DIARY FOR MARCH.

4. Thurs..Grant enters upon his second term as President of the United States, 1873.
6. Sat..Name of York changed to Toronto, 1834.
7. SUN..*4th Sunday in Lent.*
9. Tues..County Court and General Sessions in York. Last day for J. P.'s to return convictions. (32 V., c. 6, s. 9, O.; 33 V., c. 27, s. 3, O.)
14. SUN..*Passion Sunday.*
17. Wed..St. Patrick's Day.
21. SUN..*Palm Sunday.*
23. Tues..Sir George Arthur, Lieut.-Gov. Upper Canada, 1838.
26. Frid..Good Friday.
28. SUN..*Easter Sunday.*
30. Tues..Lord Metcalfe, Governor-General, 1843.
31. Wed..Last day for return by Clerks of Municipalities, under secs. 191, 192, Mun. Act.

CONTENTS.

THE

Canada Law Journal.

Toronto, March, 1875.

An important judgment has just been given by the Court of Queen's Bench, on the law of libel. It came up in the now *cause celebrè* of *The Queen* v. *Patteson.* The Court held that the prosecution was by a "private prosecutor," and that therefore, under sec. 11 of 37 Vict. cap. 38 (Dom.) the Crown had no right to cause any juror to "stand aside." In this case eleven jurymen were "dis carded" by the Crown Counsel, and this was the main ground of the appeal from the ruling of the learned Judge who tried the case. Two of the Judges in giving judgment, censured in strong terms the action of the Counsel for the Crown in opposing, with the pertinacity he did, the application on behalf of the defendant to have points of law reserved for the opinion of the Court.

Our attention has been called to an error in the paragraph relating to overworked lawyers in a recent number of this journal (Vol. X. p. 330). We there referred to the late Mr. Justice Willes, as though he had declined Knighthood. The judge of that name who declined the dignity was Mr. Justice (Edward) Willes, a contemporary of Lord Mansfield. Another judge of a similar mind was Mr. Justice Heath, who preferred to die as he had lived, "plain John Heath." Our correspondent also questions whether Sir S. Romilly should be included in the catagory of lawyers worked to death. There is no doubt that during his early years he was obliged from failing health, induced by severe study, to quit England and recruit his strength at Lausanne. And his life at the close indicated that he was affected in much the same way as Hugh Miller. Brain fever set in, and in a paroxysm of delirium he put an end to his life.

The better opinion seems to be that his over-worked system could not stand the sudden strain upon it occasioned by the unexpected death of his wife.

The Chief Justice of England in trying an action arising out of an injury sustained in a railway accident, remarked upon a defect in the law as to assessing damages in such a case. The damages he said should not be assessed absolutely, finally and at once. There should be a conditional assessment, i.e., a certain sum to be paid at once and a certain further sum to be paid in the event of non-recovery within a given time. He suggested also that the law might make some equivalent provision, such as the payment of an annuity during the continuance of the disability. The hint is worth being acted upon in this country, and we doubt not that the solicitors of the railway companies will be astute enough to profit by it.

In a case before the Supreme Court of Pennsylvania, an action was brought by a person to recover damages for the loss of his eye. The injury had been occasioned thfough the quarrel of a couple of drunken men, passengers in the same car with him. The Court held that the Company was liable, on the ground that it was the clear duty of its employés to repress all disorderly conduct in the cars: *Central Law Journal*, Jan. 29, 1875, p. 99, *Pittsburgh Railroad* v. *Pillow* (in Error.)

The *Central Law Journal* observes that a novel question has been submitted to the Secretary of War of the United States, touching the law of Government contracts. Competition by tender was invited under the Statutes for the improvement of the Sault Ste. Marie Canal. There were twenty-seven "American" bids and one Canadian—the latter being the lowest of all. The lowest "American" bidder has raised the point whether the term lowest bidder, used in the Act, includes foreign bidders, so that they can obtain Government work to the exclusion of American citizens. The matter has not yet been determined,—but we can hardly imagine that the fellow-countryman of the Secretary of War will not get the benefit of any doubt there may be on the question.

Mr. Field, Q. C., who has been appointed by the Lord Chancellor to be a Judge in the Queen's Bench—Mr. Justice Archibald, by arrangement, going into the Common Pleas to occupy the seat vacated by Mr. Justice Keating—was called to the Bar in 1850, and in 1864 was made a Queen's Counsel. For many years he has enjoyed a large practice, and bears the reputation of being an able lawyer. He was the leader of the Midland Circuit and is held in high esteem by the members of it. The appointment is non-political. It is supposed that he will go the Northern Circuit in place of Baron Amphlett, who, in that event, will be Lord Coleridge's colleague on the Midland Circuit.

The Attorneys of the Guicowar of Baroda write to the London *Times*, stating that Mr. Serjeant Ballantine has been paid a retaining fee of 5,000 guineas to defend that gentleman, and that the learned Sergeant will probably be paid 5,000 guineas more. It is supposed that the Serjeant will be absent from England about three months. If this be correct, says the *Solicitors' Journal*, the *honorarium* is probably among the largest ever paid to counsel, and it furnishes a curious commentary on the superstition which, as Mr. Forsyth tells us ("Hortensius," p. 410) has prevailed in every country where advocacy has been known, of looking upon the exertions of the ad-

vocate as given gratuitously. It hardly needs, however, the example which he cites from Roman history of the speedy relaxation of the decrees of Augustus prohibiting advocates from taking fees, to show how rapidly the custom becomes more honoured in the breach than in the observance. In England, except in the ecclesiastical courts, says the same journal, the rule has always been that a barrister has no legal right to a fee. The reward, says Sir John Davys, "is a gift of such a nature, and given and taken upon such terms as albeit the able client may not neglect to give it without note of ingratitude. . . . . yet the worthy counsellor may not demand it without doing wrong to his reputation." As far as we remember, although refreshers have often been very liberal in proportion to the retainers, no retainer since the fee of 4,000 guineas marked on the brief of Serjeant Wilde in *Small* v. *Attwood* has at all approached in amount that given to Serjeant Ballantine.

A member of the firm whose advertisement in an English paper was referred to last month, has spoken to us on the subject, deprecating any intention of offending against good taste in matters professional, and repudiating most strongly the objectionable interpretation which some had placed upon the language used in the latter part of it. We need not say that it was with no unkindly feelings that we made the very temperate observations we felt called upon to make, and which were made only from a sense of duty to the profession in this country and to prevent any false impression arising as to us in legal circles in England.

The *Law Times* thus heartily welcomes the arrival of a new legal journal in England: "What possible object is to be served by issuing in pamphlet form, half-a-dozen milk-and-water articles on worn-out topics? * * * we confess ourselves unable to determine. The only other legal monthly publication is a conspicuous failure, and we cannot suppose that any one will, by purchase, encourage *The Law* to prolong a vain struggle for existence." The laws against infanticide do not seem to be well enforced in English legal circles.

The judgment in *Ray* v. *Corporation of Petrolia*, 24 C. P. 73, will tend to discourage actions, which have become rather frequent, against Municipal Corporations by persons who have met with an accident which they attribute to the negligence of the corporation in the care of the streets. The plaintiff complained that between a hinge, which projected slightly above a trap-door to which it belonged, in the sidewalk, and a depression of said trap-door about an inch and a quarter below the sidewalk, he fell and broke his leg. Plaintiff admitted that the state of the hinge did not evidence negligence against the defendants, but was of opinion that the depression was the result of wrongful neglect on their part. The Court said: "I cannot but think that when his (plaintiff's) counsel gave up the hinge he gave up the case. There would then be nothing left but an inch and a quarter depression in a wooden trap-door on or adjoining a wooden sideway, which depression but for the stumble over the hinge would have done no harm. . . Unless we declare it to be the duty of a village corporation, when they try to improve the streets, in a place not many years taken from the forest, by laying down wooden sidewalks —to insure every passer-by against every unevenness or inequality in the levels, we can hardly hold the defendants liable."

The Lord Chief Justice of England is one of those who think that general culture should not be sacrificed to special professional training. He lately presided

at the inauguration of the new lecture rooms of the Manchester Athenæum, where he delivered a most eloquent address, to a delighted and enthusiastic audience. In the course of his remarks he dwelt upon the inestimable pleasures to be derived from the cultivation of literature by the man of business. The beautiful language of the Lord Chief Justice, which we make no apology for in part transcribing, calls to mind the picture of Mansfield after he had passed his eightieth year, tranquilizing his declining years with Cicero's De Senectute, or Tenterden in his old age, reading his Juvenal or Shakespeare, or writing Latin verses about flowers.

"Let it be permitted to one now rapidly passing into the decline of years to dwell emphatically on the solace and the blessing which mental culture and the appreciation of literary beauty afford to advancing years. Life passes rapidly away. The morning of youth passes, ere we are scarce aware, into the noon of manhood; and scarcely have we time to rejoice and exult in the maturity and vigour of manhood, when lo! the evening is at hand. The step ceases to be elastic, the exercises and pursuits in which we delighted become burdensome. Then it is that we become sensible of the value of intellectual pleasures—when we find we can still find enjoyment and delight in the intellectual treasures which they who have thought and written for us have bequeathed to us as a rich and glorious inheritance. No art, no skill can arrest the body's decay. Poets have fabled of fountains by bathing in whose waters youth might be renewed. A vain philosophy perplexed itself to discover the potent elixir by which the progress of decay was to be stayed. These were, indeed, idle dreams, but the freshness and youth of the mind may be kept alive long after the body has yielded to infirmity and age. In the continued cultivation of the intellectual powers, in the communion with the master minds of the present and past ages in the continued worship of all that is great and beautiful, sublime and holy in nature, in literature, and in art, intellectual youth may be prolonged, though the physical powers may have yielded to the withering influence of time. In these things is to be found the fountain in whose pure and vivifying waters the mind may find a well-spring of perennial youth and preserve its freshness even in age. But I am wrong to occupy your time by dwelling on the advantages of intellectual culture as contributing to the enjoyment of life. They are summed up in a few words by the most accomplished man antiquity produced, of whose language the paraphrase I venture to place before you is but a faint and feeble echo. "These things," says Cicero, speaking of the pursuits of literature, "nourish and strengthen youth; they are the charm and comfort of age. In prosperity they are fortune's best adornment; in adversity they become our refuge, and in affliction our solace. They delight us at home, they hinder us not abroad. They abide with us by night as well as by day. They are the companions of our travel, and when we retreat from the world the faithful companions of our solitude."

SUPREME COURT BILL.

On the 23d of last month the Minister of Justice, at Ottawa asked leave to introduce a bill to establish a Supreme Court for the Dominion,—such a bill having been promised for the fourth time in the speech from the Throne.

At the very outset a difficulty is encountered, namely, to determine whether the Court should have jurisdiction in cases depending upon Provincial as well as Dominion laws. Upon this very material question there is a difference of opinion. M. Fournier holds that the Court will be able properly to exercise a jurisdiction in both classes of cases, and in this view he is supported by Sir John A. Macdonald. Whatever uncertainty may arise from the language of the British North America Act, there can be little doubt that it never was intended to circumscribe the authority of the Supreme Court by limiting its jurisdiction to Dominion laws only. The object was to substitute as far as possible our own final Court of Appeal for that on the other side of the Atlantic, an object consistent with the extension of our political independence which was to be looked for as the natural result of Confederation.

The right of appeal to the Imperial

Court is not in terms affected by the proposed Act. That right it would be impossible to take away without Imperial legislation. Sir John A. Macdonald spoke in deprecation of the extinction of the right of appeal to the Privy Council thinking it important so long as we were a dependency, that every British Subject should have a right of appeal to the Highest Court, and that the taking away this right would be a severance of one of the links binding us to the mother country. As the Minister of Justice pointed out, and as was admitted by his predecessor in office, the right of appeal to Her Majesty's Privy Council has often been abused by powerful and wealthy men in Quebec by forcing individuals into a compromise, after succeeding in carrying their cases through the Provincial courts; whilst on the other hand, in Ontario, public confidence in our own Judiciary is so great, that appeals to the Privy Council have been rare. This being so, it may be urged with some reason that we in Ontario should not be deprived of our right of appeal to the Throne, because the Bench in Quebec does not possess the confidence of the people in that Province. We believe, however, that if the Supreme Court is constituted so as to answer public expectation, suitors would gladly give up the right of going beyond it, if at the same time they were relieved of the danger of being compelled to maintain their rights in England at a vast expense and delay by unknown counsel before unknown judges, who, learned and able as in the new English Supreme Court of Judicature they will undoubtedly be, yet cannot be expected to bring as much special knowledge and research to Canadian appeals as the best lawyers of our own country. But for other reasons it may be desirable that we should do our litigation at home. We doubt if the full reports which appeared in the London *Times* of *The Lindsay Petroleum Company* v. *Hurd*, and the *Guibord* case will have the effect of attracting either investors or emigrants to Canada.

