences from the facts in evidence: *The Glannibanta*, L.R. 1 P.D. 283.

The same question again came up in the Court of Appeal in *Bigsby* v. *Dickenson*, 25 W.R. 89 (Nov. 1876), where the Judges affirmed the views expressed in *The Glannibanta*. James, L.J., observed, "of course, if we are to accept, as final, the decisions of the Court of first instance in every case where there is a conflict of evidence, our labours would be very much lightened. But then that would be to do away with the right of appeal in all cases of nuisance, for there never is one brought into Court in which there is not contradictory evidence." And in the same vein Bramwell, J.A., followed thus: "the Legislature has contemplated and made provision for our reversing a judgment of a Vice-Chancellor where the burden of proof has been held by him not to have been sustained by the plaintiff, and where he has had the living witnesses and we have not. If we were to be deterred by such considerations as those which have been presented to us from reversing a decision from which we dissent, it would have been better to say at once that, in such cases, there shall be no appeal."

From a consideration of these cases we conceive, therefore, that Mr. Justice Burton has laid down the rule rather too broadly and emphatically in *Davidson* v. *Ross*. While a Court of Appeal may be unwilling to disturb a judgment which has been arrived at in consequence of the Judge believing one witness rather than another, yet there will be no hesitation in reversing a judgment (1) where the evidence is insufficient; or (2) where, credibility being equal (as is ordinarily the case when the witnesses are not parties) the Judge below has deduced wrong conclusions or drawn wrong inferences from the facts in evidence; or, (3) where the circumstances of the case, or the conduct and acts of the parties are repugnant to the credibility of the direct evidence.

THIRD REPORT OF THE COMMISSIONERS FOR CONSOLIDATING THE STATUTES.

To His Honour the Lieutenant-Governor of Ontario:

The Commissioners appointed for the consolidation and revision of the Statutes affecting the Province of Ontario have the honour to report as follows:

Since our last Report to your Honour the composition of the Commission of which we have had the honour to be appointed members, has undergone some change. The absence of the Chief Justice of Appeal is, in the first place, to be regretted. Mr. Justice Strong, has, since his elevation to the Bench of the Supreme Court, and consequent removal to Ottawa, been unable to take much part in the work; but early in the present year, Mr. Justice Mosa consented to act; from about the same time His Honour Judge Gowan, a member of the Consolidation Commission of 1859, and, more recently, Mr. Vice-Chancellor Blake, have been rendering active assistance in the work of revision.

As soon as possible after the last Session of the Legislature, the Public General Acts of the Session were incorporated in the draft already prepared of the Public General Acts relating to matters within the authority of the Legislature of Ontario. The printing of the manuscript was then commenced, and has been continuously proceeded with during the last eight months, under the superintendence of Messrs. Langton, Biggar, and Kingsford, who, from time to time, submitted the draft while in galley form, to one or more of the other members of the Com-

mission for revision. As soon as this revision was completed, the matter was put in page form, and again submitted to the members of the Commission in order that it might receive further revision. When completed, an edition of 500 copies was issued, and distributed to the Members of the Legislative Assembly and to other persons likely to furnish suggestions with regard to any particular branch of the law.

We are glad to be able now to submit to your Honour a copy of this portion of the work.

This is only one of the three divisions of the statute law affecting Ontario, with which, by the Commission appointing us, we were empowered to deal.

We have already had the honour to submit with our second report a collection of Imperial Acts affecting Ontario, made by us in the performance of a second branch of our duty.

The third branch of the work entrusted to us was to examine and arrange all the Public General Acts of the late Province of Canada and of the Dominion, in force in Ontario, and relating to matters not within the legislative authority of the Provincial Legislature.

This portion of our duty was pursued to some extent; and a first part, comprising probably, a third of the collection, accompanied our second report, and was printed and distributed. The completion of this collection has been temporarily abandoned, in anticipation of a consolidation by the Dominion Government which will comprehend the Acts of which the Ontario collection would have been composed, and to ensure the completion, without delay, of the important portion of the Revision now submitted. A Table has been prepared, to be appended to the portion of the Revision which accompanies this report, giving a complete list of the Acts which were intended to be included in such a collection, which list, it is hoped, may be of some service until the Dominion consolidation is published.

In our first Report, with reference to the difficulties against which we have to contend, we had occasion to refer, amongst others, to those which arise from the creation by the British North America Act, 1867, of two distinct sources from which legislation affecting this Province may proceed. This feature in the present Revision has presented by far the gravest embarrassments. For instance, the British North America Act (s. 91), conferred upon the Parliament of Canada exclusive powers of legislation upon the following subjects:—

1. The regulation of Trade and Commerce.
2. Bills of Exchange and Promissory Notes.
3. Interest.
4. Bankruptcy and Insolvency.

but it is a matter of some nicety to draw the line which separates these matters from others in relation to which the Provincial Legislature may exercise exclusive powers of legislation.

The provisions in respect to which such questions arise, may be divided into the following groups:

1. Provisions constituting entire Acts:
2. Provisions consisting of portions of Acts forming substantive enactments, and not dependent for their meaning upon the context of the Act in which they occur:
3. Provisions consisting of portions of Acts so connected with the enactment in which they occur, as to be insensible if separated from it.

With respect to the first two groups, the mode in which we have dealt with them has varied according to the degree of doubt entertained with regard to them. Some have been omitted from the consolidation, as probably *ultra vires*; others have been consolidated, but, at the same time, we would suggest the expediency of excepting the original Acts or clauses from any general repeal that may be made of the law existing prior to the date upon which the Revised Statutes become law.

With respect to the third group (unless the questionable clauses come within the class relating to the Criminal Law, of which mention is hereafter made), it would seem proper to except the Acts in which the clauses occur, from any general repeal of the existing law, and to apply to the Dominion Parliament for such legislation as may be requisite.

One source of trouble, occasioned by the mode of distribution of the legislative powers in regard to the Criminal Law, requires special mention.

Amongst the subjects in regard to

which the exclusive power of legislation is assigned to the Dominion is, "The Criminal Law, except the constitution of Courts of criminal jurisdiction, but including procedure in criminal matters;" while in regard to one division of the Criminal Law strictly so termed, exclusive power of legislation is conferred upon the Provincial Legislatures, viz., "The imposition of punishment by fine, penalty, or imprisonment, for enforcing any law of the Province, made in relation to any matter coming within the classes of subjects within the exclusive legislative authority of the Province."

In almost every statute of the late Province of Canada, relating as a whole to matters within the authority of this Province, there are clauses designed for the effectual enforcement of the enactment, by declaring that the commission of a particular act shall be a misdemeanor, with the addition in some cases that the person convicted of the offence shall be punishable by fine or imprisonment, varying in amount of degree according to the nature of the offence.

The course which we have adopted, as the general rule in such cases, has been to employ language prohibiting the commission of the act, and to insert the punishment, if any, mentioned in the original section, as that to be inflicted for a contravention of the section of the Revised Statute, at the same time repealing the original statute. In some cases, however, where for other reasons the original of an Act in which such a clause occurs, is one proper to be excepted from any general repeal of the existing law, or where expedience seems to require that course, the clause has been printed in bourgeois type and in the form in which it was originally passed.

In dealing with provisions in respect to which no question of jurisdiction arises, the incorporation of amendments has not always been found easy. The difficulty has generally arisen where the amendment is not made in express terms, but is the effect of some subsequent provision enacted in a substantive form, and operating as a repeal of prior inconsistent enactments.

The importance of adhering as closely as possible to the exact words of the existing statutes is obvious. While fully recognizing the importance of this rule, we have considered that the too close observance of it might defeat some of the advantages to be derived from a consolidation, viz., conciseness and uniformity of expression. The Consolidation of 1859 by furnishing models of a more concise style of parliamentary drafting has had a considerable influence upon the form of subsequent statutes. Examples, however, of the verbose style of drafting, once so general, are still sufficiently numerous, and the variety of minds engaged causes a want of uniformity in style which is perhaps unavoidable under our system of legislation. To do otherwise than harmonize the various styles when reducing Acts of different dates into one statute, would be to produce a result not only illogical and inelegant, but also involving uncertainty as to the construction of the enactment, inasmuch as the employment of different language in the same Act should indicate a difference of meaning. Our aim has therefore been, while preserving the sense and general form, and as far as possible, the language of an enactment, to secure conciseness, uniformity and clearness, and we have attempted to do this by pruning freely—omitting useless words—subdividing long sections or Acts—converting provisoes, where inaptly introduced, into exceptions, conditions, or substantive provisions qualifying a more general clause—transposing sections and clauses—and often arranging a whole Act in whatever order seemed best, without observing that in the original, if it appeared susceptible of improvement. In a few instances where amendments have been numerous or conflicting, it has been necessary to completely recast the whole matter. The separation of subjects unconnected with each other has been preferred to economy of space; and difference of type, the division of long sentences into paragraphs, and other typographical expedients have been employed to faciliate the understanding of a clause by a clearness of arrangement appealing to the eye.

In the Consolidation of 1859, the first general employment was made, in our statutes, of the present instead of the future tense, but this change was not extended to the Acts relating to real property. We do not think there is anything special in those Acts which renders it now necessary to apply to them a rule

different from that following in regard to other Acts.

While thus dealing with the language of the statutes, we have endeavoured to avoid introducing, either by omission or addition, any alteration in the legal effect.

The orderly arrangement of the Revised Acts, under appropriate heads, we have not regarded as of subordinate importance. We have employed, as a basis, the classification adopted in the Consolidation of 1859, making, however, such alterations as were considered improvements, or were rendered necessary by the re-distribution of the legislative functions by the British North America Act, 1867.

Sir James B. Macaulay, in his final report recommending the Consolidation of 1859 for adoption, after observing that the work was by no means submitted as free from errors, remarked that he could not vouch that the rendering invariably expressed the Law, as it might by judicial construction be held to exist in the statutes, but that he nevertheless regarded it "as sufficiently accurate to justify the Revised Consolidation being substituted for the Acts proposed to be repealed, trusting nevertheless to the healing efficacy of future legislation should any very material errors or omissions be afterwards discovered."

We are also, of course, unable to present to your Honour a perfect work, and as the revision has been continued since the printing and distribution of the Rough Draft, some variation has been made from the consolidation which is there shewn, but we think that the volumes now submitted represent, as correctly as possible, and may be safely substituted for the existing law.

All of which is respectfully submitted.

(Signed) S. H. Strong,
Geo. W. Burton,
C. S. Patterson,
Thomas Moss,
S. H. Blake,
Jas. Robt. Gowan,
O. Mowat,
Thomas Langton,
C. R. W. Biggar,
Rupert E. Kingsford.

Toronto, Dec. 30, 1876.

SELECTIONS.

LORD REDESDALE.