It is proposed to make the new Court the arbiter of Constitutional questions; questions touching the validity of any act passed by the Dominion or of any Province. Here the difficulty arises that this cannot be effectually done without the assent of each of the parties to the compact of Confederation. The Governor in Council may direct a special case upon the constitutionality of any such act to be laid before the Supreme Court, and may be guided by their opinion in allowing or disallowing the act. But in cases in the Provincial Courts where the validity of a Dominion or Provincial Act is brought in question, a local Act transfering the decision of such a question to the Supreme Court will be necessary.

There are many other matters of great importance contained in the Bill. The Jurisdiction in Election and Criminal matters, the Exchequer Court, the constitution and procedure of the Courts, a *resumé* of which has been given in the daily press, and which we do not propose to discuss till the Bill has assumed a more definite shape. We are glad to see that the leader of the Opposision has set the example of treating this important matter apart from all party feeling, and we trust that all the legal talent in the House, of which there is no dearth, will combine to pass the Bill this session, and to make a Supreme Court which shall be worthy of the nation, and shall command respect at home and abroad.

INFANTS AND MARRIED WOMEN.

The Court of Chancery on the 18th February last, promulgated some new orders respecting proceedings in the cases of Infants and Married Women, which

dispense with certain proceedings at a saving of time and costs.

With regard to suits against infants the practice has hitherto been to serve them and the parties with whom they reside with copies of the bill of complaint and a notice of application for the appointment of a guardian *ad litem*. Now, the officer of the Court is directed to appoint a guardian upon præcipe, thus saving the time required to be given under the old practice as well as the costs of the bills, notices, serving, etc. The absurdity of serving infants with bills, etc., which they could not understand and probably not read, no longer exists.

As to married women it is no longer necessary to procure an order that they should answer separately. The Ontario Statutes having placed the property of a married woman under her own control there no longer existed the reason for an order to answer separately. This change also saves several weeks in the prosecution of the suit and lessens the costs.

The Judges have issued a circular to the Deputy Registrars directing them to appoint the same person as guardian in all cases. They have recently been making searching inquiries into the subject of infants' estates, and have discovered some very serious irregularities; and they have no doubt taken this step in order to have but one person to look to in the management of infants' affairs. We must say we think the Judges have acted wisely in the matter, although it may seem at first sight rather a slight upon many solicitors who have acted carefully and conscientiously with respect to the matters confided to them: but the protection of infants' estates is of paramount importance, and it is better that the Judges should for a time bear the blame of what some may think an unnecessary and harsh proceeding, than that they should be derelict in the trust confided to them. They are certainly the best judges of the necessities of the case; and if it is necessary or expedient that one solicitor should be responsible in all cases, they could not have made a better selection than Mr. John Hoskin. This gentleman has for many years past acted as solicitor for infants' estates under directions of the Court, and has, we believe, been commended by the Judges for his careful attention to his duties in that behalf.

Any person who has been in the habit from week to week of attending in Court must have felt pained with the evident neglect exhibited as to the interests of infants. We know not where the difficulty arises, but it is apparent that for some reason or other there is not usually that acquaintance with the facts in infancy cases, on the part of those who represent them, that there is on the part of Counsel for adult clients. There can be no doubt of the fact of irregularities existing in these matters; and we could, if necessary, refer to some rather startling instances. No better way suggests itself to us at present of improving on the existing state of things than by appointing one who has for years been attending to this class of business and who shall be responsible for the due care of those whom the Court is especially bound to protect, and we may add that it is of great practical importance that such person should reside where he can at any moment be called upon to give information to the judges in respect to pending proceedings. Our friends in the country are mistaken in supposing that these orders have the effect of centralizing the business in Toronto (though we have our own opinions on the subject of decentralization). All the business formerly conducted in the country will still be conducted there, and all in Toronto will of course remain there as heretofore.

If for any reason those interested in the welfare of infants desire some one else to be named as guardian it can be

done under order 612, and at no greater expense than was formerly incurred by the mere service of papers, which is now dispensed with.

Order 614 is in our opinion perhaps the most important of all, and introduces a practice which cannot but be conducive to the interests of the public by preventing in many cases great loss and hardship, as for example in injunction cases to restrain the cutting of timber.

The orders will be found on page 92.

MASTERS IN CHANCERY.

Mr. J. C. Jeaffreson has written a "Book about Lawyers," but although it is of that comprehensive class which treats "*de omnibus rebus et quibusdam aliis*, he has entirely overlooked the estimable class of men named at the head of this article. Yet much quaint and curious lore might he have found as to these officials, who, though now abolished in England, still flourish on this Continent. But how mightily have they degenerated since those days of pristine splendour when their early name of clerks suggested their clerical character and indicated the immunities they enjoyed as beings of a privileged order! They were not called Masters of the Chancery on the *lucus à non lucendo* principle, but because they were "skillful in the civill and canon lawes," and they for that very reason formed a part of the high court of Parliament,—attended the House of Lords that they might give information in the making of laws touching foreign matters, how the same should accord with equity, *jus gentium*, and the laws of other nations. Then, they had precedence over the King's Solicitor and Attorney; they sat in Court with the Lord Chancellor and when the great seal was in commission or a judge was called upon to preside by reason of the absence of the Lord Chancellor, two Masters were assessors with the Judge and might even over-rule him. So it is reported in *Merritt* v. *Eastwicke*, 1. Vern 265, that Mr. Baron Atkyns would have dismissed the bill, but the Masters in Chancery "stood up and opposed it; and thereupon, the Court being divided, no order was made." But some of these Masters were modest men, who felt ill at ease in their dignified position on the Bench and who had difficulty in shaking off that habitual taciturnity which was supposed to be the characteristic of this class of judicial officers. Hence, in *Shapland* v. *Smith*, 1 Bro. C. C. 65. Master Hett, before offering his views, gravely asked his co-judge "if his opinion was of any consequence."

In England the Masters' offices were close courts, and so marvellous were the delays of cases therein, that it led to the abolition of that branch of Chancery in 1852. Strange stories are told of the high jinks practiced by certain Masters of a convivial turn of mind in the mystical seclusion of their own chambers. One Master was wont to mitigate the solemnity of proceedings before him by singing the Marseillaise, and says the *Law Magazine*, (vol. 41, p. 297) "not content with this little playful effusion he shortly after delighted the ears of the attendant solicitors with the martial chant "*Ca Ira*." Then, also were the palmy days of the taxing Masters when the fees were fixed by a per centage on the amount taxed; so that in *Small* v. *Attwood*, where the fees of each of the leading Counsel were £3000 and £4000, the taxation of each of these items would amount to £90 and £120! But even among the working Masters the idea of a good day's work was slightly different from the modern notions on that subject; for example it was thought that a good deal was accomplished in a day's work of six hours occupied in taking evidence under commission when thirty folios of depositions were taken down.

Of Masters who have risen to the bench, the most notable are, in the States,

James Kent, afterwards Chancellor, and in England, Chief Baron Alexander (a man of great experience in equity pleadings, (per Hatherley *C.* in *Warwick* v. *Queen's College*: 19 W. R. 1099), Vice-Chancellor Kindersley, Chief Baron Thompson and Sir George Rose who was one of the judges in Bankruptcy. It is remarkable that two of the present Chancery judges in this Province were formerly Masters in Chancery, Vice-Chancellor Proudfoot and Chancellor Spragge.

The early Masters do not appear to have had much aptitude for figures, if one may judge from the story told of Lord Northington. Upon being pressed to refer a complicated account to the Master, he drew out his watch, and said, "Observe this curious piece of mechanism; if it was out of order, I would as soon send it to a blacksmith to be set right as refer an account like this to the Master,—I refer it to two merchants."

Apropos of this, and by way of practical conclusion, be it observed that the Masters in Ontario have had special training in matters of account. It is for this reason that we advocate an extension of their jurisdiction, so as to include many of those proceedings in insolvency which are now transacted by official assignees. It seems a mockery to appoint mere laymen to fulfil the duties of an office where questions of great complexity as well as of great nicety arise, sufficient to tax the acumen of the ablest lawyers who can be induced to accept the position of Masters in Chancery. If the secrets of Insolvency proceedings were only disclosed, it would be seen that these official assignees are often mere puppets in the hands of some legal gentleman whose assistance they invoke and whose conclusions they adopt. No doubt to effect this change of procedure it would require the combined action of the Governments of the Province and the Dominion. But that difficulty could speedily be overcome if the expediency of the proposed change were appreciated. It would be a change from laymen to lawyers; from men whose highest recommendations are supposed to be a knowledge of business and a knowledge of figures, to officials who have acquired this knowledge from familiarity with administration and partnership suits, and in addition have been educated to deal with and dispose of large properties and estates not at hap-hazard, but on well-settled principles and under the supervision of able judges. We are persuaded that such a change would be for the creditors a financial success. At present creditors hardly think it worth while to ask for dividends on Insolvent estates. It seems to be a recognised principle that the expenses and the perquisites of official assignees will eat up everything. We do not say that all official assignees are "sharks," but we do believe that there are so many unscrupulous men amongst them that the very name has become a by-word. Besides this, matters might be so adjusted that the local Masters should receive for all their work a stated salary which would not only secure better officials, but would expedite the dispatch of public business.

PRIVATE BILLS.

Nearly four years ago, in an article on the subject of hasty legislation, (6 C. L. J. N. S. 57) we called attention to the hasty and careless manner in which our Provincial legislators amend and improve (?) the law, and whilst endeavouring to "shun the ills they have," too often fall into others which it is but justice to them to say "they know not of."

The evil of which we then spoke has not diminished. Year by year the statute law has become less intelligible to the public and to the profession, and in spite of several attempts, no scheme has yet been devised to prevent the hasty intro-

duction of ill-drawn amendments, which too often ignore altogether the prior law, and make our statutes more and more a congeries of fragmentary enactments—"a mighty maze, and all without a plan."

In 1873 a bill was introduced by Mr. McLeod, M.P.P. for West Durham, which required that every amending statute should re-enact the whole law upon the subject to be dealt with, but the proposal was not received with favour, and the bill never reached a second reading.

At length, however, the Government, having already ventured upon consolidations of the School and Municipal Acts, have undertaken a task which could not long be postponed; and the Commission recently appointed for consolidating the Statutes applicable to Ontario, have had assigned to them the pleasing duty of determining that oft-mooted question, "What the Legislature really *did* mean?"

In the first report of the Commission, which was presented to the Legislature a few weeks ago, and printed *in extenso* in our last number, we find some observations so thoroughly in accord with our article of four years ago, that we cannot forbear quoting them at length :—

> The mode of procedure which seems to be necessary in all parliamentary legislation has always constituted a fertile source of difficulties—subsequent Acts repeat sections of former Acts upon the same subject, repeal portions or contain provisions more or less at variance with the prior enactments without expressly repealing them, and many instances are to be found of repealing statutes having been themselves repealed without the use of any words indicating an intention to prevent the revival of the original Act; but embarrassment and delay proceeding from this source have chiefly arisen from the employment of repealing clauses in the form "so much of any Acts heretofore passed as relates to" a particular subject, or "all Acts or parts of Acts inconsistent with this Act, are hereby repealed"—forms which are as troublesome to the interpreter of an Act as they are convenient to the draftsman, and have necessitated such a minute examination of many of the longest Acts as very seriously to retard the progress of the Commissioners."