We understand that Lord Redesdale is about to be made an Earl of the United Kingdom, and his new title will be Earl Redesdale, of Redesdale. For many years he has acted as chairman of committees in the Upper House, and in that capacity has performed great public services. He is one of the most consummate business-men in the country, and his knowledge of the principles and practice of private bill legislation is unequalled. In fact, so far as private bills are concerned, Lord Redesdale has really been the House of Lords. In all cases the House acts on his opinion, and so well is this known that Parliamentary solicitors never think of contesting any question either of form or substance in the face of Lord Redesdale's opinion. Sitting as chairman of committees he has been the model of firmness and rapidity, and the ease with which the House of Lords performs its legislative work is largely due to the promptness and readiness of Lord Redesdale. We find the following anecdote in "Waifs of Conversation" (by "W. H. H." Magill, Belfast), where it is recorded, as related by the well-known Boyd, M.P. for Coleraine:—"I was urging before Lord Redesdale, the Chairman of the Committee of the House of Lords, my view of a point which had been raised in connection with the Portrush Railway, then before Parliament, but in which, unhappily, I differed from his Lordship. As I felt strongly on the point I continued to press it, till at length his Lordship, nettled by my perseverance, peremptorily silenced me in a manner which is not uncommon with him, but which was rather hurtful to my feelings. After a short pause I ventured timidly to say to him, 'Well, my lord, I really don't think you would have put me down in that manner if you only knew the trouble I had with you the night you were born.' 'What do you mean, sir?' said his Lordship, interrupting me. 'Well my lord, if your Lordship will only have a little patience with me, I will explain my meaning. One night in the winter of the year 1805—it's a very old story, my lord—I had just

got warm in my bed in the house of Dr. S——, in Coleraine, where I was serving my apprenticeship, when I was roused out of my sleep and ordered to saddle the doctor's horse and my own pony, and bring them round to the door immediately. When I got there the doctor was ready, and we rode to the village of Bushmills, seven long miles, in an awful night of rain and storm. The doctor alighted at Peggy M'Parland's inn, which he entered, leaving me outside to take care of his horse, where I remained for four long weary hours, walking his horse up and down Bushmills-street, and not a dry thread on my back. When the doctor came out of the inn he told me that a gentleman and his wife had been travelling along the coast, and stopping at Bushmills the lady had been taken suddenly ill, and had just been safely delivered of a baby. My lord, I am glad to see that baby before me now as Chairman of the House of Lords; but pardon me if I say that the pleasure would have been greater if your lordship had not differed from me on a point of great importance to my constituents of Coleraine.' As I proceeded with my story I saw a quiet smile spreading gently over his Lordship's features; and ever after when I happeneed to meet Lord Redesdale in the lobbies at Westminster, he would approach me in the kindest manner, and say, 'Well, Dr. Boyd, glad to see you; sorry you had so much trouble with me the night I was born.'"—*Irish Law Times.*

MODERN ENGLISH LAW.

The history of modern English law is the history of a gigantic revolution produced by the ideas of one man. Under the influence of Bentham, half a century or more of stagnation has been followed by half a century of innovation. It is a little difficult for those who live in the midst of incessant legal changes to appreciate the extent of a revolution of which the force is still unspent. Something may be achieved by the aid of a comparison. Any one, for example, who examines the English statute book for the century and a quarter which precede 1825, will see that the changes which it includes are not equivalent to a tenth part of the alteration, which have been effected within the last half century. Hardly a single portion of English law has, since George the Fourth came to the throne, escaped the influence of reform. The constitution of Parliament has been changed, the laws of treason has been modified, the criminal law has been transformed from a system of indiscriminate inhumanity into a system under which capital punishment is, except in cases of murder, practically unknown. The laws of debt have been fundamently modified; the whole law of evidence has been freed from the artificial rules by which it was defaced; the expression of opinion has been freed from all the shackles imposed by the law and from nearly all the checks imposed by opinion; all the forms of monopoly supported either by statute, or by judicial decisions have been swept away, and the principles summed up under the vague formula of "free trade" have been embodied in the legislation of the last fifty years. Other changes might be easily enumerated, but one crucial instance of the readiness with which modern English law admits of alteration or improvement may stand for a hundred examples. The institution of the Divorce Court effected not merely a change in legal procedure but an alteration in the theory of marriage. It touched one of the most sensitive points of private life. It involved the national renunciation of ecclesiastical dogmas which had been more or less respected for centuries. Yet the Divorce Court was instituted not only without revolution, but without exciting any strong popular emotion. In 1859 it was more easy to alter the law of marriage than it would have been in 1759 to abolish capital punishment for shoplifting. The extent of the legal revolution of which Sir R. Wilson is the historian may also be measured by comparing not century with century but country with country. France has, since 1826, passed through at least four revolutions, but the legislative changes introduced into French law since that period fall far short, it may be conjectured, of the innovation carried out within any given ten years by the English Parliament. France it may be said, did all her innovation at a stroke. The first revolution effected such fundamental alterations that nothin was left for later reformers to accomplish

In a very limited sense this is true, but it should be noted that the alterations effected by the revolutionists were in many cases far from radical, and that the spasmodic activity of three or four years of feverish excitement will never attain the results gained by fifty years of energetic improvement. Moreover, what we are here concerned with is not the cause but the fact of French conservatism. An attempt to change the law of divorce, though that law is not really consistent with the idea of civil marriage, an authoritive determination of the moot question whether a Catholic priest can legally marry, the introduction of free trade, or the establishment of true religious equality, are all measures beyond the force of the revolutionists or the despots who have ruled France. The intense conservatism of the country is too strong either for republicans or for emperors. Changes which would pass through an English Parliament almost without attention would, if attempted in France, drive the whole country into fits of excitement or panic. Nor is there any real paradox in the fact that a country which has suffered from revolutions cannot bear reform. The impossibility of violent change is a necessary condition for systematic reform. The absence of all dread of revolution has, combined with other circumstances, produced in England the condition of public feeling which allows for incessant innovation. For half a century the thoughts of Bentham have been working in the minds of men, many of whom have forgotten or have never known the name of the great jurist. The fruit of his ideas has been a movement of which the last generation saw the beginning, and of which the present generation will not see the end.

That the principles which have guided all Englishmen who have attempted to reform the law were derived from Bentham is also too manifest to deserve mention. His leading principle, that the test of a good law is its promoting the greatest happiness of the greatest number, may be now considered an admitted axiom of legislation. A subordinate principle, which is rather assumed than put forward by Bentham, has exerted even greater practical influence on the course of legislation than the axiom on which his whole philosophy depends. This subordinate principle is that every man will be found to be in the long run the best judge of his own happiness. That maxim itself, which is roughly embodied in the proverb, "No one knows where the shoe pinches but the wearer," is true only under considerable limitation is apparent. It is nevertheless the necessary foundation of the theories on which the greater number of modern legal reforms are grounded. Thus the establishment of free trade, the abolition of legal restraints on the expression of opinion, the repeal of the combination laws, the permission of divorce, are all, under different forms, expressions of the same fundamental idea that each individual is the best judge of his own happiness. But the triumph of Bentham is seen much less markedly in the tacit adoption by all the world of what were once his peculiar principles, than in the success with which in several departments his theories have been carried into practice. For a lifetime he laboured to convince lawyers that the way to come at truth was to give free admission to all evidence which could possibly be relevant. At last his suggestions on this matter have been all but completely carried into effect. When a conservative lawyer, such as the Recorder of London, recommends that a prisoner on his trial should be allowed to give evidence, the triumph of Benthamite principles, in one department of the law at least, is nearly complete. The various attempts made, with more ot less success, in this country no less than in England, to codify the law are also distinct results of the teachings of Bentham and Austin. Strangely enough, the efforts of law reformers have, in England at least, been far more successful in improving the substance than in amending the form or expression of the law. That this should be so seems at first sight strange, because common sense suggests that it is easier to express a law in good language than to make a good law. But this suggestion, like many others made by common sense that is suggested by obvious appearances, turns out, in fact, ill-founded. The substance of English law approaches, in many departments, to a very high degree of merit; but the style of English statutes has rather deteriorated than improved, and an English code is still merely the dream of reformers.

Modern English Law.

One cause at least of the failure of attempts to codify the law, lies in a feature of the Benthamite movement, which has received insufficient atttention. Bentham's disciples were compelled to carry out their reforms by means of the only instrument which lay ready to their hands. This instrument was the British Parliament. Now, the House of Commons has great merits. Its main function is to represent English opinion, and this function it admirably performs; but its other and subordinate functions is to legislate, and this subordinate duty it performs, and always will perform ill. Parliament, moreover, had till within the last fifty or sixty years, never been habitually employed as what may be termed a law making machine. The long roll of the statute books gives an exaggerated idea of the amount of legislation actually turned out by Parliament. Many of the acts enrolled among the statutes are merely administrative measures. There are, indeed certain law-making epochs, such, for example, as the reign of Edward I or Henry VIII, but on the whole, the quantity of legislation, at any rate affecting private law, was, down to the present century, much smaller than is easily believed by a generation accustomed to see each session produce a good sized volume of new law. In early times, further, Parliament had little concern in the drafting of acts, and down to a quite modern period the discipline of party checked the indiscriminate legislative activity of individual members. At the time when Bentham commenced his career, legislative changes were rare. Innovations came not from St. Stephen's but from the Court of Queen's Bench, and the judge-made law of Lord Mansfield, may compare favorably with the work of parliamentary reformers. Law made by judges has defects, but it has the merit of being made by men who understand the system which they mean to improve. The inevitable result of the general effort to improve the law was, as already pointed out, to work the parliamentary machine for a purpose to which it was not properly adapted. The effect has been that the work turned out has been marked by the merits and the defects of the machine which produced it. The public wished for the abolition of various abuses. Parliament, representing the public, has abolished these abuses; and wherever the mere repeal of bad laws was all that was needed, Parliament has done all that the occasion required. But the careful statement of complex rules in precise language, which constitutes the essence of codification, is not a matter in which electors can be interested. If the constituents, indeed, should by any chance clamor for a code, Parliament would be itself unable to provide it. Parliament might conceivably delegate its powers to competent persons; but as members, like all other men, love power even which they can not use, they will not, except under extreme pressure, delegate to others the glory of making laws. This pressure has never arisen. Hence, while the substance of the law has been remodelled, its form has been hardly improved. In India, Englishmen can make a code, but in India Englishmen are despots. The man who could easily carry a whole code through the council at Calcutta, would probably fail in getting a single clause of a bill through the House of Commons. Other causes, no doubt, have contributed to the failure of English reformers to produce a code, but the nature of the House of Commons is the most obvious cause of their want of success. To the fact, at any rate, that the reforms which mark the history of modern English law have not been embodied in a striking form, must be attributed the comparatively small amount of fame which has fallen to the share of Bentham and his disciples. To compare Napoleon as a jurist with Bentham, would be as absurd as to consider whether Bentham equalled Napoleon as a general; but the French emperor, who could plunder the fruits of other men's labors will go down to posterity with his code in his his hand; the English jurist will never be known to any but students. A story is current of Bentham's predicting to a friend that in the next generation he would be seated on a throne giving laws to England. The prophecy has been half fulfilled. He now legislates for England, but he has not received his throne.—*N. Y. Nation.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

(Reported for the *Law Journal*, by E. Sydney Smith, Student-at-law).

The Manufacturers and Merchants Fire Insurance Co. v. Attwood.

A. J. Act, 1873, *sec.* 24—*Examination*—"*At issue.*"

Held, that an order of reference after declaration filed, and before issue joined has not the same effect as a oinder so as to enable either of the parties to examine the other under the A. J. Act.

[October 31, 1876.—Mr. Dalton.]

After the declaration had been filed and before issue was joined, the case was ordered to be referred to arbitration. The plaintiff then obtained an order to examine the defendant under the A. J. Act, whereupon the defendant took out a summons to set this order aside.

J. H. Ferguson shewed cause. The order of reference has the same effect as a joinder of issue; see Brown's Law Dictionary, p. 105, and *Bacon* v. *Campbell*, 6 Prac. R. 275, where the examination of a defendant in ejectment was allowed, although no appearance had been entered by him. The case is at issue, within the meaning of the Act, when the pleadings are concluded, as the object of the A. J. Act in not allowing examination before issue joined was merely to prevent fishing applications.

Mr. Madden (Bethune, Osler and Moss) contra. The words "at issue" have a technical meaning, and must be interpreted strictly.

Mr. Dalton said that, although, he would have preferred to allow the examination if he could have seen his way to do so, considered that the words "at issue" had a technical meaning which he could not disregard.

Order accordingly.

Le Mesurier v. Tierney.

Hab. fac. poss.—Lands detached from one County and attached to another.

Judgment in ejectment in 1867 for certain lands in County of Northumberland, and *hab. fac. poss.* to the Sheriff of that county who executed the writ. Subsequently, the land sold, was by proclamation of the Lieutenant-Governor, detached from the County of Northumberland, and incorporated with the Village of Trenton, in the County of Hastings.

Held, that plaintiff might enter a suggestion of the facts upon the judgment roll, and issue an original writ of *hab. fac. poss.* to the Sheriff of the County of Hastings.

[December 2, 1876.—Mr. Dalton.]

A summons was taken out calling upon the defendant to show cause why the plaintiff should not have leave to enter upon the judgment roll a suggestion, that since the issuing of execution in this cause, the land in question in this suit had been by proclamation of the Lieutenant-Governor in Council detached from the County of Northumberland, and incoporated in the Village of Trenton in the County of Hastings; and why a writ of *hab. fac. poss.* should not issue to the Sheriff of such County.

Osler shewed cause.

Clarke contra.

Mr. Dalton thought it was a proper case for an application, and granted the order in the terms of the summons.

Order accordingly.

Ray v. Briggs.

Application to sell land under A. J. Act, 1873, *secs.* 35, 36, 37—*Issue directed.*

[October 29, 1876.—Mr. Dalton.]

Judgment had been recovered against defendant and execution returned *nulla bona.*

Osler obtained a summons to sell the lands under A. J. Act, 1873, secs. 35, 36 and 37, on the ground that the lands had been conveyed by the defendant to his wife before judgment to delay hinder or defraud creditors.

Watson shewed cause, and read several affidavits which stated that the conveyances had not been made with any fraudulent intent.

Mr. Dalton.—I do not think I should exercise the powers given by the statute to dispose of the matter summarily in Chambers, as the interests involved are of much importance. I will direct an issue to be tried between the parties as provided by the 37th section of the Act.

Order accordingly.

Purser v. Bradburn.

Costs—Certificate—Title.

Held, that in a plea of *non demisit* to a count in covenant, a question of title arises, which entitles the plaintiff to superior Court costs, although no certificate be granted.

[December 16, 1876.—Wilson, J.]

The action was brought by a tenant against his landlord for breach of covenant for quiet enjoyment; there were also two counts in tres

pass. The defendant pleaded to the count on the covenant, *non est factum* and *non demisit*, and to the counts in trespass, not guilty. The plaintiff obtained a verdict for one shilling. No certificate for costs having been granted by the learned Judge who tried the cause, the taxing officer refused to tax the plaintiff his cost of suit. A summons was taken out to review the decision of the taxing master.

W. S. Smith shewed cause.

Creelman supported the summons. The question of title arises under the plea of *non demisit* which ousts the jurisdiction of the County and Division Courts, and therefore no certificate was necessary.

Wilson, J., allowed the appeal.

Order accordingly.

Regina v. Clancy.

Vagrant Act—32, 33 Vict. cap. 28—Justice of the Peace sitting for Police Magistrate.

Held, that a conviction by one Justice of the Peace under the Vagrant Act is bad.

Quære. Whether if the Justice of the Peace were sitting for and at the request of a Police Magistrate, the conviction would be good.

[December 12, 1876.—Wilson J.]

The prisoner was arrested in the town of Belleville without any warrant having been issued for his arrest, and was tried before one Mackenzie Bowell, Esq., a Justice of the Peace for the County of Hastings, who convicted him of being a common vagrant, under 32 & 33 Vict. cap. 28, and committed him to the common gaol for the term of six months with hard labour.

J. B. Clarke having obtained from Mr. Justice Wilson a writ of *habeas corpus*, on the return of the writ, moved for the discharge of the prisoner on the ground that the committing magistrate had no jurisdiction under the Act, that the powers of such Act required to be exercised by a Stipendiary or Police Magistrate, Mayor, or Warden, or two Justices of the Peace.

Capreol for the Attorney-General, asked for an enlargement to file an affidavit shewing that Mr. Bowell was sitting for, and at the request of the Police Magistrate when he convicted the prisoner.

Wilson, J.—The conviction having been made by only one Justice is bad, and I must discharge the prisoner. Admitting that the Justice of the Peace was sitting at the request of the Police Magistrate, I doubt whether that would get over the difficulty.

Prisoner discharged.

GENERAL SESSIONS OF THE PEACE FOR THE COUNTY OF ELGIN.

Regina v. Bradshaw—In the matter of Appeal between Henry Bradshaw, *Appellant*, and Richard B. Nicholl, *Respondent*.

Summary conviction for destroying a fence under 32 & 33 Vict. cap. 22, D. sec. 29—Malice.

The defendant Bradshaw had buried a child in a graveyard near the remains of his own father. The complainant Nichol had a parcel of ground which the sexton of the church had appropriated to his exclusive use without any authority from the incumbent or church wardens. The complainant subsequently extended his fence, by the like consent of the sexton only, and enclosed more ground, so that the fence crossed diagonally over the grave of defendant's child; defendant remonstrated, but obtaining no redress, or a removal of the fence, proceeded to remove it himself. In process of doing so he broke a marble pillar of complainant's fence, for which he was summoned before the Police Magistrate of St. Thomas, for "wilfully and maliciously" destroying a fence under sec. 29 of 32 & 33 Vict. cap. 22, D. He was fined $10, and ordered to pay for the damages. From this conviction the defendant appealed to the General Sessions of the Peace.

Held, that although the defendant was guilty of trespass, for which he might be mulcted in damages in a civil action, he was not liable to a fine, and that, acting under a claim of right, the act was not necessarily *malicious*.

[St. Thomas, Jan. 15, 1876.—Hughes, Co. J., Chairman.]

This was an appeal from a conviction by the Police Magistrate of the town of St. Thomas, for unlawfully and maliciously breaking down and destroying a fence in a graveyard under sec. 29, of 32 & 33 Vict. cap. 22, D.

J. McLean for appellant.

Horton for respondent.

The judgment of the Court was delivered by

Hughes, Co. J., Esq., Chairman.—This appeal is in the nature of a new trial. We think the only important point for consideration is whether the act complained of was *maliciously* done.

There can be no question whatever that it was unlawful, and that the appellant would have been liable to damages in an action of trespass, but it must have been maliciously done or the conviction must fall. The proceeding before the Police Magistrate was one not only seeking for damages to be awarded to the respondent, but for a penalty to be inflicted besides: the one for the unlawfulness of the act and redress of the private injury to the property of the respondent, the other as a punishment or penalty for the alleged maliciousness of it.

It was urged upon us by counsel very strongly at the trial, that the act was "maliciously," and even *vindictively* done, for which he pressed the enforcement of the penalty as well as the damages. He also urged that as it was not necessary to prove express malice, and that where an act was of such a nature as could spring from *no other than a bad motive*, and calculated to inflict injury without cause or justification, malice would be implied from the act itself. But it is just as broadly laid down that if there be some other than *a bad motive* for the doing the act, the necessary consequence of which is an injury to another person, it may be done under such circumstances as negative malice. Thus if an act injurious to another be done under a *bonâ fide* claim of right it will not come within the statute.

As the case was more a matter of fact for a jury than a question of law for the Court, we urged the parties to have a jury empanelled to try it on its merits—but the counsel for the respondent refused to have a jury, insisting that it was a matter which the Court ought only to decide; we therefore find ourselves unpleasantly called upon to decide the merits of a case which has evidently caused some heat between the parties from its very nature. When the appellant sought to remove the fence, it is evident to us from the evidence that his intention was only to remove it from over the grave of his child—not to break or destroy it. That he did break it in the process of removal, there can be no question, and that for breaking it, the respondent was entitled to damages against the appellant as a trespasser, but that belongs only to a civil court and not to a *quasi* criminal tribunal, for it does not follow that because destruction resulted from an illegal act, *malice* is to be implied; unless *malice* can be inferred from the inception of the matter, it cannot be imputed by the mere result, or after an act is accomplished; malice can only flow from the *animus* in which an act is conceived, and not from the consequences merely. In this case the appellant, when remonstrated with by the sexton for what he had done, insisted upon his right to do the act.

Rex v. *Reynolds, alias John Diel*, Russ & Ry. C.C. 465, was a case illustrating this principle, and we think must determine this case, *i.e.* whether in fact this act of the appellant was maliciously done. That was an indictment under 52 Geo. III, cap. 146, for shooting at a vessel of the Customs, and also at an officer of the same on the high seas. [The learned Chairman then cited the case at length]. It appears from this case that the surrounding circumstances (where it is essential to prove malice) must be examined and considered in all cases. The maxim, "*actus not facit reum nisi mens sit rea*," applies here, and we think that as in that case, so in this, the intention and not the result must be the point on which the case ought to be determined.

Although the appellant here was clearly a trespasser, and in the wrong, as regards this whole matter about removing the fence and the consequences which followed from his illegal act, still he insisted upon his right to do it. However mistaken he might have been, we do not see that express malice, within the meaning of the statute under which he was convicted, has either been proven, or that malice can be inferred from those facts, or that (as strongly urged upon us by the counsel for the respondent) the acts of the appellant exhibited either "vindictiveness" as he called it, or maliciousness. Had a jury been empanelled to try this case, we think that under a fair charge they might have reasonably been expected to find a verdict which would have had the effect of quashing this conviction on the merits. And we think that acting as a jury as well as a Court of law, we ought to do the same.

We therefore order that the said conviction shall be, and it is hereby quashed; and we also order the respondent to pay, on notice of this order, the costs of this appeal, amounting to and taxed at the sum of $25.60, to the Clerk of the Peace, to be by him paid over to the appellant forthwith, and that the sum deposited by the appellant instead of a recognizance, he repaid and returned to him—by the Police Magistrate.

The case having been removed by certiorari into the Court of Queen's Bench.

Hodgins, Q.C., moved (before a single Judge) for a rule *nisi* calling upon Bradshaw to shew cause why the judgment of the Court below should not be quashed. The Judge having reserved the case, on a subsequent day refused the rule.

Hodgins, Q.C., subsequently moved by way of appeal to the full Court.

Last Term the full Court refused a rule *nisi*.

INSOLVENCY CASES.

IN RE FREDERICK DANGERFIELD *Insolvent*, MATILDA DANGERFIELD, *Claimant*, AND MEIKLE ET AL, INSPECTORS, *Contestants*.

Wife of Insolvent proving claim.

The claimant was the wife of the insolvent, and claimed to prove against his estate for money lent and in-

terest thereon. The contestants disputed the claim. The judge having found all questions of fact in favor of the claimant.

Held, that the fact of the claimant being the wife of the insolvent did not debar her from proving against his estate as a creditor, but *held*, that under the circumstances the question was a fair one for judicial enquiry, and no costs were allowed the claimant.

[Brockville, McDonald, J.J.]

The insolvent made an assignment in April, 1875, and amongst other claims filed against his estate was one of his wife.

1871, April 20,	To money lent.....	$1300 00
	To five years interest on same at 6 per cent per annum..	390 00
		$1690 00

The inspectors of the estate contested the claim and put in thirteen grounds of objection, which may be summarised as follows: 1. Claimant was wife of insolvent, and not entitled to rank; 2, payment; 3, that the moneys were a gift to insolvent from his wife; 4, that claimant allowed insolvent so to deal with the moneys, that between him and his creditors, other than claimant, the property purchased therewith, became the property of insolvent, and it would be a fraud upon other creditors to allow her to rank equally with the others; 5, never indebted; 6, moneys belonged to insolvent; 7, the claim was a fraud upon creditors other than insolvent; 8, the moneys claimed were proceeds of equity of redemption in certain lands sold by one W. McC. under mortgage from insolvent, or balance or residue of the proceeds of sale of land, after debt and costs of W. McC., and it would be a fraud upon other creditors to allow the claimant to rank &c.; 9, claim did not accrue within six years before assignment; 10, claim did not accrue within six years before filing of claim; 11, claimant, at time alleged debt was contracted, was in possession of property of insolvent of an equal or greater value than amount claimed; 12, the moneys were trust funds, and insolvent never received benefit from, or had the use of the moneys; 13, that the moneys were lent by claimant to enable her to rank.