It must have been due to the judicial habit of moderation in language that stronger terms were not employed by the Commissioners to characterize this careless and slovenly mode of legislation. Arising, no doubt, from the natural craving of our legislators after statutory immortality, it results, like amateur conveyancing and "justicing" in sad perplexity and vexation of spirit, in litigation too often costly and protracted, and in amendments which, like 33 Vict., c. 7, s. 8 (O); 34 Vict., c. 12, s. 14 (O); cap. 15, s. 3 (O); c. 28 (O); 35 Vict., cap. 34 (D); 36 Vict., cap. 15, s. 1 (D); 37 Vict., c. 4, s. 4 (D) and others, are melancholy mementos of carelessness and incapacity. Perhaps the true remedy for this unfortunate state of affairs is to be sought, not in a second chamber representing no new "estate of the realm," (though the "Lords" claim especial credit in preventing hasty legislation as to private bills,) but in a vigilant supervision on the part of the Government and the legal staff of the House over bills introduced by private members, and a firm determination on the part of the Legislature itself not to be wearied or hurried into crude and hasty legislation.

But another, and perhaps even a greater source of danger than the one above referred to, arises from the manner in which "the transcendent power of Parliament" is exercised in the passing of Private Bills.

Sir William Blackstone long ago observed that "Private Acts of Parliament are of late years become a very common mode of assurance;" but if the prince of law lecturers could examine the last three or four volumes of Ontario Statutes he would probably use much stronger language, echoing perhaps the words of His Majesty, Charles II. on the close of

the session of 1661, "I pray you let this be done more rarely hereafter."

A glance at the statutes passed during the last few sessions of the Ontario Legislature will show that until the passing of Mr. Mowat's general Act (37 Vict. c. 34) for the incorporation by Letters Patent of Benevolent, Provident and other Societies, the amount of Private Bill legislation has been steadily and rapidly increasing so as very largely to exceed the "legitimate business" of the House. Here are the figures:

	31 Vic.	32 Vic.	33 Vic.	34 Vic.	35 Vic.	36 Vic.	37 Vic.	38 Vic.
Pub. Gen.	36	43	29	32	40	48	37	29
Private & Local.....	43	42	46	73	79	115	66	65
Total No. of Acts.....	97	85	75	105	119	163	103	94

which show that out of 823 Acts passed by the Legislature of Ontario between 1867 and 1874, only 294, or little more than one-third, were of a public general character.

It appears, therefore, that the Legislature is exercising very fully the powers conferred upon it by the British North America Act in relation to "property and civil rights in the Province" and "all matters of a merely local or private nature" therein; and it is a question of very great importance to this country whether this practically unlimited jurisdiction is exercised with that deliberate care and caution which the importance of the subjects dealt with, the scope of the enactments, and the interests which may be affected, alike demand and deserve.

We have said that in matters within its jurisdiction the power of the Legislature is "practically unlimited." In one notable instance, familiar to laymen as well as lawyers, it has been used to defeat the intention of a testator, admitted to be of sound and disposing mind and memory, and "to alter his will—not for the purpose of supplying a defect—but to substitute an intention contrary to that which he had deliberately expressed:" *Re Goodhue*, 19 Grant 381.

Nor, whatever may be the jurisdiction of the Supreme Court which is about to be created, is it within the power of any existing tribunal to modify or prevent the effect of an Act of Parliament however absurd and unjust, or even to stay its operation until the parties prejudiced can apply for its amendment or repeal. "A Court of Justice cannot set itself above the Legislature. It must suppose that what the Legislature has enacted is reasonable; and all, therefore, that we can do is to try and find out what was intended, but * * * there is no power of dispensation from the words used:" *Per* Lord Campbell, *Logan* v. *Burslem*, 4 Moo. P. C. C. 296.

And even where the Act is manifestly unjust or unreasonable, (of which instances are not wanting on our Statute Book) all that the Courts can do is to try and give it a reasonable construction. "They will not, out of respect and duty to the law giver, presume that every unjust or absurd consequence was within the contemplation of the law; but if it should be too palpable to meet with but one construction, there is no doubt in the English Law of the binding efficacy of the Statute:" 1 Kent Com. 408. And in *Rhodes* v. *Smethurst*, 4 M. & W. 63, Lord Abinger says:—"A Court of Law ought not to be influenced or governed by any notions of hardship. Cases may require legislative interference but the Judges cannot modify the rules of law." And again, in *Hall* v. *Franklin*, 2 M. & W. 259, the same Judge observes: "We have been strongly pressed with the inconveniences that may result from the construction of the Statute. We are not insensible to them, but we cannot on that account put a forced construction on the Act of Parliament."

Seeing then that the "solemn act of

the Legislature," whatever may be its provisions and however their insertion may have been obtained, must at all events remain in force for the traditional "year and a day" without the possibility of amendment or redress, it is not too much to ask that this "transcendent power" should not be rashly, hastily, or arbitrarily exercised, and that before a private bill is submitted for the assent of the Lieutenant-Governor some tribunal should exist for determining—(1) That all parties whose interests may be affected shall have had due notice of the enactment and of its provisions; and (2) That those provisions should themselves be consistent with equity, good sense and the rest of the law.

In theory both of these requirements are fully met and answered. The first, by the appointment of a committee, called the Committee on Standing Orders, whose duty it is to see that due notice, in the manner directed by the rules of the House has been given for six weeks before the introduction of the petition for any private bill; and the second by the practice of referring all those bills first to a Committee specially charged with their consideration, and afterwards examining them in Committee of the whole House.

In practice, however, these wholesome regulations are seldom carried out in spirit, although the letter may seldom be violated. The question of due notice is, we fear, determined in most cases, not by the Committee on Standing Orders, but by the Clerk of Private Bills, and if that gentleman found it not incompatible with the duties of his office to be absent from Canada during a large part of the last session of the Legislature, it may be inferred that too much time is not devoted to the determination of a question most essential to the full and fair consideration of Private Bills.

Again during a recent Session of Parliament the control of the Private Bills Committee was entrusted to a young and promising supporter of the Administration who had only been admitted as an Attorney a few weeks previous, and who, though doubtless destined to take rank in the future as a leading politician, could scarcely be expected to possess as yet either the age or the parliamentary experience required for a post so important. It may be in consequence of this loose method of procedure that such bills as the Toronto Water Works Amendment Act were introduced last session without any notice whatever having been given in the Ontario Gazette or in any local paper—and in direct defiance of a rule of the House; that Townships have been "grouped" for bonus by-laws in several Railway Acts of the past three or four sessions without notice either to their inhabitants or to their municipal councils; and that during the last session an Act (38 Vict. cap. 50) was passed, incorporating a Company for the construction of a Railway "from some point on Lake Ontario to some point on the Georgian Bay" without any opportunity being afforded to the Northern, or the Toronto, Grey & Bruce Railway Companies to see that their vested rights were not interfered with.

Some of these cases—and others could easily be given—may serve as instances where the "solemn act" of the legislature has hardly been characterized by that equity and good sense which might be hoped for in the highest tribunal of the Province, but there are others, the peculiar provisions of which will only become known to the world by the criticisms of a perplexed and long suffering Bench.

One of these peculiar Acts came up for discussion before Mr. Justice Gwynne a short time since, upon an application for a *mandamus* by a Railway Company, incorporated in 1874 with power to construct a road "from or near the town of Barrie, or *some other point on the line of the*

Northern Railway, to Penetanguishene, *or some other point* on the shore of the Penetanguishene Bay,"—a power which was subsequently enlarged to authorise an extension of the road "from some point on the main line thereof to some point on the line of the Toronto, Grey and Bruce, or the Northern Railway, *or any or all* the railways in the county of York and Peel." The Council of a certain municipality situated at some distance from the line of the proposed railway, had refused to submit a by-law granting the Company a bonus, on the ground that the municipality was not "interested in securing the construction of the road," and the aid of the law was invoked to compel the performance of the duty imposed by the Act of incorporation. The Company in question, though nearly a year had elapsed since their incorporation, owned, as yet, not a foot of land, and had not, so far as appeared in the affidavits, surveyed or located any portion of their line; yet they claimed the right upon the petition of twenty ratepayers, to compel the submission of a by-law granting them a bonus of $100,000, without any terms, conditions, or qualifications. Their contention was certainly borne out by the literal wording of their Act of Incorporation and the case was only determined against them on the somewhat charitable supposition, that the Legislature could never have intended to divest the Municipal Council of its legitimate functions in favour of a private company, which for all that appeared in the Act or in the affidavits, had not yet a paid up capital of $2,500.

The Act incorporating the Company—one of a large class of similar Acts in the Provincial Statutes of 1873 and 1874—was examined and criticised at length in the exhaustive judgment of Mr. Justice Gwynne, and we hope in our next number to notice some of his Lordship's suggestions; but Railway Acts have occupied so large a share of the attention of our legislators, that their consideration demands a separate article.

In support of our statement that regard has not always been had, in passing private bills, to the provisions of the existing law, we might refer to the Incorporation Act of this very Railway; but other and perhaps more glaring instances of inconsistency are not wanting.

Take, for example, the legislative muddle which has rendered all but incomprehensible the municipal relationships of several townships in the District of Muskoka.

By 31 Vict., c. 25, s. 1 (O), His Honour the Lieutenant-Governor was authorized to erect the townships of Monck, Humphrey, Wood and Cardwell, with others, into the "District of Muskoka."

By 32 Vict., c. 56 (O), the township of Monck was constituted a municipality, and "attached for all municipal purposes to the County of Simcoe." By cap. 57 of the same session, the townships of Watt, Cardwell, Humphrey, Christie, Medora and Wood were together constituted a municipality under the name of "The Corporation of the United Townships of Watt, Cardwell, Humphrey, Christie, Medora and Wood," and by sec. 2 the "said municipality" was "attached for all municipal purposes to the County of Simcoe." After being mentioned here and in 31 Vict., c. 35, s. 1, as a township, it seems somewhat strange to find Humphrey constituted a township corporation by 36 Vict., c. 49, s. 1 (O); but this trifling incongruity sinks into insignificance beside the other sections of the same Act, *e. g.* (sec. 7) which unites this township, together with Monck, Watt, Cardwell, Medora, Wood, and twelve others, (*not* including Christie,) into "The Municipal Corporation of the District of Muskoka," the Council of which is to be composed of the Reeves of all these town ships (sec. 8), while sec. 12 declares that

'nothing herein contained shall be construed to detach from the County of Simcoe any of the townships hereinbefore mentioned, now united thereto for municipal purposes."

It would therefore appear clear to the attentive reader of the Statutes that the Reeve of the Township of Monck sits in the councils both of Simcoe and the District of Muskoka, while the united townships of Watt, Cardwell, Humphrey, Christie, Medora and Wood send a representative to the Council of Simcoe, and are all (except Christie) again represented in the Council of the District of Muskoka.

Finally, it seems that the perplexity occasioned by this mode of procedure has proved too much even for our legislators themselves, for after incorporating by Act of Parliament several towns and villages, which for all that appears, might have been content to "enter in by the door" of by-laws under sec. 8, or proclamations under sec. 10 of the Municipal Act, we find that the same House which in March, 1873, put an end to the village of Ashburnham, by merging it in the town of Peterborough as one of its wards, has inadvertently treated it as still a distinct municipality, and placed it for representation purposes in a different constituency from Peterborough by the Act 38 Vict., c. 2, s. 14 (O) assented to on the 20th December, 1874.

Surely such a state of things should not be allowed to continue. If the duties of the Law Clerk are too onerous (and the profession well know he is neither indolent nor incompetent) to allow of a careful examination of all the Private Bills which pass through his hands in the course of a Session, the Province can well afford an addition to the staff of the House, in order to protect the public from the evils which must inevitably result from such hasty legislation. If, among the thirty or thirty-five members who form the Committee on Private Bills, but four or five will ordinarily attend, would it not be better to introduce the English system of referring each act to a committee of three, sworn to examine fully into all the facts and report the result to the House?

It is easier perhaps, to point out the evil than to devise the remedy; but we trust that the Honorable the Attorney General, whose long judicial experience enables him to judge of the importance of the matter, will ere long give it his attention, and bring to bear upon it that practical good sense and judgment which he has in many other instances exhibited.