The claimant in her answer admitted being the wife of the insolvent but denied all the other allegations of contestants, and issue having been joined, the matter was brought for trial before the Junior Judge of the County Court of the United Counties of Leeds and Grenville.

The evidence was to the effect that insolvent at one time owned some real estate in Brockville, which he mortgaged to his wife's brother one W. McC., and subsequently sold and conveyed to him absolutely. Several years afterwards W. McC. sold the property, and after taking an account of all it had cost him, found that he had about $1300 to the good, and in 1871, made a present of this amount to his sister, the wife of the insolvent, who loaned it to the latter, there being no memorandum or writing to evidence the loan, but insolvent promising claimant that he would give her as much for it as any one else would, and at all events 6 per cent. The contestants contended that the insolvent had an equity of redemption in the real estate, and that the $1300 really belonged to him and was not W. McC.'s to give.

The judge found all the facts in favor of the claimant.

The contestants urged that notwithstanding the finding of the judge, the claimant could not recover, and judgment was reserved, pending argument.

On a subsequent day the parties appeared by by counsel.

French for the contestants, contested that the Married Woman's Act of 1859 did not apply to Mrs. Dangerfield who was married before it was enacted. He cited *Commercial Bank* v. *Lett*, 24 U.C. Q.B. 552; Story's Equity Jurisprudence, 1374, ; White & Tudor's Leading Cases 457, 459, 540; *Gardner* v. *Gardner*, 5 Jurist, N. S. 975; Lewin on Trusts, 550, 537 and 552; *Kerr* v. *Read*, 23 Grant 529; *Scott* v. *Hunter*, 14 Grant 377; *Healey* v. *Daniels*, Ib. 633; *Buckland* v. *Rose*, 7 Grant 440.

Senkler for claimant referred to White & Tudor's Leading Cases 447: *Woodward* v. *Woodward*, 9 Jurist N. S. 882, Story's Equity Jurisprudence, 1373.

McDonald, J. J. gave judgment in favor of the claimant, but held that the case was a proper matter for enquiry, and that, under the circumstances, the inspectors were justified in contesting the claim, even although they had done so unsuccessfully. He allowed no costs to the claimant, but allowed the inspectors their costs out of the estate.*

* In the same matter was a claim for wages, and for money lent to insolvent by the son of insolvent, who was an infant. The inspectors of the estate having disputed the claim, and all the facts having been found in favor of the claimant.

Held, that the claimant was entitled to prove against the estate, that his being an infant did not preclude him from recovering from his father, the contracts having been proved.

MUNICIPAL ELECTION CASE.

In the Matter of the Election for the Office of Reeve for the Township of Edwardsburgh for the Year 1877.

Upon an application for a judge's order for the inspection and production of ballot papers used in the election of a Reeve, such application being made under the provisions of section 28 of the Act 38 Vict., cap. 28, O., and neither a prosecution for an offence in relation to ballot papers, nor proceedings for the purpose of questioning the election on return having been instituted, *held*, that the order could not be granted.

[Brockville, McDonald, J. J.]

A summons was obtained from the Junior Judge of the County Court of the United Counties of Leeds and Grenville on behalf of James Millar the unsuccessful candidate for the Reeveship of the Township of Edwardsburgh, calling upon one Joseph Craw Irvine, the successful candidate, and Gideon Fairbairn, clerk of the said Township, to show cause why an order should not be made directing the inspection and production of the ballot papers used in this election.

The summons was granted upon an affidavit of Mr Millar, showing that he was a candidate for the Reeveship; that the only other candidate was Joseph Craw Irvine, and that, as appeared the return of the Clerk of the Township, Mr. Irvine was elected to the office by a majority of three votes; that deponent believed that such return was not the true and correct return of the vote of the electors polled, and that he believed an inspection and a count of the ballot papers would show that the return of the clerk should have been in his (Millar's) favor, rather than his opponent's; that he was informed and believed that at certain polling sub-divisions in said Township to wit, at subdivision No. 6, certain ballot papers were rejected which should have been counted in his favor, and the votes which they represented added to his count; and that he was advised, and believed that the inspection and production of the said ballot papers were material for the purpose of questioning the election and return.

J. Reynolds, on behalf of Mr. Irvine, showed cause, and, amongst other objections, urged that the order asked for could not be granted until a petition had been filed.

M E. O'Brien supported his summons.

McDonald, J. J.—The 28th Section of the Act, 38 Vict. cap. 28, O., provides that no person shall be allowed to inspect any ballot papers in the custody of the Clerk of the municipality, except under the order of a Court or Judge of competent jurisdiction, to be granted by the Court of Judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition as to an election or return.

Mr. Reynolds, for Mr. Irvine, the Reeve elect, admits that I am a "Judge of competent jurisdiction," but contends that the order asked for cannot be made, unless a petition questioning the election or return shall first have been filed, and which has not in this case been done. After considering the matter very fully, I have been unable to arrive at any other conclusion than that this contention is correct. I do not think that the Legislature can have intended that a production and inspection of ballot papers should be permitted merely for the purpose of allowing a party to inform himself whether there exist grounds for contesting an election. I have doubts whether a Court or Judge is clothed with power to make an order under the above mentioned 28th section, unless and until a prosecution has been instituted for an offence in relation to ballot papers, or the proper proceedings for the purpose of questioning an election or return have been commenced under the Municipal Institutions Act, although possibly in the former case he may have such power, (see 37 Vict. cap. 5, sec. 23, O.) And it is questionable whether the evidence on oath required under the 28th section to satisfy the Court or Judge could, in many cases be obtained, or be compelled to be given before one or other of the above steps be taken.

I must therefore decline to grant the order for inspection and production of ballot papers asked for in this matter.

Summons discharged.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS FOR AUGUST, SEPT., AND OCT., 1876.

From the American Law Review.

Action against Public Officer.—*See* Frivolous Suit.

Annuity.—*See* Residuary Legatee.

Arbitration Clause.—*See* Covenant.

Bailment.

1. Plaintiff left two parcels worth £60 with a servant of the defendant railway company,

paid for their deposit without declaring their value, and received therefore a ticket headed "Luggage and cloak office," and bearing on its face, in plain type, a reference to conditions on the back. Among these conditions was one stating that the company would not be responsible for more than £5 value, unless the extra value was declared and paid for, and that "the company will not be responsible for loss of or injury to articles except left in the cloak-room." Plaintiff knew there were conditions on the ticket, but did not know what they were. The parcels were left by the servant in an exposed place, instead of putting them in the "Luggage and cloak office," referred to on the ticket, and a thief made off with them. *Held*, that the plaintiff could not recover although the parcels were not put into the cloak-room, because the conditions on the ticket were binding. and the plaintiff must be held to have had knowledge of them.—*Harris* v. *The Great Western Railway Co.*, 1 Q. B. D. 515.

2. Plaintiff left his bag, worth £24 12*s.*, at the cloak-room of defendant's station, and received a ticket therefor, on the face of which was the date and number of it, and the time of opening and closing the cloak-room, and the words "See Back." On the back it was stated that the company would be responsible only to the amount of £10. There was also a notice to this effect hung in the cloak-room in a conspicuous place. The jury found as a fact that the plaintiff did not read his ticket, and did not know of the condition on the back, and that, as a reasonably careful man, he was under no obligation to make himself aware of said condition. *Held*, that the company was liable for the value of his bag. *Parker* v. *South-Eastern Railway Co.*, 1 C.P.D. 418.

Banker.—*See* Bills and Notes, 3.

Base Fee.—*See* Tenant in Tail.

Bill of Lading.

By a bill of lading, 306 packages of tea, shipped on board the *Medway* at London for Montreal, for the appellants, were "to be delivered from the ship's deck where the ship's responsibility shall cease at the port of Montreal . . . unto the Grand Trunk Railway, and by them to be forwarded thence to the station nearest Toronto, and at the aforesaid station delivered to" the appellants or their assigns. There was a list of exceptions to liability, and then the clause, "No damage that can be insured against will be paid for, nor will any claim whatever be admitted, unless made before the goods are removed." The ship arrived May 2d or 3d. The tea was unloaded and placed in shipping-sheds. From the shipping-sheds it was removed to the railway freight-sheds on the 6th, 9th, and 12th of May, and delivered at the appellant's warehouse in Toronto on the 13th, 16th, and 17th of May. The shippers were informed by the appellants of damages to the tea on the 30th of May. *Held*, that the clause, "Nor will any claim whatever be admitted unless made before the goods are removed," referred to the removal of the goods from the railway station rather than from the ship, and that not merely patent damage, but latent damage, that an examination at the station would have revealed, was meant. Appeal dismissed.—*Moore* v. *Harris*, 1 App. Cas. 318.

Bills and Notes.

1. 16 & 17 Vict. c. 59, §19, provides, that, if a check is presented to a bank "which shall, when presented for payment, purport to be indorsed by the" payee, the bank shall not be liable by paying the same, &c. Plaintiffs did business in their own name, and also as "S. & Co., Agent K." In payment for goods bought of the latter concern, defendants gave checks payable to "S. & Co. or order," to K., who indorsed the checks: "S. & Co., per K. Agent." got the money, and misappropriated it. *Held*, that the defendants were not liable to the plaintiffs in any form.—*Charles* v. *Blackwell*, 1 C. P. D. 548.

2. The plaintiffs in New York purchased a draft of S. & Co. for £1,000 on S., P., & Co in London, payable to the order of the plaintiffs. They indorsed it to W. & Co., of Bradford, England, and enclosed it in a letter to W. & Co. for transmission. The letter was placed in the "Letter Box" in the plaintiffs' office, where their letters for the post were usually put. It was stolen by one of their clerks whose duty it was to take the letters to the post-office, and in the course of a fortnight it was presented to defendants' bank, with a forged indorsement by W. & Co. to C. or order, and the blank indorsement of C., the bearer. Defendants received the draft, stamped it with their bank stamp, sent it to S., P., & Co., got the money on it, and turned the money over to the bearer. Evidence was offered at the trial to show that it was the general custom to send a letter of advice with a draft, or on the next steamer when a foreign remittance was made. This evidence was rejected. *Held*, that an action for money received to the plaintiffs' use would lie; that there was no evidence of negligence to stop the plaintiffs from setting up their title to the draft; and that the evidence in question was properly rejected.—*Arnold* v. *Cheque Bank*. *Same* v. *City Bank*, 1 C. P. D. 573.

3. A check drawn by the plaintiff on M. & Co., his bankers, payable to the order of P., and crossed "L. and C. Bank," was stolen from P., and his indorsement forged. It was then offered to defendant, who, after telegraphing to M. & Co., and received word that the check was good, took it in good faith and gave it to his bankers for presentation. Meantime P. learned his loss, wrote to plaintiffs about it, and asked for another check, which was sent him. Afterwards the first check was presented to M. & Co. by the L. and J. Bank, and was paid in spite of the crossing on its face. Subsequently the second check was presented to M. & Co., and paid. The jury found everybody concerned, except the defendant, had been guilty of negligence in the matter. *Held*, that the action could be maintained, as the defendant acquired no title to the check, and M. & Co.

paid the first check without authority.—*Bobbett* v. *Pinkett*, 1 Ex. D. 368.

Bond by Shipmaster.—*See* Collision, 2.

Broker.

H. & Co., fruit-brokers, gave the plaintiff a sold-note as follows: "We have this day sold to you, on account of James Morand & Co., 2000 cases oranges," which they signed with their own name merely. In an action against the brokers for non-performance, *held*, that they intended to bind their principals, and that they were not liable as principals themselves.—*Gadd* v. *Houghton*, 1 Ex D. 357.

See Principal and Agent, 2.

Carrier.—*See* Common Carrier.

Charterparty.—*See* Freight.

Check.—*See* Bills and Notes, 1, 2, 3.

Class.

1. A testator left an aggregate fund to trustees to pay the income to his wife, and on her death to apply the income to the support of "such child or children of mine then living, and of the issue of my child or children then deceased, . . . until my youngest surviving child shall have attained the age of twenty-one years." At that time, the trustees were to make certain sales of real estate, and to stand possessed of the whole fund in trust for "my child or children then living, and the issue then living of my child or children dying before that period," the shares of the children to be paid immediately, the shares of the other issue at marriage or the age of twenty-one. The youngest child became twenty-one in 1862. The widow died in 1874, and several of the children had died before her. *Held*, that the class to take was to be ascertained at the widow's death, and the personal representatives of a child dying before that time took nothing.—*In re Deighton's Settled Estates*, 2 Ch. D. 783.

2. A testator gave the residue of his estate to trustees in trust to pay the income to R. M. for his life, and at his death to pay the trust fund to his sister's female children "on their attaining the age of twenty-one years, or marrying with the consent of their parents," R. M. died in 1870, at which time the testator's sister was a widow with two daughters. In 1875, one daughter married with her mother's consent, and she and her husband petitioned for the transfer of a half of the residue of testator's estate. *Held*, that the "consent of parents" must mean, parents or parent, if any," so that when the daughter married with her mother's consent she took a vested interest, and the class to take was to be fixed when an individual of it became absolutely entitled.—*Dawson* v. *Oliver-Massey*, 2 Ch. D. 783.

Cloak-Room Ticket.—*See* Bailment, 1, 2.

Collateral Covenant,—*See* Covenant.

Collision.

1. An Inman steamer, going at ten and a half knots an hour, on a dark night, between Queenstown and Liverpool, overtook and ran down a bark having no light astern. The bark saw the steamer a quarter of an hour before the collision, but had not time enough to run up a light before they struck. The steamer did not see the bark. *Held*, that the steamer was liable, and that there was no contributory negligence on the part of the bark.—*The City of Brooklyn*, 1 P. D. 276.

2. A steamer, bound to port for a perishable cargo of fruit, negligently ran into a sailing-vessel; and the master of the steamer, to avoid detention, and in good faith, gave a bond binding himself and his owners to pay the damage done. In an action against the vessel by the captain for wages and disbursements, including the amount of the penalty of the bond, *held* that the amount of the penalty must be held in court to abide the result of any claim preferred against the captain in respect of the bond.—*The Limerick*, 1 P. D. 292.

Common Carrier.

The plaintiff shipped two horses on a steamer belonging to defendant, for transportation. There was no bill of lading. In a storm of more than usual violence, partly from the rolling of the ship in the heavy sea, and partly from struggling from fright, one of the horses was so injured that she died. The jury expressly found that there was no want of due care on the part of the defendant, either in taking proper measures beforehand for guarding against storms, or in the treatment of the horse at the time of the storm and afterwards. *Held*, that the defendant was not liable. "Act of God" defined by Cockburn, C.J.—*Nugent* v. *Smith*, 1 C. P. D. 423; s. c. 1 C. P. D. 19; 10 Am. Law Rev.

Concealment.—*See* Marine Insurance, 1.

Condition on Ticket.—*See* Bailment, 1, 2.

Consideration.—*See* Principal and Agent.

Conspiracy.—*See* Frivolous Suit.

Constructive Total Loss.—*See* Marine Insurance, 2.

Contingent Interest.—*See* Marriage Settlement.

Contract.

1. The defendants bought rice of the plaintiffs, to be shipped at Madras "during the months of March and or April, 1874, about 600 tons, per *Rajah*, of Cochin." The 600 tons filled 8,200 bags; of which 1,780 bags were shipped Feb. 23, 1,780 bags Feb. 24, 3,560 bags Feb. 28, and the remaining 1,080 bags on Feb. 28, with the exception of 50 bags, which were shipped March 3, on which day the bill of lading for the last 1,080 bags was signed. The defendants refused to accept the rice upon its arrival. Evidence was given that rice shipped in February would be the spring crop, and equally good with rice shipped in March or April. *Held*, that the defendants were not bound to accept the rice.—*Shand* v. *Bowes*, 1 Q. B. D. 470.

2. The plaintiff contracted with the defendants to construct some dockworks. There

was in the contract provision for a penalty of £100 a week in case the works were not completed on or before on or or before Aug. 31, 1873. The works were not completed on that date, and on Jan. 22, 1874, the defendants gave notice to the plaintiff to terminate the contract; and they at the same time seized the the materials and implements of the plaintiff, under the following clause in the contract: "Should the contractor fail to proceed in the execution of the works in the manner and at the rate of progress required by the engineer, or to maintain the said works to the satisfaction of the engineer, his contract shall, at the option of the company, be considered void, as far as relates to the works remaining to be done; and all sums of money due the contractors, together with all materials and implements in his possession and all sums named as penalties for non-fulment of the contract, shall be forfeited to the company, and the amount shall be considered as ascertained damages for breach of contract." There was a clause providing that if the works were not completed "within the period limited for that purpose," it should be lawful for the company to assume control of and finish them, in which case the contractor should be paid only for the work he had done. *Held*, that the forfeiture of the sums of money, materials, and implements, as set forth in the above clause, could only be enforced before the expiration of the time limited for the completion of the contract.—*Walker* v. *The London & North-western Railway Co.*, 1 C. P. D. 518.

See Principal and Agent, 1.

Contract to Sell.—*See* Vendor's Lien.

Contributory Negligence.—*See* Collision, 1.

Covenant.

Covenant by a lessee to keep only such a number of hares and rabbits as should not injure the crops, &c.; and in case he kept a greater number, he should pay a fair compensation for the damage, to be fixed, in case of disagreement, by two arbitrators. In an action for breach of the covenant to keep only such a number, *held* that the action could be maintained before an arbitration, the clause as to arbitration being a distinct and collateral covenant.—*Dawson et al.* v. *Lord Fitzgerald*, 1 Ex. D. 257.

Creditor with Notice.—*See* Joint Debtor.

Damage to Cargo.—*See* Bill of Lading.

Damages, Measure of.—*See* Measure of Damages.

Deaf Mute.

A deaf mute was found guilty of felony, but the jury also found that the prisoner was not capable of understanding, and did not understand, the proceedings against him. *Held*, that the prisoner could not be convicted; and it was ordered that he be detained as of insane mind during the Queen's pleasure.—*The Queen* v. *Berry*, 1 Q. B. D. 447.

Debt of Honor.—*See* Infant.

Delivery of Cargo.—*See* Bill of Lading.

Discovery.—*See* Production of Documents.

Distribution.—*See* Trust to Sell.

Documents, Inspection of.—*See* Inspection of Documents.

Estoppel.

A company, formed to build a railway, improperly went on when only one-fifth of the capital stock was taken. In a bill filed by a shareholder to avoid his contract to take shares, it appeared that, for a long time after the company was to his knowledge proceeding illegally, he continued to act with the other members of it, and did not protest against the improper and illegal acts. *Held*, that, though he might have originally had a ground of relief, he had lost it by acquiescence.—*Sharpley* v. *Louth & East Coast Railway Co.*, 2 Ch. D. 663.

See Bills and Notes, 2; Vendor's Lien.

Equitable Owner.—*See* Insurance.

Evidence.—*See* Bills and Notes, 2.

Forcible Entry.

L. was mortgagee in fee of premises, but did not take actual possession. T. and W. occupied the premises under the mortgagor who had never been dispossessed. L. one day had a carpenter take off the lock of one of the doors, and he entered into possession. T. and W. entered by a window and expelled L. L. had them indicted for forcible entry. They were acquitted, and sued L. for malicious prosecution without reasonable and probable cause. *Held*, that the action could not be maintained. If L. got the legal possession for civil purposes, that was ground enough for an indictment against T. and W. for forcible entry.—*Lows* v. *Telford et al.*, 1 App. Cas. 414.

Foreign Judgment.—*See* Marine Insurance, 2.

Forfeiture.—*See* Contract, 2.

Forged Indorsement.—*See* Bills and Notes 2, 3.

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

Freight.

Charterparty by the defendants to convey a cargo of railway iron from England to Taganrog, Sea of Azof, "or so near thereto as the ship could safely get," consigned to a Russian railway company. The ship arrived Dec. 17, at Kertch, a port thirty miles from Taganrog, where the captain, the plaintiff, found the sea so blocked up with ice, and unnavigable till April. Against the orders of the charterers, who notified him that they would hold him responsible, he proceeded to unload the cargo; and there being nobody to receive it, he put it in charge of the custom-house authorities there. The consignees claimed it; and, on their producing the bills of lading and charterparty, it was delivered to them against the captain's claim that it should be retained for freight. A receipt was given to the effect that the cargo was received

"on the power of the charterparty and the bill of lading." *Held*, by Mellor and Quain, J.J., that the captain was entitled to no freight; by Cockburn, C. J., that he ought to have freight *pro rata*.—*Metcalfe* v. *The Britannia Ironworks Co.*, 1 Q. B. D. 613.

Frivolous Suit.

The court will stay summarily as frivolous and vexatious an action brought for conspiring to make, and making, false statements about the plaintiff, if the defendants come in and show that they did all that they did as members of a military court of inquiry, and in the performance of their official duty.—*Dawkins* v. *Prince Edward of Saxe Weimar. Same* v. *Wynyard. Same* v. *Stephenson*, 1 Q. B. D. 499.

Fund in Court.—*See* Marriage Settlement.

Good-Will.—*See* Mortgagor and Mortgagee.

Indorsement of Check.—*See* Bills and Notes, 1, 2, 3.

Infant.

B., being of full age, promised to pay, "as a debt of honor," a debt contracted when under age. Such a promise is not a "ratification of the contract made during infancy," as a "debt of honor" cannot be enforced at law.—*Muccord* v. *Osborne*, 1 C. P. D. 569.

Inspection of Documents.

Letters written and sent for the confidential and private information of the solicitor of a party in a future suit, and having reference to the subject-matter thereof, are not privileged. But if they are written in reply to the application of such solicitor, with a view to using the information so obtained in the suit, the case is otherwise.—*M'Corquodale* v. *Bell*, 1 C. P. D. 471.

Insufficient Assets.—*See* Residuary Legatee.

Insurance.

D. became owner of a vessel in December, 1868, and the plaintiff equitable mortgagee. D. applied for insurance on the vessel in the defendant company in January, 1860, ordering the policy made in plaintiff's name, and sent to him. The policy, in the usual form, was made in the name of D., but sent to plaintiff. D. did not inform the defendant company that the plaintiff was equitable mortgagee. In the policy, *inter alia*, was this: "This is to certify that Mr. D., as ship's-husband for the H., whereof is master at the present time D., has this day paid £17 10*s* for insurance . . . . on said vessel." In January, 1870, while the vessel was on a voyage, plaintiff took out a policy like the preceding, but in his own name as ship's-husband. In March, 1870, plaintiff, on application of the defendant company, paid the yearly assessment for losses, and received a receipt therefor as husband of the said vessel. In October, 1870, he paid another. In May, 1870, D. transferred the vessel to the plaintiff, who became registered owner. The defendant company had no notice of this. Later, D. put in a claim for the loss of an anchor. In November, 1870, the vessel was lost, and in December plaintiff put in a claim for the insurance. In January, on request of the company, D. attended a meeting of the directors to consider the claim. After his withdrawal they resolved that there was no claim. In April, 1871, another meeting was held, which came to a similar resolution; but D. was not notified, and the plaintiff had no notice of either meeting. Neither D. nor the plaintiff had signed, or been asked to sign the articles. The company was a limited mutual insurance company. Every person insuring a ship in the company was a member, provided he signed the articles. The directors were to manage the affairs of, and act fully for, the company, with full power to settle disputes between members and the company; and no member could bring suit against the company, except as thus provided. If any member sold his ship, the new owner was to have no claim upon the company for loss. In case of loss, the directors were to summon the owner, master, or crew, as they saw fit, and make inquiry as to the loss. *Held*, reversing decision of the Queen's Bench, that the plaintiff could recover. (Archibald, J., and Pollock, B., dissenting.) *Edwards* v. *The Aberayron Mutual Ship Insurance Society*, 1 Q. B. D. 563.