LORD ST. LEONARDS.

On the 29th January last died Edward Sugden, Lord St. Leonards, a name which ranks with Coke and Blackstone as that of a writer upon the laws of England of no ephemeral fame. He had reached the great age of 94 years, and it has been said of him, what can be said of no other lawyer living or dead, that he has been appealed to as a living oracle of the law for 70 years. In the roll of the Chief Justices and Chancellors of England will be found in about equal numbers, men of the highest and lowliest birth. Lord St. Leonards belonged to the latter class, and like Abbott, Lord Tenterden, was the son of a barber. He is said to have been born in his father's shop in London, on the 12th February, 1781. It is related of Lord Chief Justice Tenterden, that on his last visit to Canterbury, his native place, he pointed out to his son a little booth or stall opposite the western front of the Cathedral, saying "Charles, you see this little shop! I have brought you here on purpose to show it you. In that shop your grandfather used to shave for a penny. That is the proudest reflection of my life! While you live never forget that, my dear Charles." A story is told of Lord

St. Leonards which exhibits him in an equally pleasing light. He was addressing a crowd of electors once from the hustings, when one of his hearers taunted him with his origin. "It is true, I am a barber's son," he retorted, "and I am proud to own it. If you had been a barber's son, you would have been a barber yourself."

The history of young Sugden's early life is not well authenticated, but it is clear that he was set to earn his bread in no very dignified capacity. He was employed as an errand boy in the office of Mr. Groom, a conveyancer in Cavendish Square, London. The story goes that Mr. Groom was in the habit of consulting Mr. Butler, the learned editor of "Fearne's Contingent Remainders" and "Coke upon Littleton." Butler happened one day to be in Mr. Groom's office, when he was bantered by Mr. Groom about a supposed error in one of his books, which the conveyancer said had been discovered by his office boy. Butler insisted on having the office boy into the room and Sugden made his appearance. The error into which the great author had fallen is said to have been so clearly pointed out by the office boy that the author gave way, admitted he was wrong, and became his critic's firm friend. Butler went to Sugden's father and represented that the boy was meant for greater things than running errands and cleaning ink-bottles, and Sugden was eventually entered a student of Lincoln's Inn.

Owing to the curious and antiquated custom of unseating the Lord Chancellor with his defeated government, Lord St. Leonard's fame rests chiefly upon authorship, and not upon judicial decisions. He was hardly twenty-one years old when he made his first adventure in legal literature with a little work entitled "A brief Conversation with a Gentleman of Landed Property about to buy or sell land." This unpretending work at once gave him a reputation, and met with so much encouragement that three years later, in 1805, he published his celebrated Treatise on the laws of Vendors and Purchasers, which has gone through fourteen editions, and will always be the standard text book on the subject.

In 1807, Mr. Sugden was called to the Bar, having been previously a conveyancer simply. He immediately stepped into an extensive practice, which increased rapidly. At one time his professional income is said to have reached, and perhaps exceeded £20,000 a year. His fame as a Real Property lawyer caused him to be retained in most important cases where questions of that description arose, and in the Common Law as well as in the Equity Courts. About 1822 he received his silk gown from Lord Eldon, who had the highest respect for his learning, and is said to have once consulted him privately on an abstruse question relating to "springing uses," and to have been guided by his view.

"His silk gown," says a writer in *Blackwood's Magazine*, to whom we are indebted for many of the facts in this notice—

> "Was a splendid success, silencing all sneers and the whispers of disparagement in every quarter. His consummate knowledge of the principles and details alike of Real Property Law and of Conveyancing, and of Equity, his rapidity of perception, his imperturbable coolness and self-possession, his conscientious devotion to the interests of his clients, the pith and brevity of his arguments, his lucid exposition of the most involved facts—these points all combined to invest his advocacy with such charms in the eyes of anxious solicitors and their clients, that retainers were soon showered down upon Mr. Sugden from every quarter, and it was almost a race between rival solicitors who should first retain him."

But the pressure of counsel business did not detract from Sugden's literary efforts. Before he had passed his 27th year he had given to the public two new and enlarged editions of the "Vendors and

Purchasers," and had written an entirely new work, the celebrated "Treatise on Powers," which is regarded "as one of the most remarkable performances on record in the literature of the law." This was followed in close succession by other works on legal subjects, some of an extensive and others of a minor character.

Mr. Sugden was, in politics a Tory, and in 1828 was elected in the interest of that party for the constituency of Weymouth and Melcombe Regis, and was soon after made Solicitor General in the Duke of Wellington's administration. This, however, he did not long enjoy, for he was compelled to retire with his colleagues in 1830, when Earl Grey and the Reformers came into power. Sir Edward Sugden then resumed his practice at the Bar, and had the pleasure of pleading before Brougham, the new Chancellor, with whom, according to general belief, he was on anything but amiable terms. The caustic comment of Sugden upon the Chancellor's capacity for his office is well known. "If the Chancellor knew only a little of law, he would know a little of everything." A good deal has been said about the relations between Lord Brougham and Sugden. Lord Campbell, in those "Lives" which added a new terror to death, dwelt upon the matter with such spitefulness as to call forth from Sugden the *brochure* known as "Lord St. Leonard's Defence." In a much canvassed book lately published, which probably embraces as much malice and scandal as any book of its size yet written, the "Greville Memoirs," the hostility between Brougham and Sugden is accounted for by reasons hitherto, we believe, unknown. We will let the accomplished gossiper tell his own story:

"Lamarchant told me that the cause of Sugden's inveterate animosity against Brougham was this—that in a debate in the House of Commons Sugden in his speech took occasion to refer to Mr. Fox, and said that he had no great respect for his authority, on which Brougham merely said, loud enough to be heard all ove the House, and in that peculiar tone that strikes like a dagger, "Poor Fox." The word, the tone, were electrical; everybody burst into roars of laughter; Sugden was so overwhelmed that he said afterwards it was with difficulty he could go on, and he vowed that he never could forgive this sarcasm."

At this time Sir Edward Sugden, with professional and parliamentary duties combined, seems to have been in the habit of accomplishing an amount of work which was simply tremendous. On one occasion, the evening before a "motion" day, he read and mastered the contents of 30 briefs between his dinner and 11 p. m., and then, instead of going to bed, called a hackney coach and drove to the House of Commons.

In 1834, on the return of the Tories to power, Sugden was made Lord Chancellor of Ireland, an office which he held for three months, just long enough to make his rare powers as a Judge manifest, and to cause his return for another too brief period, in 1841 to be hailed with acclamation. In 1852 he was appointed by Lord Derby Lord Chancellor of England, with the customary peerage.

"He speedily showed both the Bar and the public that he justified the appointment, and something more than justified it. In the first appeal case which came before him in the House of Lords—that of *Rhodes* v. *De Beauvoir*—a most intricate case, depending on the construction of a singular and most obscurely worded will, when the counsel expected that he would ask for the papers and take time to consider, he delivered, off-hand and without notes, a most elaborate and luminous judgment, which occupies nearly 20 pages in the printed reports. And this he did repeatedly as by intuition, so familiar had he grown with every possible complication that had arisen or could arise in all questions as to the ownership or transfer of real property."

Since the close of 1852 he never again held the Great Seal of England, although the opportunity was again offered him in his 77th year. That offer was declined, but not through love of ease, for from that time till the very end of his

long and laborious life, Lord St. Leonard's kept himself busily employed in work of different descriptions. He read and noted every reported case in all the Courts and recorded them in the margin of his works, so that, it is said, his executors could send a new edition to the press to-morrow without revision. He wrote his "Handy Book of the Law of Real Property" since his retirement from office. His attendance in the House of Lords as a Law Lord was unremitting. He allowed no legal measure to pass the House uncriticised. For instance, when Lord Hatherley in 1869 introduced his Judicature Bills, Lord St. Leonards, though close upon 90 years of age, put forth a clear and lucid criticism upon those measures.

LAW SOCIETY.

Hilary Term—38th Victoriæ.

The following is the *resumé* of the proceedings of the Benchers during this Term, published by authority:—

Monday, 1st February.

The several gentlemen whose names appear in the usual lists were called to the Bar, and received certificates of fitness.

Tuesday, 2nd February.

The Treasurer laid on the table the abstract of balance sheet for 1874 and for the last quarter of 1874.

The memorial of Messrs Wethey and Harman was referred to the Committee on Reports.

The memorial of Mr. Yorke was referred to the Finance Committee.

A communication from Mrs. Vankoughnet, acknowledging the receipt of a memorial from the Law Society, was read,

The Report of the Examining Committee was received and adopted.

Messrs. McLennan, Irving, Hodgins, McMichael and Read were appointed Examining Committee for next Term. Mr. Evans was appointed Examiner for next Term and the usual fee was ordered to be paid him for his services for this Term.

The memorial of Mr. F. Beverly Robertson, asking to be allowed to pass his second Intermediate Examination next Term was granted.

Mr. James Bethune was elected a Bencher in the room of the late M. R. Vankoughnet, Esq., deceased.

Saturday, 6th February.

The petition of Mr. Fullarton for the filing of his articles and assignment *nunc pro tunc*, and for the allowance of his services thereunder was granted.

The petition of Mr. Kilbourn for the allowance of his second Intermediate Examination, was granted.

The petition of Mr. Peter L. Palmer, asking to be allowed to pass his second Intermediate Examination in May next, was refused, Convocation having no power to grant it.

The petition of Duncan McMillan was refused.

A communication received from the Chief Superintendent of Education was referred to the Committee on Legal Education.

The account of Messrs. Rowsell & Hutchison for printing the Reports, was referred to the Secretary to be examined, and if correct, to be paid.

The account of Messrs. Rowsell & Hutchison, for postage on the Reports, was ordered to be paid.

Mr. Charles Moss was elected Lecturer and Examiner on General Jurisprudence, in place of James Bethune, Esq., resigned.

Mr. William Muloch was appointed Lecturer and Examiner in Equity, in place of Mr. Charles Moss, who accepts office as Lecturer on General Jurisprudence.

Ordered that the new Benchers be added to the several Standing Committees

in place of the members whose vacancies they were elected to fill, and that the Secretary do notify the several gentlemen of their appointments.

SELECTIONS.

LORD ROMILLY.

The Right Hon. John Romilly, Lord Romilly, of Barry, in the county of Glamorgan, who died on the 23rd Dec., at his residence in London, in the seventy-third year of his age, was the second son of the late Sir Samuel Romilly, still well remembered as a distinguished Liberal politician, a philanthropist, and a law reformer. His mother was Anne, eldest daughter of Francis Garbett, Esq., of Knill Court, Herefordshire, and he was born in London in Jan. 1802. He was educated at Trinity College, Cambridge, where he took his Bachelor's degree in 1823, and proceeded M. A. in 1826. In the following year he was called to the Bar by the Honourable Society of Gray's Inn, and he subsequently became a Bencher of his inn, and obtained the honour of a silk gown. Having chosen the equity side of the Profession, he soon obtained a fair share of practice both as a junior and Queen's Counsel in the Court of Chancery. In 1832 he entered on a political career, having obtained a seat in the House of Commons, in the Whig interest, as member for the borough of Bridport, which he represented till the general election in 1835, when he lost his seat for that place. In March, 1846, on a chance vacancy occurring, he again offered himself as a candidate, but was unsuccessful; but he recovered the seat, however, after a petition in the following month. At the general election in 1847 he was returned for Devonport, which constituency he continued to represent until 1852. In 1848, during Lord John Russell's administration, he was appointed Solicitor-General, on which occasion he received the customary honour of knighthood, and in 1850, upon the elevation of Sir John Jervis to the Lord Chief Justiceship of the Common Pleas, he became Attorney-General. During the time that he was in Parliament, as a law officer of the Crown, Sir John Romilly was the author of the measure known as the Irish Encumbered Estate Act, which brought about a social revolution in Ireland, the system which it introduced having been perpetuated in that which is now the Landed Estates Court. The introduction and carriage of this Bill were in the hands of Sir John Romilly, and by him was successfully conducted to its result. In March, 1851, on the death of Lord Langdale, Sir John Romilly was nominated to the great judicial office of Master of the Rolls, which, by his lordship's death, had become vacant. This post, which Lord Romilly filled until within a little more than a year of his death, is one of the very few judicial offices which are compatible with a seat in the House of Commons. The very last speech made by Lord Macaulay, as a member of that House, was against a Bill to incapacitate the Master of the Rolls from sitting there; and it is memorable as one of the few instances in which a direct change of opinion in the House of Commons was effected by a single speech, and accordingly the Bill was thrown out. Sir John Romilly, to whom Lord Macaulay referred in the course of his speech, in terms of the highest respect, was unable, however, to enter by the door which his friend's eloquence had left open for him; for, after his elevation to the Mastership of the Rolls, Sir John Romilly offered himself for re-election at Devonport, but was unsuccessful. He never after sought to represent any place in the House of Commons, and, as his successor as Master of the Rolls, Sir George Jessel did not avail himself of his right to continue a member of the House, it is likely that it would never have been exercised again even if a provision in the Judicature Act had not taken it away. In 1865 Sir John Romilly, through being created a peer, did become a member of the Legislature. He took, however, no very great part in the discussions in the House of Lords, though he occasionally contributed to them. As a judge he was so quick in decision as sometimes to excite comment, and though his court was chosen for the carriage of cases of first instance, it also contributed largely to the courts of appeal. In April 1873, having sat on the bench far beyond the time which would have entitled him to his retiring pension, Lord Romilly resigned the

Mastership of the Rolls. It seems, however, that neither his physical nor judicial strength was entirely exhausted, for, after the death of Lord Westbury, he undertook the duty of arbitrator in the winding-up of the affairs of the European Assurance Company. We may add that his Lordship was one of the last survivors of a debating society established in London among the more promising young men of his age, and of which the late John Stuart Mill was a member. Lord Romilly married, in 1833, Caroline, daughter of the late Right Rev. Dr. William Otter, Bishop of Chichester, by whom he had a family of four sons and four daughters. His eldest son, the Hon. William Romilly, who now succeeds to the title, was born in 1835, and is a barrister of Gray's Inn; he has been twice married, first, in 1865, to Emily Idonea Sophia, eldest daughter of the late Lieut.-General Sir. J. G. Le Marchant; and secondly, in 1872, to Helen, eldest daughter of the late Edward Hanson Denison, Esq.—*Law Times.*

That some one or more of the veterans of the judicial ranks should fall victims to the present inclement season cannot be a matter of surprise; yet the death of Lord Romilly, although he has succumbed full of years and honours, has occurred at a singularly unfortunate crisis. A man who was called to the bar nearly half a century ago, and had scarcely known during all that period the meaning of the word 'leisure,' might well have been permitted to enjoy the repose which seemed at last to be within his reach. But Lord Romilly was induced to take up the duties of arbitrator to the European Assurance Company on the death of Lord Westbury, and so he has died literally in harness. There is, indeed, nothing more remarkable in the history of the legal profession than the pertinacity with which, with some rare exceptions, such as was exhibited by the late Mr. Charles Austin, its members cling to work, and utterly refuse even in the weakness of age to exchange the labour and turmoil of Courts for the ease and quiet of the library or the domestic circle. Rarely also is any good purpose effected by this devotion to work, either as regards the person himself, or the public welfare; and, in the present instance, whatever may have been the result upon Lord Romilly's health and happiness brought about by the arbitration, the consequences to the suitors have been pernicious. Very recently we commented on the mischief caused by the conflicting decisions of Lord Westbury and Lord Romilly, and now the suitors are remitted to the evil of fresh uncertainties and the possibility of a new batch of inconsistent judgments.

But at this moment we prefer to regard the earlier portions of Lord Romilly's career, which was in all respects most honourable and worthy of remembrance. To say that he was a legal genius, that, unaided by circumstances, he would have arrived at the dignities which were bestowed upon him, would not be true. He owed much, very much, to the memory of his distinguished father, one of the best of men, and the noblest of lawyers, and he also owed not a little to that powerful Whig connection, into which he was, as it were, born. That he justified to a considerable degree the confidence of his friends is certain, for he had many qualifications for the offices which he held. He had unbounded industry—that peculiar gift which, though often fatal to the health and real happiness of its owner, rarely fails in the long run to bring the second-rate man up to the level of genius, at least as far as the material rewards of life go. He was devoted to his profession, and he did his utmost to make up by learning for his deficiency in high intelligence. He was conscientious and painstaking, and, while his work was too rapid, no effort was spared to make it thorough. The decisions given by him as Master of the Rolls were numerous beyond precedent, and they have been reported and preserved in a manner elaborate beyond precedent. In the infinite variety of human affairs, cases must arise of absolute novelty; but few come up which have not some kinship to one of the hundreds decided by the late Master of the Rolls. On the other hand, it is not in 'Beavan's Reports' that lawyers look for those luminous expositions of the doctrines of equity for which the judges of the present day are justly famous.

John Romilly was born in 1802, and died on December 23, after a short illness.

He was the second son of Sir Samuel Romilly, who died in 1818. After taking his degree at Cambridge as a Trinity College man, John Romilly was called to the bar at Gray's Inn in 1827. At the election after the Reform Bill he became member of Parliament for Bridport, and at a later date was returned by Devonport. In 1848-50 he was Solicitor-General, and in 1850 became Attorney-General. In 1851 he was promoted to the Mastership of the Rolls, which high office he held for more than twenty years. On January 3, 1866, he was made a peer as Lord Romilly of Barry, in the county of Glamorgan. It was on June 1, 1853, that Macaulay delivered his famous speech against Lord Hotham's Bill, by which it was sought to exclude the Master of the Rolls from the House of Commons. In that speech the orator reminded his hearers that the House of Commons and the office of Master of the Rolls began to exist probably in the same generation, certainly in the same century, and that during six hundred years the House had been open to Masters of the Rolls. Since the accession of the House of Hanover, Jekyll, Strange, Kenyon, Pepper Arden, Sir William Grant, Sir John Copley, Sir Charles Pepys, and Sir John Romilly have sat in the House and at the same time presided at the Rolls. *Law Journal.*

THE RELATION BETWEEN BARRISTERS AND SOLICITORS.

The following is from a paper read at the provincial meeting of the Incorporated Law Society, held at Leeds last October, by Mr. W. E. Shirley :—

"Throughout all great enterprises there runs one general principle—division of labour; and a late eminent statesman used to say he never did anything himself if he could get anybody else to do the work for him. Nowhere is that principle more strikingly exemplified than in the legal profession. With relative duties and positions, we have barristers—including special pleaders, conveyancers, and counsel; and attorneys—including solicitors, notaries, proctors, and parliamentary agents. Barristers are approachable only through attorneys, the practice being to require their intervention in cases which come before barristers, either as advocates, counsel, or draftsmen. It was not always so. The practice formerly prevailed of barristers being resorted to, in the first instance, for counsel and general legal assistance. In the "Life of Noy, Attorney-General of Charles I.," we have an incident illustrating this. Three graziers had deposited a bag of money at a country inn during fair-time. One of them afterwards came alone, and persuaded the hostess to give him the money back, and then absconded. Subsequently the other two also demanded the money, declaring that the first had no authority to receive it, and ultimately sued the hostess. The trial came on, and the case was going against the woman; when Noy, not being employed in the cause, desired her to give him a fee, as he could not plead for her without one. And the fee having been given, Noy addressed the judge, and claimed a nonsuit, on the ground that the duty of the hostess, as shown by the evidence, was to redeliver to the three jointly; a duty, he said, she was perfectly ready to fulfil when all three appeared, and made a joint demand. Lord Campbell also says in his "Lives of the Chief Justices," that in the time of Chief Justice Hale the client consulted the barrister in person, and paid the "honorarium," without the intervention of attorney or clerk. In our days, moreover (the right of advocacy in the Superior Courts excepted), solicitors enjoy the unrestricted practice of the law in all its branches; calling in the aid of barristers only when superior skill, knowledge, or other attainments are required. But that, again, was not always so. Up to a comparatively modern period, conveyancing, now so important a branch of solicitors' practice, was not deemed part of their business. The form of the ordinary covenant for further assurance, stipulates for such assurances as "counsel learned in the law," shall advise or require. And in ancient law-books, under the head "Slander," we find it laid down that to say of a barrister, "He is no lawyer, he cannot make a lease," is slanderous; but to say of a solicitor, "He made false writings," is not slanderous, because it is not the business of solicitors to make "writings."

Besides our division into barristers and

solicitors, the bar itself is divided into sections; and a counsel who professed to know everything would be regarded with suspicion. There is, indeed, a story of the old Northern Circuit, that Mr. Pollock, afterwards Chief Baron, was once corrected upon a legal point by the presiding judge. When it became Pollock's turn to address the jury, he thus delivered himself:—"You would observe, gentlemen, the correction given to me by his lordship. And of course, for the purposes of to-day, we must assume that his lordship is right. Indeed, a judge is never wrong. I assure you all I can do is to "cram" as much law as will carry me round the circuit. Whereas a judge knows, by heart, every Act of Parliament that was ever passed; he has read (and, what is more, understands) every law book that was ever published; and he recollects every case that was ever decided."

The distinction, however, between barristers and solicitors, now prevailing in England, does not, even yet, prevail everywhere. In many of the States of Germany, in Geneva, in America, and in some of our own colonies, they are united in the same person. There a lawyer is a lawyer. Again, in France, the advocates invariably see their lay clients; the local bar deriving much emolument from giving advice to their neighbours, without the attorneys.

It will thus be seen that the profession, with us, has undergone considerable changes, materially altering the respective provinces of barristers and solicitors. And, for good or evil, it has become the opinion of a large number of the profession, that it is contrary to etiquette, and, indeed, dishonourable, to take briefs from, or to advise, or to receive fees from others than solicitors.

We live, however, in days when not only almost every question is open, but there seems a restless anxiety for change.

After all, the question is, whether the true interests of the profession and the public (which are, without doubt, identical) would be best protected by maintaining the system now established; by amalgamating the branches of our profession; or by returning to, what is jocosely called, the wisdom of our ancestors.

In looking back at the annals of the Inns of Court, we find that, from an early date, the judges, acting in their capacity of visitors, from time to time issued orders respecting the discipline of their members. These orders appear to have had in view the special training of students; the moral and professional conduct of barristers; the limitation of their number, and the prevention of competition. For example, in the reign of Philip and Mary we find the following: "No attorney shall be admitted." And in the reign of James I., the following: "There shall always be a difference between counsellors at law and attorneys and solicitors."

Few, probably, had more experience, or were better qualified to give an opinion, than the late Lord Campbell. And this is what he said: "The advantage to be derived from subdividing the business of a suit, and having two orders in the profession of the law, between whom it should be distributed, becomes more and more felt. I much approve of the demarcation finally drawn between the functions of the attorney and those of counsel. And I believe that the intervention of an attorney, between the counsel and the party, has greatly contributed to the improvement of English jurisprudence. I earnestly trust that the almost uniform usage, which has prevailed now for more than a century, will not be disturbed. Exceptional cases may occur, though very rarely, when it may be fit for barristers to plead in civil suits, instructed only by the parties. But I hope what is now considered the etiquette of the bar will be continued."

Moreover, not longer ago than June 17, when presiding at the last annual festival of the Solicitors' Benevolent Association, Lord Selborne, another very competent authority, declared his conviction that the duties of each branch of the profession should remain distinct; and deprecated any change which would affect the line of demarcation between the work done by solicitors and that done by the bar. "If," said Lord Selborne, "the offices of judge and barrister are important, the office of solicitor is indispensable, and, without it, the duties of the other two never could be performed."

Indeed it can, we think, hardly be disputed that the system of employing able solicitors, responsible to their clients and the Courts, to collect facts and circum-

stances, and to bring upon them their own practical and legal knowledge, is better than conducting negotiations through unqualified, irresponsible persons, or than retaining barristers, however qualified, in the first instance.

The truth is, that the two professions are radically, fundamentally distinct. A man may be an admirable solicitor, without the slightest pretension to being a good lawyer in the barrister's sense. And he may be a first-rate lawyer, and an excellent advocate, without any of the qualities requisite for a solicitor.