Joint Debtor.

The defendants, R. and H., who were partners, had been in the habit of consigning goods through the plaintiffs to B. and S. for sale, the proceeds to be remitted by B. and S. to the plaintiffs. By an agreement in writing between plaintiffs and R. and H. these remittances were to be held to pay any advances made by plaintiffs on account of R. and H.; and the balance was to be sent to R. and H. The practice was for the defendants to draw on the plaintiffs, who accepted the drafts; and the defendants discounted their acceptances. In case the goods were not sold in season for the acceptances to be met, the defendants made a new draft, which the plaintiffs accepted. Thus the plaintiffs got new funds to meet the old acceptances, and the defendants got further time. This course continued for five years, at the end of which time R. and H. dissolved partnership. At that time there was goods in the hands of B. and S. for sale, and the plaintiffs had, on the security of them, accepted R. and H.'s drafts. H. went on with the business, and drew new drafts in the same manner, in the name of "R. and H., in liquidation." A year after the dissolution, H. informed plaintiffs that R. had withdrawn, and that he (H.) would go on with the business. Plaintiffs afterwards accepted R.'s drafts in the manner above described, by the discount of which they were saved cash advanced. The action was brought partly for advances which had been renewed by "R. and H., in liquidation," partly for advances which had been renewed by H.'s draft alone, accepted by plaintiffs. *Held*, that the plaintiffs had a right to treat both R. and H. as principal debtors, and that R. was

not discharged by the extension of time given H. in pursuance of the practice of the parties. —*Swire et al.* v. *Redman & Holt*, 1 Q. B. D. 536.

Laches.—*See* Estoppel.

Lease.

The *habendum* of a lease stated the term as 94¼ years, the *reddendum*, as 91¼. The counterpart of the lease signed by the lessee had 91¼ in both parts. *Held*, that the *habendum* must control the *reddendum* in the lease itself, and that the counterpart must be made to follow the lease, and that the term was therefore 94¼ years.—*Burchell* v. *Clark*, 1 C. P. D. 602.

Liability of Master.—*See* Collision, 2.

Liability of Ship-Owner—*See* Bill of Lading.

Lien.—*See* Vendor's Lien.

Life Insurance.—*See* Amalgamation of Companies.

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

Malicious Prosecution.

The declaration set forth that defendants falsely and maliciously wrote and published a certain notice, requiring the plaintiff, under the Insolvent Act of Canada, to make an assignment of his property for the benefit of his creditors, as certain promissory notes on which the plaintiff was liable to the defendants and others had long been overdue, and were unpaid. In another count, it was complained that the defendants maliciously, and without probable cause, had the plaintiff arrested, in a suit on certain promissory notes indorsed to the defendants by the plaintiff, on the ground that he was about to leave the country; when the court subsequently found that he was not about to leave the country, and ordered his discharge. The defendants replied to the first count, that the notice in question was true, and was not published, except to the plaintiff. To the last count they replied simply, that the note was long due, and that they had been informed, and believed, the plaintiff intended to leave. The court ruled, that, unless the defendants believed that they would lose their debt unless they had the defendant arrested, or if they acted with the idea of protecting other indorsers who might otherwise be liable to them, there would be evidence of want of reasonable cause for the arrest sufficient to justify damages. *Held*, error in the charge, and that the said notice was a legal proceeding, and *prima facie* privileged. —*Bank of British North America* v. *Strong*, 1 App. Cas. 307.

See Forcible Entry.

Marine Insurance.

1. The brig *Jessie*, from Falmouth, arrived at Mazagan, in Morocco, Dec. 27, 1874. Jan. 1, 1875, she was driven from her moorings in a gale, and lost her anchor. On the 9th, the captain wrote the plaintiff, who was owner, but said nothing about the loss of the anchor. The letter reached the plaintiff on the 24th, and, just a month later, the plaintiff, having had no further news of the vessel, had her insured in the defendant company, "lost or not lost." He said to the company's, "I do not know when she was ready to sail; I have not had the sailing letter yet." The usual time for loading at Mazagan was fifteen to twenty days, and for the voyage home, twenty-five to thirty, and the course of the post was irregular. After verdict for plaintiff, a motion to enter verdict for defendants, on the ground that the failure by the captain to mention the loss of the anchor constituted a material concealment, was refused. *Quære*, if a failure to communicate such a fact forms a defence, unless fraudulent.—*Stribley* v. *Imperial Marine Ins. Co.*, 1 Q. B. D. 507.

Marriage Settlement.

Where a husband, by a post-nuptial settlement, made a covenant to settle on his wife any property to which she was, or during the marriage should become, entitled, it was *held* that a fund in court, then contingent, and which came into possession after her death, was included.—*Agar* v. *George*, 2 Ch. D. 706.

Marshalling Assets.

Testator made several pecuniary legacies, and devised a specific real estate to one son, and the residuary real estate to another There was not enough personalty to pay the debts besides the legacies. *Held*, that the pecuniary legacies must be exhausted in making up the deficiency before resorting to the real estate.—*Farquharson* v. *Floyer*, 3 Ch. D. 109.

Master and Servant.

1. The defendants employed the plaintiff with other workmen, and also a steam-engine, with an engineer, in sinking a shaft in their colliery. When the work was partly done they employed W., under a verbal contract, to finish it. W. was to employ and pay the plaintiff and the other workmen. The engine and engineer were under his control, but the engineer's wages were to be paid by the defendants. The plaintiff was injured through the negligence of the engineer. *Held*, that the defendants were not liable.—*Rourke* v. *The White Moss Colliery Co.*, 1 C. P. D. 556.

2. The S. Club, composed of persons interested in agriculture, made an agreement with the defendant company for the use of the company's hall for their annual shows. By this agreement the hall was, during the times of the shows, at the entire disposal of the club. The company was to provide accommodation for the stock and things exhibited, and provide and pay a sufficient body of men to do all the work about the show, and who should be under the exclusive control of the club. The company was to pay £1,000 to the club at each show, and be at liberty to charge and receive an admission fee of 1*s*. The club was to have entire and exclusive control of the show while it was in progress. The club contracted with one S. to see to admitting the stock, &c., at the gate, to its dis-

position, and to its delivery. He admitted and delivered on orders signed by the club, and was paid in the lump for the whole job. Plaintiff bought some sheep of an exhibitor at the show, and got an order to S. for their delivery. S. delivered him other sheep in place of his own. *Held*, that the defendant company was not liable.—*Goslin* v. *The Agricultural Hall Co.*, 1 C. P. D. 483.

3. Contract in writing, as follows: "I hereby accept the command of the ship C. C., on the following terms: Salary to be at and after the rate of £180 per annum." "Should owners require captain to leave the ship abroad, his wages to cease on the day he is required to give up the demand; and the owners have the option of paying or not paying his expenses travelling home." "Wages to begin when captain joins ship." The captain was dismissed, not for misconduct, but without notice. *Held*, that the captain was entitled to reasonable notice under this contract.—*Green* v. *Wright*, 1 C. P. D. 591.

Measure of Damages.

The plaintiff, who was contractor for the construction of a tramway with a tramway company, contracted with defendants that they should lay with asphalt and maintain in good order for twelve months the said tramway. Within the twelve months, one H., driving over the road, was thrown out and hurt, in consequence of the defective condition of the asphalt. H. sued the tramway company, who gave notice to the plaintiff. Plaintiff gave notice to the defendants. They refused to settle; and plaintiff, by negotiation, finally settled by paying £110: £70 damages, and £40 H.'s costs. He sued for these sums, together with £18 costs of his own in getting the claim reduced. *Held*, that the defendants were only liable for the £70 damages.—*Fisher* v. *The Val de Travers Asphalte Co.*, 1 C. P. D. 511.

Mistake.

G. P. R., an undischarged bankrupt, ordered goods from a firm under his old firm name of J. R. & Co., Mincing Lane, Plymouth." The firm sent them, thinking the order was from "R. Bros. & Co., Old town St. Plymouth," with whom they had had dealings. G. P. R.'s trustee in bankruptcy seized and claimed the goods, and the sellers, learning the mistake, sued to recover them. *Held*, that no property in them had passed, and the trustee must restore them.—*In re Reed. Ex parte Barnett*, 3 Ch. D. 123.

Mortgagor and Mortgagee.

P., lessee of certain dock premises, and the machinery movable and immovable thereon, for twenty-one years mortgaged the same to L. & Co. Afterwards a railway company gave notice to P. to buy the premises for the railway under the Land Clauses Act. P. died; and L. & Co., took possession, and gave notice to the railway company that they wished the compensation settled by arbitration. The company, and the executors and the mortgagees, concurred in the appointment of an umpire; and he made an award of a certain sum, including £2,800 "in respect of trade profits which would have accrued if the premises had not been taken" by the railway company. The executors claimed this sum. *Held*, that it belonged to the mortgagees. *Pile* v. *Pile. Ex Parte Lambton*, 3 Ch. D. 36.

Mutual Insurance.—*See* Insurance.

Negligence.—*See* Bills and Notes, 2, 3.

Negligence of Fellow-Servant.—*See* Master and Servant, 1.

Notice.—*See* Master and Servant, 3.

Partnership.—*See* Joint Debtor.

Patent.

Three referees were appointed under an act of Parliament to inquire into the impurities of the London gas, with right to require the gas companies to afford them facilities for their investigations. As a result of their examinations, one of the number thought he had discovered a method of securing greater purity in the gas. The impurities complained of came from certain compounds of sulphur. The defendant company had experimented on the matter, and had been using lime in the purifiers. This, with the contents of the purifiers, formed sulphide of calcium, with which the sulphur impurities combined. The carbonic acid of the gas impeded the action of the sulphide of calcium, and the result was, the gas came out to impure for use, and could not always be relied on to come out with the same degree of purity. The gist of the plaintiff's change consisted in keeping more lime in the first set of purifiers. In this way the carbonic acid was more effectually removed, and the subsequent processses of removing the sulphur impurities by sulphide of lime were much more effective. The change was suggested to the defendant company by the referees, and the latter tried it, with success. The referees made their report, incorporating these suggestions and experiments; but the report was witheld from publication, to enable the plaintiff to get out a patent. *Held*, that the plaintiff's idea only amounted to a a more thorough application of something in use before. *Quære*, whether a public official can patent the results of an official investigation. *Patterson* v. *Gaslight & Coke Co.*, 2 Ch. D. 812.

Petition of Right.

English merchants were authorized by the law of China to trade only with members of a guild called the Cohong. War broke out between England and China, the Cohong was abolished, and the English merchants lost their only remedy, which was against the Cohong. A treaty was made between the countries, under which China paid to the British government a certain sum on account of debts due from former members of the Cohong to said merchants. It was *held* that a petition of right would not lie by one of said British merchants to obtain payment of a sum of money alleged to be due from a a former member of the Cohong.—*Rustomjee* v. *The Queen*, 1 Q. B. D. 487.

Digest of the English Law Reports.

Power to Sell.—*See* Trust to Sell.

Principal and Agent.