For myself, at least, I am persuaded that the more the matter is considered, the more it will appear that the two callings require, not only a different education, but a different set of professional rules. And American experience does not really conflict with this. For so distinct are the branches, that, as a rule, in the United States, one member of the firm takes the advocate's department, and the other that of the solicitor."

CANADA REPORTS.

ONTARIO.

ELECTION CASE.

Cornwall Election Petition.

Bergin v. Macdonald.

Dominion Election Acts, 1873, 1874—*Bribery be agents—Whether Candidate thereby disqualified—Evidence on second election of bribery at first—Report to Speaker.*

A petition was filed by one Bergin, the unsucessful candidate, against the return of the respondent in January, 1874, on the usual grounds. This election was avoided on the ground of the corrupt acts of respondent's agents. But the Chancellor reported to the Speaker of the House of Commons that these acts had been committed without the knowledge and consent of respondent. A new writ was issued, and the same persons were again candidates, when respondent was again elected. The present petition was filed by electors claiming the seat for Bergin, charging corruption against respondent and his agents at the second election, and also that persons guilty of corrupt practices at the first election could not vote at the second election, because the two elections were one in law. The petitioners also claimed that respondent was ineligible by reason of the acts of his agents at the first election, and that public notice had been given of such disqualification, and that Bergin should be seated, although respondent had the majority of votes.

Held.—1. That the two elections were one in law.

2. That evidence may be given by petitioners in a petition attacking the second election, of corrupt practices by agents of respondents at the previous election, and if these corrupt acts are proved on the second trial, the votes of persons guilty of corrupt practices at the first election are void if polled at the second election, and must be struck out. This also applies to the unsuccessful candidate.

3. But the mere fact of persons being "reported" to the Speaker as guilty of corrupt practices at first election does not require the disallowance of their votes at second election.

4. That the respondent is not ineligible because his election was set aside on account of corrupt practices by his agents without his knowledge or consent.

5. That (following the judgment of the Court of Common Pleas in the *London Case*, not yet reported, and that of the Chief Justice of Ontario in the *Kingston Case*,) a candidate is not disqualified by the corrupt acts of his agents, under sec. 18 of Act of 1873, without his knowledge or consent.

6. It is not material that the two elections were held under different Acts of Parliament.

7. The difference between the "adjudication" of the Judge and his "report" to the Speaker discussed and explained.

[Cornwall, February 3, 1875.]

A petition was filed by Dr. Bergin, the unsuccessful candidate, against the return of the respondent in January, 1874, on the usual grounds. It came on for trial before the Chancellor on 3rd Sept., when the election was avoided on the ground of the corrupt acts of respondent's agents. But the learned Chancellor reported to the Speaker of the House of Commons that these acts had been committed without the knowledge and consent of the respondent. A new writ was issued to fill the vacancy thus caused, and both respondent and Bergin were again candidates, and respondent was again elected.

The present petition was filed by electors claiming the seat for Bergin, charging corruption against respondent and his agents at the second election, and also that persons guilty of corrupt practices at the first election could not vote at the second election, because the two elections were one in law. The petitioners also claimed that respondent was ineligible by reason of the acts of his agents at the first election and that public notice had been given of such disqualification, and that Bergin should be seated, although respondent had majority of votes.

Preliminary objections were filed by the respondent, raising the following points: 1. Whether the two elections were one in law. 2. Whether the respondent was disqualified.

Bethune moved before the learned Chancellor of Ontario to over-rule these objections.

Harrison, Q. C., supported the objections.

Spragge, C. The election now petitioned against was held under the Election Act of

1874, the respondent and Dr. Bergin being the candidates. At the next preceding election for the same constituency, which was held under the Election Act of 1873, the same gentlemen were candidates, and the present respondent was returned. His return being petitioned against, the adjudication upon the trial of the election petition, was that the respondent was not duly elected or returned, and that the election was void; and that adjudication, or "determination," as it is called in the Statute, having been certified to the Speaker, a writ for a new election was ordered, and a new election had, with the result that I have stated. Preliminary objections have been taken against portions of the petition against the second election.

The 14th paragraph is objected to. It runs thus: "On the trial of the said former petition a great number of persons were reported by the said judge in his report to the House of Commons as guilty of corrupt practices on behalf of the respondent at the said first election, and a great many persons voted at the said last election who were guilty of corrupt practices on behalf of the respondent at the said former election who were not reported, and such persons so reported as aforesaid voted at the said election, and a number of votes equal to the number of persons so reported as aforesaid and so guilty of corrupt practices as aforesaid at the first election should be struck off the number of votes polled for the said respondent."

This raises two questions—one as to persons who were reported at the trial of the former petition to have been guilty of corrupt practices at the first election, and who voted for the respondent; the other as to persons who voted in the same way, and who were also guilty of corrupt practices, but who were not reported.

The objection is as to the whole paragraph, and raises first the general question whether corrupt practices by voters at the first election affect their right to vote at the second; and supposing that proposition answered in the affirmative, the second question is as to the class first named—those reported—whether the report is as to them an adjudication that they were at the first election guilty of corrupt practices.

The contention upon the general question on behalf of the petitioner is that the first election having been determined to be null and void, it was in law no election; and that the first and second elections, though two elections in fact, are one election only in law.

The point was fully discussed in the judgment given by Sir Joseph Napier in the *Dungarvan Case*, 2 P. R. & D. 300, and that judgment is well summarized in Mr. Rogers' Treatise on the Law of Elections 10 ed., 227, thus: "Where an election has been set aside by an Election Committee as 'null and void,' the Committee upon the trial of the subsequent election are at liberty to enquire into any corrupt acts whatever which have been committed at the previous election, after the vacancy, on the ground that although there have been two elections in fact, and two writs have actually issued, yet there never has been a valid return according to the proper exigency of the first writ; in short, that the proceedings subsequent to the issuing of the first writ, until a legal return has been made to it according to its exigency, constitute in point of law one election, into which the committee are then enquiring. In the words of the learned chairman: 'The party who offends against the prohibition of this Act is disabled to serve in Parliament upon such election, which in a restricted sense would apply only to the election in relation to which the offence shall have been committed. But if this election be subsequently declared null and void, and a new election take place under a new writ in order to supply the vacancy by the due election of a qualified candidate, then on a petition upon this new election against the return of a party who may have committed bribery, &c., at the previous election, which has been set aside as null and void, it may be open to show those previous acts of bribery, &c., as constituting a disqualification of the offending candidate, and disentitling him to be returned upon such new election, because the vacancy still remains until it is supplied by the return of a qualified candidate upon a valid and lawful election, which ultimately takes place, not under but according to the proper exigency of the first writ. In this way the language of the statute is adapted to the case of one entire process of election, ending in a single valid and recognized return of a duly qualified candidate, so as to supply the original vacancy:" *Acc. 2nd Horsham*, 1 P. R. & D., 240; *2nd Cheltenham, Ib.*, 224; *2nd Lisburn*, W. & Br., 233; and cases quoted ante, pp. 226, 227. All the above-mentioned corrupt acts, therefore, if taking place at a former election, operate as a disqualification at a subsequent one, provided the first has been set aside by a competent authority as null and void."

The same view has been taken in other cases of the legal effect of an election being determined by a competent tribunal to be void; and so in the late case of *Drinkwater* v. *Deakin*, L. R. 9 C. P. 626, Lord Coleridge speaks of an election after an election determined to be void,

which he says is "regarded as an adjournment only, or continuance of the election so avoided." In another passage, p. 637, "the second election under these circumstances is but a continuation of the first, the exigency of the writ not being satisfied till there is a good return."

In the earlier case (though still a recent case) of *Stevens* v. *Tillett*, L. R. 6 C. P., Mr. Justice Willes appears to have entertained considerable doubt upon the point. He says, p. 171: "But I do not feel sufficiently confident, in respect of concluding that the first and second proceedings are to be treated as one proceeding, to lay that down in point of law"—and after referring to the *Dungarvan Case*, he explains how in subsequent cases a person disqualified for corrupt practices cannot be a candidate for the same place at the next election for the same place (or, indeed, at any subsequent election during the same Parliament,) without resorting to the doctrine of an avoided election followed by another election being in law only one election. He explains it by the provisions of the Corrupt Practices Prevention Act, 1854, s. 36, "That if any candidate at an election for any county, &c., shall be declared by any Election Committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county," &c., during the Parliament then in existence.

The decision in the *Dungarvan Case* proceeded upon the like disqualification created by a previous Act, 5 & 6 Vic., c. 102, where the corrupt practice was "treating." It was the opinion of Mr. Justice Willes that under section 36 of the Act of 1854, a petition might be presented at any time during a Parliament at which corrupt practices had been used. He places his decision in the *Westbury Case*: 1 O'M. & H., 47, 53, upon that ground; and in *Stevens* v. *Tillett* he says, p. 177: "I apprehend that the 36th section is the pivot now of all these proceedings." It seems to me clearly that decisions subsequent to 1854 may properly be referred to that section.

It seems clear, also, that without that section corrupt practices previous to an effectual election would not work a disqualification at an election subsequent to it. The same learned judge observes: "As to matters which occurred at the former election, though bribery at the particular election goes to the disqualification of a member, yet I can find no authority at common law that bribery at a former entirely disconnected election would go to the disqualification of a member, and I think it seems to be agreed at the Bar that there was no such authority." If it would not go to the disqualification of a member, it is hardly necessary to say that it would not disqualify a voter. We have no provision in our statutes equivalent to section 36 in the Imperial Act of 1854, or the previous Acts of 5 & 6 Vic., (which relate to corrupt treating,) and therefore the disqualification of voters contended for by the fourteenth objection must rest entirely upon the doctrine propounded in the *Dungarvan Case*.

Mr. Harrison, for the respondent, in this case drew a distinction between the case of members and voters—the *Dungarvan Case* and other cases cited by Mr. Bethune being cases of members; but the principle of the doctrine obviously applies to the case of voters as much as to that of candidates. If it is the same election as to the latter, it cannot be otherwise as to the former.

Mr. Rogers (p. 277) treats it as a moot point with committees, before the passing of the C. P. P. Act, how far bribery or other corrupt practices under Acts which he enumerates, if taking place at a former election, disqualified a person from being elected or sitting on a subsequent one. I apprehend the learned author did not mean to say that it was a moot point whether a member could be unseated for corrupt practices at a previous one. That was the case in the *Camelford Election Case*: Corb. & Danl., 239, decided as long ago as 1819. In that case a distinction was taken in argument between corrupt practices by a candidate and petitioner, and corrupt practices by the candidate returned at a previous election; and it was said by counsel that in all the cases cited the party who was unseated, or who was declared to be ineligible, had been himself returned in the first instance, and that the return had been subsequently set aside by a judgment of a Committee finding that he had been guilty of bribery or treating at such first election. I refer to this argument only to show that it was not denied by counsel for the respondent (and they were counsel of eminence) that corrupt practices at a previous election could be shewn in order to unseat, at any rate, the candidate returned, involving the proposition that evidence of corrupt practices at a previous election was admissible, and, if admissible, the Judge who may try the present election petition must receive such evidence.

The weight of authority appears to me to be in favor of receiving such evidence, and I cannot therefore allow the objection to the 14th paragraph of the petition. I must, however, dissent from the proposition implied in it, that

the votes given at the previous election of persons reported to have been guilty of corrupt practices at that election be disallowed. I put it in that shape because that would be the effect of striking off an equal number of votes given for the respondent at the previous election. It appears to me to be very clear that no such effect as is contended for is given by the statute, or could in reason be given to the report of the Judge.

In the very elaborate judgment of Sir William Bovill, in *Stevens* v. *Tillett*, the distinction is clearly pointed out between the judicial determination of the Judge, which he certifies to the Speaker, and the report which he is required to make at the same time. After giving a history of the legislation which preceded the Parliamentary Election Act of 1868, from which the Canadian Acts constituting the judges the tribunals for the trial of controverted elections are taken, he comments upon those clauses of the Act which relate to the determination to be come to by the judge on the trial, and his certificate of such determination, and to the report to be made under the Act. I cannot do better than quote his language: "Now this Act of Parliament, which is really the foundation of our jurisdiction, and which declares and must determine what is the effect of reports of the election Judges, makes a very material distinction between what is final and what is not final. For instance, sub-section 13 of section 11 declares that the determination of the Election Judge shall be final to all intents and purposes. But that is the 'determination' mentioned in that section, viz., as to who was duly returned or elected, or whether the election was void; that is, by the express terms of the clause, which says that 'at the conclusion of the trial the Judge who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Speaker, and upon such certificate being given, such determination shall be final to all intents and purposes.' The other case in which a decision is to be final is under sub-section 16 of the same section, which enacts that a special case may be stated under certain circumstances, which shall be heard before the Court, and that 'the decision of the Court shall be final'; and 'the Court shall certify to the Speaker its determination in reference to such special case.' In those two cases both of which relate to the determination of the question as to who is to be the sitting member, or whether the election was void, the Act expressly declares that the determination shall be final. That is entirely in accordance with the Grenville Act, and with the 11 & 12 Vic., c. 98. The provisions are almost in words the same. Then, following the provisions of the previous Acts (it having been optional, however, under those Acts with the Election Committee to report on any special matter as they might think fit) sub-section 14 of section 11 of this Act says the Judge shall, in addition to such certificate and at the same time, report in writing to the Speaker. It nowhere says that such report is to be final. It does not say that the Judge shall determine any particular matter, or that he shall not determine any particular matter in terms; but it says he shall report first whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice. Then, secondly, the names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice: Thirdly, whether corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates; and at the same time he is authorized to make a special report to the Speaker as to any matter arising in the course of the trial, an account of which, in his judgment, ought to be submitted to the House of Commons. * * *. My object in referring to the previous legislation was to show how closely the provisions of the former Acts have been followed in the recent Act of Parliament; and just as a distinction is made in those Acts between the 'determination' of the petition and a 'report' upon other matters, so this Act of Parliament, while it says that the 'determination' of the petition is to be final, contains no such words as to the 'report.' Where effect is intended to be given to the report it is expressly enacted what that effect shall be, but there is nothing in this Act which I have been able to discover that makes the mere 'report' of the election judge equivalent to his 'determination.' There is nothing which says that the report is to be final for any purpose whatever except in the particular cases that are expressly mentioned, and the present is not one of them. If Parliament had intended, not only that the determination of the question as to the seat was to be final, but that the report was to be final in other respects, it

would have so enacted. But it could hardly have been intended that such a report should be final, looking at the various matters which may be included in it, as stated in the different paragraphs of section 11. If the report was not to be final under the old Acts, it seems to me that we should be going a long way, and straining the construction of this Act, to hold that it was to be final in this case or that the parties were concluded by it." The same distinction was taken between the effect of the "determination" by the Judge and his "report" by Mr. Justice Willes and Mr. Justice Keating, who also gave judgment in the same matter.

The question in *Stevens* v. *Tillett* was as to the effect to be given to a "report" of a judge in relation to the conduct of a candidate at a previous election. In the case before me the report is in relation to corrupt practices by voters, and the case is therefore *a fortiori*, for voters are not in a proper judicial sense parties to the proceedings at an election trial, and to give the effect contended for to the report concerning them would be making an adjudication affecting their franchise behind their backs. I apprehend that in order to affect them the report would have to be laid before the Attorney-General with a view to the prosecution of the persons named in the report, as was suggested by Sir Wm. Bovill, p. 158, in relation to individuals reported by an Election Committee to have been guilty of corrupt practices.

My opinion, then, upon the 14th objection is that it is not tenable in its present shape; that so much of it as relates to voters reported to have been guilty at the first election of corrupt practices, and states as a consequence that an equivalent number should be struck off the number of votes polled for the respondent at the second election, must be overruled.

But further, my opinion is that upon the trial of the petition now presented against the second election, evidence may be given of corrupt practices at the first election, and I apprehend that it will be open on the other hand to the respondent to show corrupt practices on the part of voters for the petitioner. It will be in substance and effect a scrutiny so far as the petitioner's case under the 14th paragraph of his petition is concerned.

The second objection taken by the respondent is to the 16th paragraph of the petition, and to so much of the 17th and 18th paragraphs as charge that the respondent was ineligible to be elected; the petition not charging or showing any facts or circumstances which would cause the respondent to be ineligible or disqualify him to be a candidate at the said election.

The point argued upon this objection is the same as was raised at the London election case before the Chief Justice of the Common Pleas and reserved by him for the judgment of that Court, and the same as was raised also at the Kingston election case before the Chief Justice of Ontario, and overruled by him.

At the trial of the first petition I determined that the election was void by reason of the corrupt acts of agents; that was my adjudication. I at the same time, in pursuance of the Act, reported to the Speaker that no act of corrupt practice had been proved before me to have been committed by or with the knowledge and consent of the respondent. His ineligibility therefore must rest upon my determination that the first election was void by reason of the corrupt acts of agents.

A point occurred to me at the argument of these objections—and I stated it at the time, but it was not urged by counsel—that if the two elections that have taken place in fact constitute one election in law, the respondent has it determined against him that his election was void by reason of the corrupt acts of agents. He goes to the poll a second time and on the second occasion with that adjudication against him. In the case of voters there has been no adjudication; but if the fact of corrupt practices at the first election be established in evidence their votes (or an equal number) will be struck off on the short ground that the corrupt practice at the first election disqualified them from voting at the second. If as to these voters there had been an adjudication, an equal number of votes would be struck off now. It seems to me, I confess, to be a logical sequence that the candidate's seat is forfeited by the corrupt practices of his agents; or it may be put in this way:—Suppose, no adjudication against the candidate, then candidate and voters would stand upon the same footing in relation to what took place at the first election; in fact, give to corrupt practices at that election the same effect as to the respondent, he being the candidate at the first as well as the second election, as we give in regard to voters, would not his seat be forfeited upon proof of corrupt practices at that first election? But there is, as to him, an adjudication, and so the fact of those corrupt practices requires no further proof.

Logically, I confess, I see no escape from this conclusion; but the answer may be this: The doctrine that a void election is no election, and that such election followed by an effectual election is in law but one election, prevailed before

the passing of the C. P. P. Act, which was passed in 1854. That Act rendered a candidate who should be found by an Election Committee guilty of corrupt practices, by himself or his agents, incapable of sitting for the same county, city, or borough during the Parliament then in existence. That Act, it is true, consolidated as well as amended the law relating to elections, but the provision that I have cited was not, I believe, contained in any previous Act, except that relating to corrupt treating, referred to in the *Dungarvan Case*; and while there has been legislation on the subject in the Parliament of the late Province of Canada, and of the Dominion, and of the Legislature of Ontario, since the passing of that Act, no such provision has found a place in any Act on the subject.

The carrying out of the doctrine to its full extent would have the same effect, for if the first election, being void, is no election, and the adjudication against the candidate would operate to unseat him when again returned, it would have the same effect at the third or any subsequent election, at any rate during the same Parliament, and so the candidate would be rendered incapable of being elected by the operation of this doctrine; while the Legislature has abstained, while adopting several provisions of the Imperial Act of 1854, from adopting the one to which I have referred; and in the Dominion Act of 1874 under which this second election was held, the "punishment for corrupt practices" is expressly defined, and it is only where it is proved that there has been any corrupt practice with the actual knowledge and consent of the candidate, or a conviction of the misdemeanor of bribery or undue influence, that any penalty is incurred beyond the avoiding of the election.

That enactment obviates difficulties in the future, but the question raised is whether the respondent was not ineligible by reason of what had occurred at the previous election which took place before that Act was passed. Looking at the legislation to which I have referred since the passing of the Imperial Act of 1854, and the other considerations to which I have adverted, I think the proper conclusion is that the respondent was not ineligible.

I find that I have omitted to notice the contention of Mr. Harrison that the doctrine to which I have several times referred cannot apply to this case because the first and second elections in fact were under different Acts of Parliament—the Act of 1874 repealing that of 1873, and substituting other provisions in its stead.

Mr. Bethune directed my attention to the Interpretation Act as an answer, and it appears to me that sub-section 35, and subsequent sub-section, of section 7 are an answer to the objection. Besides, the Act of 1873 is not wholly repealed. Elections held, rights acquired, and liabilities incurred before the coming into force of the Act of 1874 are expressly excepted. I cannot agree with Mr. Harrison's contention upon this point. The point that the respondent was ineligible for re-election upon the 18th section of the Act of 1873, chap. 27, was but little pressed by Mr. Bethune. I thought certainly that it would be a strained construction to give to that section to hold a candidate ineligible in the absence of personal wrong, and only by reason of the acts of agents. The learned Chief Justice of Ontario has held in the Kingston case that in such a case no disqualification was created, and the Court of Common Pleas has since, in the London case, expressed the same opinion.

I think this is not a case for costs to either party.*

UNITED STATES REPORTS.

SUPREME COURT OF ILLINOIS.

BISHOP ET AL. v. O'CONNOR ET AL.

Administrator's Sale—Caveat Emptor applies.

1. RIGHT OF PURCHASER.—That a purchaser at an administrator's sale which fails to pass title cannot be subrogated to the position occupied by the creditors whose debts were paid out of the money arising from the sale, and that he has not the same right in equity to have the land sold for the purpose of having his money refunded as the creditors had to have it sold for the payment of their debts.

2. THE DOCTRINE OF CAVEAT EMPTOR APPLIES.—It is a general rule, subject to few if any exceptions, unless it be when a fraud is practiced upon the purchaser at a judicial sale, that the doctrine caveat emptor applies.

3. NO IMPLIED AGREEMENT FOR HEIR TO REFUND TO PURCHASER.—It is a familiar rule that with the exception of the purchase of commercial paper, one person cannot make another his debtor, either in law or equity, without his consent. And in this case there could be no implied agreement on the part of the heirs to refund the money if the purchaser failed to acquire title, nor does the law imply such a promise against them.

4. SUBROGATION, WHEN IT APPLIES.—That if there was any validity to the claim for the money paid on the purchase, and it were not barred, the doctrine of subrogation would not apply, as that doctrine is confined to the relation of principal and surety and guarantors, or to cases where a person to protect his own junior lien is compelled to remove one which is superior and in cases of insurers paying losses.

[Jan. 30, 1874—*Chicago Legal News.*]

WALKER, J. A bill was filed by appellants in

* This case has been reheard before the full Court and now stands for judgment—*Ed. L. J.*

the Superior Court of Cook County against appellees. It alleges that a petition was filed by the administratrix of Charles O'Connor, deceased, in August, 1858, in the County Court, asking leave to sell certain real estate which belonged to deceased in his lifetime, to pay the debts of his estate. A decree was obtained and a sale was made to the brother of Caroline L. Bishop in 1859, to be held by him in trust for her, and it was conveyed to her. The proceedings under which this sale was made, were, after protracted litigation, held to be void for the want of such service on two of the heirs as to give the court jurisdiction over their persons, and the other heir not then having been born, was not, before or after its birth, made a party.

It is alleged that the widow applied the greater part of the money to the payment of the debts which had been proved up against the estate.—That if any portion of it was not so applied, the administratrix held it as guardian for the heirs, or used it for their support. That about half of the debts were paid by the proceeds of the sale or otherwise. That there was a balance of about $5000 which remained unpaid, some of which has been assigned to appellants and Jabez K. Botsford. The bill prays that complainants be subrogated to the rights held by the creditors so far as they were paid from the proceeds of the land. That the heirs be charged with the money spent in their support; that the unpaid debts of the estate be decreed to be a charge on the land; that the court take general charge of the administration of the estate, and settle it according to the equities of the parties.

A demurrer was filed and sustained to the bill, which was dismissed, and the record is brought to this court on appeal, and various errors are assigned.

It is urged that a purchaser at an administrator's sale, which fails to pass title, may be subrogated to the position occupied by the creditors whose debts were paid out of the money arising from the sale. And that inasmuch as his money paid the debts, that he should have the same right in equity have the land sold for the purpose of having his money refunded, as the creditors had to have it sold for the payment of their debts. That such a purchaser should occupy their position, and should be treated as a creditor.