1. Action for breach of the following undertaking: "I undertake to load the ship *Der Versuch*, twenty-nine keels, with Bebside coals, in ten colliery working days. On account of Bebside Colliery, W .S. Hoggett." Hoggett the defendant, was a clerk of the colliery company, which had made a contract with B., W., & Co., to furnish them a certain amount of coal in the months of January, February, and March, "the turn to be mutually agreed upon." B., W., & Co., chartered the plaintiff's ship to convey the coal; and the plaintiff, objecting to the provision of the charterparty as to the matter of detention in loading "in turn, the above undertaking was procurred, and the charter was completed. The undertaking purported to be with nobody in particular. The vessel was detained beyond ten days, and the claim was for demurrage. *Held*, that the jury properly found that the defendant was personally bound, though he did not know he was making the undertaking in reference to a pending charter, and that there was consideration therefor. *Weidner* v. *Hoggett*, 1 C. P. D. 533.

2. A broker is not personally liable on a note signed by him, and running thus: "I have this day sold by your order and for your account, to my principals, five tons anthracene." *Southwell* v. *Bowditch*, 1 C. P. D. 374 s. c. 1. C. P. D. 100; 10 Am. Law Rev.

See Bills and Notes, 1; Broker.

Privileged Communication.—*See* Inspection of Documenes; Production of Documents.

Privity.—*See* Master and Servant, 2.

Production of Documents.

A banking company, having a controversy about an alleged fraudulent transfer of an account, at one of its branch offices, telegraphed to the manager of the branch office to write full particulars. In the suit that followed, the bank refused to produce the letter sent in answer to the telegram, claiming it to be privileged. *Held*, that it must be produced. *Anderson* v. *Bank of British Columbia*, 2 Ch. D. 644.

Proximate Result.—*See* Measure of Damages.

Public Official.—*See* Patent.

Ratification of Contract.—*See* Infant.

Realty and Personaly.—*See* Marshalling Assets.

Residuary Legatee.

A testratrix gave life annuities, and ordered funds invested to pay them. She then gave the residue of her estate, "including the fund set apart to answer the said annuities, . . when and so soon as such annuities shall respectively cease," to J. The estate paid only 5s. in the pound, and the court ordered sums apportioned to each annuity to be invested and the income duly paid. One of the annuitants died, and J. claimed the fund out of which this annuitant had received his annuity. *Held*, that all the annuities must be paid in full before J. could take anything as residuary legatee.—*In re Tootal's Estate. Hankin* v. *Kilburn*, 2 Ch. D. 628.

Right, Petition of.—*See* Petition of Right.

Sale.—*See* Vendor's Lien.

Salvage.

The steamer M., from Sumatra to Jedda, with 550 pilgrims, was wrecked on the Parkin Rock; in the Red Sea, two or three days' voyage from Jedda. The steamer T. came up, and her captain refused to rescue and carry to Jedda the pilgrims for less than £4,000, the whole amount of the passage money from Summatra, to Jedda. The captain of the M. at last agreed to give this amount. *Held*, that the bargain was inequitable, and must be set aside. £1,800 was awarded. *Tye Medina*, 1 P. D. 272.

Sheriff.

A sheriff seized goods under *fi. fa.*, and the execution creditor afterwards lost his claim under the execution by accepting a composition from the execution debtor. He gave no instructions to the sheriff how to proceed, and the sheriff sold the goods for his fees and expenses. *Held*, that the execution debtor could maintain trover or trespass against the sheriff in respect of the goods so sold.—*Sneary* v. *Abdy*, 1 Ex. D. 299.

Slander.

In an action to impeach a testators's signature to a will which the plaintiff was an attesting witness, the defendant testified as an expert that he thought the signature was forged. The jury found in favor of the will and the presiding judge animadverted severely upon the hardihood of the expert. These strictures were published next day in the *Times*. Afterwards defendant was called in an action for forgery, and testified that the alleged forgeries were genuine signatures. The counsel, in cross-examination, referred to the witness' testimony in the previous case, the remarks of the judge, and the item in the *Times*, and sat down. Thereupon the witness began an "explanation" of the previous case, and, in spite of the efforts of the judge to stop him, said: "I believe that will to be a rank forgery, and I shall believe so to the day of my death." The jury found, on special questions put them by the judge, that the witness spoke these words not in good faith as a witness, nor in answer to any question, but for his own purposes, and maliciously. *Held*, that the words were privileged.—*Seaman* v. *Netherclift*, 1 C. P. D. 540.

Sold Note.—*See* Broker.

Statute.

A man may be convicted and fined for "riding a horse furiously so as to endanger the lives of passengers," under the following statute: "If any person, *riding* any horse or beast, or *driving* any sort of carriage, shall *ride* or *drive* the same furiously so as to en-

danger the life of any passenger, every person so offending and being convicted of such offence shall forfeit a sum not exceeding £10 in case such *driver* shall not be the owner of such wagon, cart, or other carriage, and in case the offender be the owner of such wagon, cart, or other carriage, then any sum not exceeding £10."—*Williams* v. *Evans*, 1 Ex. D. 277.

Statute of Frauds.

The following note by W.'s solicitor to A.'s solicitor is not such as to meet the requirements of the Statute of Frauds, although a verbal agreement was made, as there stated: "W. has been with us to-day, and stated that he had arranged with your client A. for the sale to the latter of the Lion Inn for £950. We therefor send herewith draft contract for your persual and approval.—*Smith* v. *Webster*, 3 Ch. D. 49.

Statute of Limitations.

A writ was issued in the Common Pleas for a claim not then barred, but it was never served. After the claim was barred, but within six months of the date of the writ, the time allowed by the Procedure Act for the writ to remain in force, a bill in Chancery was brought for the same claim. *Held*, that the writ would have saved the claim in the Common Pleas, but was of no effect against the statute in proceedings in equity.—*Manby* v. *Manby*, 3 Ch. D. 101.

Sub-contractor.—*See* Master and Servant, 2.

Tenant in Tail.

G. R. had an estate tail expectant on the death without issue of C. R., a lunatic. C. R. died without issue, and G. R. had converted his estate tail into a base fee, and died leaving a widow and children. The land was sold and the fund paid into court. G. R.'s widow and children petitioned to have the fund paid out to them. *Held*, that they must first produce a proper deed enlarging the base fee. *In re Reynolds*, 3 Ch. D. 61.

Ticket.—*See* Bailment, 1, 2.

Time for Completion of Contract.—*See* Contract, 2.

Transfer of Shares.—*See* Contributory, 1, 2.

Trust to Sell.

A testator left his property, including a newspaper, to his son W., and two others, trustees in trust, among other things, "to carry on, or cause to be carried on, under their inspection and control, during the life of my said wife," the newspaper. He directed a reserve fund of one-fourth part of the profits of the newspaper to be set apart each year to aid in carrying it on, and then directed the trustees to divide the remaining three-fourths of the profits of the paper, and his other property, into six parts, and to pay one part to each of his five children named, and one to his wife; and in case a child died without issue before the death of his wife, his share to go to the surviving children. Then followed: "In case any of my children shall survive my wife, and die before he shall have received his share of my trust estate without leaving issue, I give such share equally amongst my surviving children." Then came this: "And from and after the decease of my wife (or during her life if she and the majority of my children and my trustees shall think it proper and expedient so to do), at the sole discretion of my trustees, or trustee, to sell and absolutely dispose of all my real and personal estates, and my trade or profession [the newspaper], and the good-will thereof, and to divide the proceeds thereof amongst my wife and children and their issue, if the division be made in the lifetime of my wife, but if the division be made after her death, amongst my children and their issue." Then followed a provision, that, in case it was decided to sell the paper under the foregoing provisions, the eldest son should have the privilege of taking it at £500 under the market value. *Held*, that the will created an absolute trust to sell at the death of the wife, and a trust to sell in the discretion of the trustees as to the time and manner thereof, during her life; and at the wife's death to the surviving children took equal vested shares in the newspaper and the residue of the property.—*Minors* v. *Battison*, 1 App. Cas. 428.

Ultra Vires.—*See* Debentures.

Vendor's Lien.

Dec. 31, 1873, the defendants sold to B. & Co., one hundred tons zinc, out of a gross lot lying on the wharf, and at the same time made two "undertakings," as follows: "We hereby undertake to deliver your order indorsed hereon twenty-five tons zinc off your contract of this date." Jan. 7, 1874, the plaintiffs bought of B. & Co., fifty tons zinc, and paid for it. Jan. 14, B. & Co., failed, having given the defendants a bill for the zinc, which was dishonored; and the defendants refused to deliver the zinc to the plaintiffs. *Held*, that the assumed undertaking to deliver did not estop the defendants from setting up against the plaintiffs their right as unpaid vendors to stop the goods.—*Farmeloe* v. *Bain*, 1 C. P. D. 445.

Vested Interest.—*See* Class, 1; Trust to Sell.

Wages and Disbursements.—*See* Collision, 2.

Waiver.

In bankruptcy proceedings against the holder of a lease, the lessors sent the trustee in bankruptcy a notice to disclaim the lease within twenty-eight days, as the Bankruptcy Act provided. Some letters followed; and the day before the twenty-eight days were up the lessors wrote, "We should be glad to have a reply to our letter of the 24th ult., as to whether you intend to retain the lease, at your earliest convenience." The letter of the 24th ult., contained the notice to disclaim. *Held*, that the right to a disclaimer within the twenty-eight days was waived by the

lessors.—*Ex parte Moore. In re Stokoe*, 2, Ch. D. 802.

Warehouseman.—*See* Bailment, 1, 2.

Will.—*See* Class, 1, 2; Residuary Legatee; Trust to Sell.

Witness.—*See* Slander.

Words.

"*Act of God.*"—*See* Common Carrier.

"*For your Account.*—*See* Principal and Agent, 2.

"*On Account of.*"—*See* Broker.

"*Receiver*," "*Divide.*—*See* Trust to Sell.

"*Rider*," "*Driver.*"—*See* Statute.

SPRING ASSIZES.

EASTERN—HARRISON, C. J.

Ottawa	Tuesday	March 20th.
Pembroke	Tuesday	April 3rd.
Certh	Tuesday	April 10th.
Lornwall	Tuesday	April 17th.
L'Orignal	Tuesday	April 24th.

MIDLAND—GWYNNE, J.

Belleville	Tuesday	March 13th.
Napanee	Thursday	March 22nd.
Brockville	Tuesday	April 3rd.
Kingston	Tuesday	April 17th.
Picton	Tuesday	May 1st.

VICTORIA—PATTERSON, J,

Brampton	Monday	March 26th.
Whitby	Tuesday	April 3rd.
Cobourg	Monday	April 9th.
Lindsay	Tuesday	April 24th.
Peterborough	Tuesday	May 1st.

BROCK—GALT, J.

Owen Sound	Tuesday	March 20th.
Walkerton	Tuesday	April 3rd.
Goderich	Thursday	April 12th.
Stratford	Tuesday	April 24th.
Woodstock	Thursday	May 3rd.

NIAGARA—MORRISON, J.

Hamilton	Monday	March 19th.
Milton	Monday	April 16th.
St. Catharines	Monday	April 23rd.
Welland	Tuesday	May 1st.
Cayuga	Tuesday	May 8th.

WATERLOO—WILSON, J.

Simcoe	Tuesday	March 13th.
Berlin	Monday	March 19th.
Brantford	Monday	March 26th.
Guelph	Monday	April 9th.
Barrie	Monday	April 23rd.

WESTERN—BURTON, J.

London	Monday	March 26th.
Sandwich	Tuesday	April 10th.
St. Thomas	Tuesday	April 17th.
Sarnia	Tuesday	April 24th.
Chatham	Tuesday	May 1st.

HOME—MOSS, J.

Toronto, (Oyer, Terminer, and General Gaol Delivery)	Tuesday	March 27th.
Toronto, (Assize and Nisi Prius)		April 10th.

There will be a jury and non-jury list in Toronto, Hamilton, and London. The former will be first disposed of.

The Chief Justice of the Common Pleas will remain in Toronto during circuit to hold the sittings of the Single Court and Judges' Chambers each week.

FLOTSAM AND JETSAM.

Prolix Judgments.—The number and voluminousness of the judgments delivered by the judges in the case of the *Franconia*, have placed the Law Reporting Society in some difficulty. The point to which they refer is so important that they ought to be all put on record, but they would occupy nearly a volume themselves. The judgment of the Lord Chief Justice alone occupied three hours in delivery. It is estimated that the cost of printing them to the Society would be £850, and the reporters naturally hesitate to incur such an expense. It is probable, I believe, that the matter will be compounded by the printing of two of the judgments on each side of the question.

Legal Notes and Queries.—In one of the legal journals there appears a column headed "Notes and Queries on points of Practice;" beneath the heading is a note to the following effect—"This column is not open to questions involving points of law such as a solicitor should be consulted upon. Such questions are excluded." This is a restriction, the property of which is tolerably obvious. It could not be for the benefit either of barristers, solicitors, or, in the long run, of the public, to establish a system of anonymous question and answer through the medium of the public press. Were such a practice once tolerated it might become the fashion to submit regular cases in the shape of "queries," and receive the opinions thereupon, at the very moderate cost involved in buying a copy of the paper in which the correspondence appears. Such a plan might save some intending suitors a good deal of money in the shape of fees, but the gratuitious opinions thus delivered by irresponsible persons would hardly prove as satisfactoy at the price as the more expensive

articles now paid for in guinea fees. No one, therefore, can fail to applaud the rule which has been quoted above. But what must be the surprise of the ordinary reader who turns from a perusal of the note containing it to the "queries" printed underneath? In one of these a gentleman requests an opinion, or a list of cases, to enable him to decide as to the lawfulness of a certain case of distress. Another wants to know what are his legal rights against the fowls of his neighbor which trespass upon his territory. A third will be obliged by "an early answer with any authorities" on a question of attestation: and the last of the four "queries" published relates to the technial interpretation of words in a certain will. Every one of these questions thus "involves a point of law;" and the uninitiated reader may perhaps be pardoned for wondering how the publication thereof is reconciled with the prohibition standing at the head of the column.—*London Globe.*

A barrister, not a hundred miles from Toronto, recently purchased from his next door neighbour a house with the appurtenances thereto belonging, of which he had previously been a tenant. The use of one of these appurtenances was denied to the vendee by the hard-hearted vendor. The man of law then filed his bill in the words and figures following:

"The plaintiff shows, &c., that the convey ance to the plaintiff embraces the said water-closet, and that even if the said closet be not within the precise words of the description, the said closet was intended to pass, and did pass by implication to the plaintiff, and the plaintiff is entitled to the uninterrupted and exclusive use of the same, and that the same is an easement.'

Prayer. "(1). That the defendant, his servants, workmen and agents, may be restrained by the order and injunction of this honourable Court from in any way preventing or interfering with the plaintiff's use of the said water-closet in the manner in which he has hitherto used the same.

"(2). That the defendant may be ordered to pay such damages as the plaintiff may suffer by reason of the defendant's conduct."

When the injunction was moved for in court, an enlargement was, for some reason or another, applied for, whereupon plaintiff's counsel tearfully implored that this should not be, his client being, he said, most anxious that the prayer might be immediately granted. The Court, impressed by the gravity of the situation, and being equal to the occasion, responded with alacrity: "*Oh—indeed.* Then there had better be no delay. You may take an interim injunction."

The Law of 'Packarapu.'—An Otago paper, just arrived, tells the story of a Maori, who, having been the unfortunate creditor of a bankrupt, had lost 40*l.* or so, and was determined to master the system by which he was deprived of his money. Having done so, he was able to explain to his friends that he had lost his money because the debtor became 'Packarapu.' In explanation of this word he laid down that a white man who wants to become 'Packarapu' goes into business and gets lots of goods and does not pay for them. He then gets all the money he can together, say 2,000*l.* and puts it away where no one can get it, all except 5*l.* With this he goes to the judge of the Supreme Court, and tells him he wishes to become 'Packarapu.' The judge says he is very sorry, but of course it cannot be helped; and he then calls all the lawyers together, likewise all the men to whom the 'Packarapu' owes money, and he says: 'This man is "Packarapu," but he wishes to give you all he has got, and so he has asked me to divide this among you all. The judge thereupon gives 4*l.* to the lawyers and 1*l.* to the other men, and the 'Packarapu' goes home, a regenerated man. Not so satisfactory to debtors it seems is the law administered in the District Court of Oamaru, as appears by the following extract from a judgment by Judge Ward, reported in the *New Zealand Jurist*: 'Under the Debtor and Creditor Act, 1875, the proceedings can go no further, but do not lapse, and no provision is made for quashing them, or for replacing the debtor in the position he occupied before filing the fatal statement of insolvency. Freed from his property, but not from his debts, of a certainty "the last state of that man is worse than the first." The wisdom of the Legislature has evidently deemed it fitting that a debtor, who has not reserved a portion of his estate sufficiently large to induce his creditors to attend his meetings in hope of a dividend, should go down to his grave in a state of liquidation. Until his debts are merged in the great debt of nature,

> Years may come and years may go,
> But he remains for ever

an unliquidated man. It may be a comfort to him in his painful situation to reflect that when he filed his statement of insolvency—and paid the fees thereon—he unconsciously enrolled himself in the "noble army of martyrs" to colonial legislation.'—*Irish Law Times.*

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Michaelmas Term, 40th Victoria.

During this Term, the following gentlemen were called to the degree of Barrister-at-Law.

H. H. G. Ardagh.
J. S. Fraser.
E. P. Clement.
W. H. Culver.
D. W. Clendenan.
I. W. Liddell.
J. W. Nesbitt.
A. C. Galt.
H. Symons.
A. Ogden.
J. L. Whiteside.
F. W. Casey.
C. L. Ferguson.
F. S. Nugent.
T. E. Lawson.
R. Harcourt.
G. A. Cooke.
J. C. Patterson.
J. C. Judd.

Mr. R. E. Wood who passed his examination last Term, and Messrs Maitland McCarthy, E. W. Scane, James Warren and Francis Tyrrell, who applied under 39 Vict., cap. 31, were also called to the Bar.

The following gentlemen received Certificates of Fitness:

John L. Whiting.
John Crerar.
A. C. Galt.
F. W. Patterson.
W. H. Culver.
E. F. B. Johnston.
C. W. Woodward.
C. L. Ferguson.
J. L. Whiteside
C. S. Jones.
T. M. Mahon.
T. M. Daly.
F. S. Nugent.
J. Creighton.
H. E. A. Kent.
R. J. Duggan.
J. C. Patterson.

And the following gentlemen were admitted into the Society as Students of the Laws and Articled Clerks:

Graduates.

John B. Rankin, B.A.
William Mundell, B.A.
Richard Willis Jameson, B.A.
John Brown McLaren, B.A.
Alexander Chrysler, B.A.
Henry Edmund Morphy, B.A.
Frederick Covert Moffat, B.A.

Junior Class.

Allan McLean.
James Thompson.
Edward A. Peck.
Harry Fowler Lee.
William Blackader.
William Vallèau Macliss
John W. Redick.
Thomas Adam.
Samuel Squire Young.
William Cayley Hamilton.
Alfred Beverley Cox.
John A. Gilbert.
Archibald McKay.
Robert K. Cowan.
Frederick A. Dawson.
William Havelock Garvey.
Daniel Fraser McWatt.
Robert Gilray.
Harry V. Carter.
George S. Lynch Staunton.
John Barry Scholefield.
Frank Marshall McDougall.
George Rivers Sandesson.
Arthur H. McKenzie.
William R. Thompson.
William Proudfoot.
Henry Stephen Blackburn.
Newenham Graydon.
Alexander John Snow.

Articled Clerks.

Charles Howard Widdifield.
Robert Miller.

After Hilary Term, 1877, a change will be made in the Preliminary Examinations.

Ordered, That the division of candidates for admission on the Books of the Society into three classes be abolished.

That a graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

That all other candidates for admission shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination upon the following subjects, namely, (Latin) Horace, Odes, Book 3; Virgil, Æneid, Book 6; Cæsar, Commentaries, Books 5 and 6; Cicero, Pro Milone. (Mathematics) Arithmetic, Algebra to the end of Quadratic Equations; Euclid, Books 1, 2, and 3. Outlines of Modern Geography, History of England (W. Douglas Hamilton's), English Grammar and Composition

That Articled Clerks shall pass a preliminary examination upon the following subjects:—Cæsar, Commentaries Books 5 and 6; Arithmetic; Euclid, Books 1, 2, and 3, Outlines of Modern Geography, History of England (W. Doug. Hamilton's), English Grammar and Composition, Elements of Book-keeping.

That the subjects and books for the first Intermediate Examination shall be:—Real Property, Williams: Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and amending Acts.

That the subjects and books for the second Intermediate Examination be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vict. c. 16, Statutes of Canada, 29 Vict. c. 28, Administration of Justice Acts 1873 and 1874.

That the books for the final examination for Students-at-Law shall be as follows:—

1. For Call.—Blackstone, Vol. I., Leake on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis' Equity Pleading, Dart on Vendors and Purchasers, Taylor on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

2. For Call with Honours, in addition to the preceding—Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

That the subjects for the final examination of Articled Clerks shall be as follows:—Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the final examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining certificates of fitness and for call are continued.

That the Books for the Scholarship Examinations shall be as follows:—

1*st year*.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and amending Acts.

2*nd year*.—Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Acts.

3*rd year*.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Lega Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I., and Vol. II., chaps. 10, 11 and 12.

4*th year*.—Smith's Real and Personal Property, Russell on Crimes, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis' Equity Pleading, Equity Pleading and Practice in this Province.

That no one who has been admitted on the books of the Society as a Student shall be required to pass prelim-examination as an Articled Clerk.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AND ARTICLED CLERKS.

To the Benchers of the Law Society:

The Committee on Legal Education beg leave to submit the following report:

Your Committee have had under consideration the representations made from time to time to the Benchers, and referred to your Committee, respecting the different courses of study prescribed for Matriculation in the Universities, and for Primary Examination in the Law Society, and now recommend:—

1. That after Hilary Term, 1877, candidates for admission as Students-at-Law, (except Graduates of Universities) be required to pass a satisfactory examination in the following subjects:—

CLASSICS.

Xenophon Anabasis, B. I.; Homer, Iliad, B. I. Cicero, for the Manilian Law; Ovid, Fasti, B. I., vv. 1 300; Virgil, Æneid, B. II., vv. 1-317, Translations from English into Latin; Paper on Latin Grammar.

MATHEMATICS.

Arithmetic; Algebra, to the end of quadratic equations; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar; Composition; An examination upon "The Lady of the Lake," with special reference to Cantos v. and vi.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar. Translation of simple sentences into French prose. Corneille, Horace, Acts I. and II.

or GERMAN.

A paper on Grammar. Musaeus, Stumme Liebe Schiller, Lied von der Glocke.

2. That after Hilary Term, 1877, candidates for admission as Articled Clerks (except graduates of Universities and Students-at-Law), be required to pass a satisfactory examination in the following subjects:—

Ovid, Fasti, B. I., vv. 1-300,—or
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II. and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-keeping.

3. That a Student of any University in this Province who shall present a certificate of having passed, within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a Student-at-Law or Articled Clerk, (as the case may be) upon giving the prescribed notice and paying the prescribed fee.

4. That all examinations of Students-at-Law or Articled Clerks be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

THOMAS HODGINS, *Chairman.*

Osgoode Hall, Trinity Term, 1876.

Adopted by the Benchers in Convocation August 29, 1876.