It is a general rule, subject to few if any exceptions, unless it be when a fraud is practised upon the purchaser of a judicial sale, that the doctrine of *caveat emptor* applies. In our researches, no case has been found where a bill has been sustained to enable such a purchaser to recover back the money paid by him for a defective title, or where, by his purchase, he acquired no title. The officer of the law can only sell such title as the debtor has, and he has no power to warrant the title, or impose terms or conditions on the sale beyond that which are required by the law. And the same is true of administrators who sell under a license from the court. They must pursue the requirements of the decree and the law; and can do no act or make any agreement that will charge the heirs. In all judicial sales, the presumption is that as the rule *caveat emptor* applies, the purchaser will examine the title with the same care that a person does who receives a conveyance of land by a simple quit-claim deed. When he knows there are no covenants to resort to in case he acquires no title, the most careless, saying nothing of the prudent, would look to the title and see that it was good, before becoming a purchaser at such a sale. Or, if not, he must expect to procure it on such terms as he might sell the claim for a profit. As well might a person purchasing a quit-claim deed, file a bill to be re-imbursed on the failure of title where the purchase is made at a sale by an administrator. Both kinds of purchase depend upon the same rule.

It is the policy of the law to only vest a sheriff, master in chancery, or administrator, in making sales of real estate, with a mere naked power to sell such title as the debtor or deceased had, without warranty or any terms except those imposed by the law. They are the mere instruments of the law to pass such and only such, title as was held by the debtor, or intestate.—Then if the purchaser in this case observed but ordinary prudence, he had the title, and, as a part of it, the proceedings under which he purchased, examined, and whether so or not, we must presume that he determined to take the risk of the title upon himself. We have no hesitancy in saying that the rule of *caveat emptor* applies in this case with its full force.

But it is urged that as the lands of a deceased debtor may be made liable to the payment of the debts, although they descend to the heirs, that equity should treat the money paid on the purchase, and which was applied to the payment of debts or expended in support of the heirs, as a charge upon the land, and subject it to the refunding of the purchase money. To this there seems to be two answers. If the doctrine of *caveat emptor* applies, the rule must be the same in equity as at law; and that the claim is stale and should not be regarded in equity any more than at law. If this is treated as money paid

for the use of the heirs, then an action at law would be barred in five years from the time of its payment. And, as a general rule, equity follows the law as to the bar of the statute. But we are not prepared to hold that even if a volunteer, or person, without the consent of the heirs, who being minors and could not consent, should pay debts against their ancestor, could he recover from them because they had inherited ands from him; or that such volunteer could either sue the heirs or charge the lands thus inherited for its repayment. It is a familiar rule, that with the exception of the purchase of commercial paper, one person cannot make another his debtor either in law or equity without his consent. And in this case there could be no implied agreement on the part of the heirs to refund the money if the purchaser failed to acquire title; nor does the law imply such a promise against them.

In *Wilkes* v. *Harper*, 1 N. Y. R., 593, it was held where a part of the legatees paid off the debts of the estate, and then sought to subject the land of one who paid nothing to satisfy his proportion of the indebtedness thus paid, that the complainants were separately liable for their respective proportions, and the payment of Horatio's share by the other legatees, if at his request would have been money advanced to his use; but if voluntarily made without his assent it would impose no obligation, either legal or equitable upon him or his representatives. This case goes farther than it should if the debts were liens upon the lands that could not be removed in *part*, as in such case the whole of the debts would have to be removed before the land of either legatee would have been discharged.

But the case of *Newlan* v. *Coit*, 1 Ham., 519, seems to be a case in point, as there the court refused to charge the land or hold the heirs liable for the money paid by the purchaser at the sale, but applied the doctrine of *caveat emptor* in its broadest sense.

It is, however, said, that the law charges the land which passes to devisees or descends to heirs, with the payment of the debts, where the personal property, as the primary fund, is insufficient for the purpose.

It is not accurate to say that the lands are charged, but rather that they are liable to be charged as the law has declared that the lands may be subjected to the payment of such debts, and has prescribed the manner and the time within which it may be done.

If creditors desire to enforce their claims against real estate, it must be done in a reasonable time. In the case of *McCoy* v. *Marron*, 18 Ill., 519 it was intimated that in analogy to the lien of judgments on real estate, and the bar of entries into lands after seven years, that period would be regarded as a reasonable time. And we are fully prepared to hold that such a period should be adopted as the limit within which proceedings should be instituted to enforce the lien, unless special circumstances are shown explaining and justifying the delay. See *Rosenthal* v. *Renick*, 44 Ill., 202, which has been subsequently followed in an unreported case. Here was a case where the claims had been allowed nearly double that period, when there was nothing to prevent a resort to the County Court to compel the administrator to proceed to the subjection of the land to the payment of the unsatisfied debts, which are now claimed to have been assigned to the appellants.

But even if there was any validity to the claim for the money paid on the purchase, and it were not barred, the doctrine of subrogation would not apply. That doctrine is confined to the relation of principal and surety and guarantors, or to cases where a person to protect his own junior lien, is compelled to remove one which is superior, and in cases of insurers paying losses.

In the first class of these cases the doctrine is applied to prevent a multiplicity of suits.—And in the second class of cases the person discharging the superior lien is treated as its purchaser or assignee, unless the facts show it was intended as an absolute payment.

In case of insurers the law proceeds to subrogate the insurer who has paid the loss upon the grounds that when he has done so he is entitled to the thing insured, as being abandoned by the assured, including every means of remedy for its recovery, or for recovering compensation for its loss by those who held the insurance whose right pass to and vest in the insurer, by implication of law even when no act is done to transfer the right.

These seem to be the only character of cases in which the doctrine is applied. And whilst cases are innumerable that may arise under these heads of subrogation, the jurisdiction of courts in the application of this doctrine is clearly limited and defined.

To apply the doctrine in this case would be to add another class of cases to the jurisdiction of courts of equity, and would be to extend it beyond well defined limits. From doing so we are prohibited, and when the legislative department shall deem it for the interest of society they will doubtless apply the remedy. We must adhere to the known and recognized rules that

have always in the past governed courts of equity.

It is, however, contended that the doctrine if not announced is sustained by a number of cases to which we have referred.

In the case of *Bright* v. *Boyd*, 1 Story's R., 478, 2 Story R., 607, the bill was for compensation for improvements placed upon lands purchased in good faith when the title had failed. There was no subrogation in that case. The purchaser had made the improvements and claimed that the owner of the land should pay for them, and he was decreed payment. In that case he was substituted to the rights of no other person. He held the claim in his own right, and had paid no other person's debt, or the lien upon any property, or discharged no other person from liability.

The case of *Valle's Heirs* v. *Flemming's Heirs*, 29 Mo., 152, approaches more nearly a subrogation than that of *Bright* v. *Boyd*, *supra*, although it is based on the latter named case. But in that case the party purchased land at an administrator's sale which was subject to a mortgage, and the money was applied to its satisfaction, and the title derived under the sale failed, and the purchaser was subrogated to the rights of the mortgagee. We shall not stop to inquire whether the purchaser from the administrator was by the court properly treated as the assignee of the mortgage, simply because the money paid by him was applied to satisfy the mortgage. The decision was by a divided court, and its correctness is doubted. But be that as it may, that case is in its facts entirely different from this, nor do we see even if it establishes a principle, that the case could fall in the rule.

The case of *Newlan* v. *Coit*, *supra*, was where the heirs were required to pay the taxes advanced by the vendee, but they were not required to repay the purchase money. The amount paid to discharge the taxes against the land was decreed because such payment preserved the estate from sale, and no doubt relieved the heirs from as great or even greater burthen in redeeming. But this case only gave compensation, and there was no subrogation or grounds for it.

In the case of *Hudgin* v. *Hudgin*, 6 Gratt., 320, the testator expressly charged the land with the payment of debts. And these debts having been paid by the purchase money arising from a sale by the executors, the heirs were required to refund to the purchaser the money he had paid the executor, and which had been applied to remove the incumbrance. That case proceeded upon the grounds that his money having been applied to release the land from the incumbrance he should, as was held in the case of *Valle's Heirs* v. *Flemming's Heirs*, *supra*, be treated as the assignee of the incumbrance. If that case is to be regarded as announcing a correct rule of law, it differs essentially from the case at bar, and does not control it.

It is supposed that the case of *Kinney et al* v. *Knoebel, et al*, 51 Ill., 112, must control this case in principal if not on the facts. This we think is a misconception of the principles upon which that case is based. There the heirs filed a bill to set aside an illegal sale made by a sheriff. The subrogation in that case was placed upon the grounds that it was a bill filed by the heirs to set aside the sale, and to be permitted to redeem the land from Morrison's purchase.—And it being a fundamental rule in equity that where its aid is asked, the court will never grant relief except on equitable terms, and inasmuch as complainants offered to redeem, the court would permit them to do so only upon doing full equity. Again, in that case Morrison only agreed to become a purchaser upon the condition that he could control and use the debts against the estate for paying his bid, and he made the arrangement and used the debts in paying for his purchase. These two features of that case clearly distinguish it from the case at bar and has no controlling effect in its decision. We are also referred to the case of *McConnel* v. *Smith*, 39 Ill., 279, as an authority of the position of appellants. In that case the property which descended to the heir was by the will of his ancestor specifically charged with the payment of debts, and it was held that as it was so charged it should be so sold for the payment of those debts; such a charge, like a mortgage, follows the land, and it must be held liable in the hands of heirs or devisees. But in this case we have seen that there was no such charge, and hence that does not apply as an authority in this case.

Perceiving no error in sustaining the demurrer to the bill, the decree must be affirmed.

Decree affirmed.

The divorce law of Indiana is now claiming the attention of the people of that State. The Indianapolis *News* contrasts England with Indiana, and remarks:

"Indiana, with only one married couple to twenty in England, has at least fifty divorces to one, making a disproportion of connubial infelicity of about one thousand to one against us. And it is the fault of our infamous divorce law."

CORRESPONDENCE.

When execution may issue.

To the Editor of the Canada Law Journal.

I am in a quandary with respect to the law on a matter of every day practice. It is this: Can A on entering judgment against B issue execution immediately on entry thereof, if B is not prepared to satisfy the judgment, &c. Practitioners evidently have been following the law as laid down in the English case of *Cruickshank* v. *Moss*, 8 L. J. N. S., and in our Courts by the case of *Davidson* v. *Grange*, 5 Prac. Rep. in which all the cases *pro* and *con* are fully gone into. Now, evidently all this is upset by the late English case of *Smith* v. *Smith* in vol. 43 L. J. N. S., Exch. 86, on an appeal from an order of Mr. Justice Groves setting aside an execution and proceedings thereon for the reason that a reasonable time had not elapsed after taxation and before its issue. This case of *Smith* v. *Smith* expressly lays down the law that execution may properly issue immediately on the entry of judgment, if the same is not satisfied by the person attending on taxation. Which of these cases should we follow? The case of *Cruickshank* v. *Moss* was not cited to the Judges when they heard the case of *Smith* v. *Smith*, or it might have changed their judgment. An answer will oblige

A Student at Law.

Belleville, Feb. 23, 1875.

[This is a legitimate question to ask a legal journal; but instead of answering it at present, we should much prefer to hear from some of our young friends among the students, who could not spend half an hour better than in looking up the point, and putting the result in the shape of an "opinion."—*Ed. L. J.*]

REVIEWS.

The Law of Usages and Customs, a Practical Law Tract, by J. H. Balfour Browne. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1875, pp. 112.

Nothing more plainly indicates the growth of the law than the increase in the number of Reports, and Law books. With this multiplication of law books, we now have many books treating of minute branches of the law instead of a few exhaustive treatises as formerly.

Mr. J. H. Balfour Browne is already well known to the profession as the author of an able work on the law of Carriers and an equally able work on the Medical Jurisprudence of Insanity.

There is in his style great power of illustration and expression. Let us take the commencement of his work as an example. He says "I do not propose to search for, or in this place to expound the fundamental principles of all law but to point out how large a portion of our law—which may be looked upon as crystallized common sense and rational experience—was at one time in an amorphous form of heterogeneous custom. Indeed all laws have been in practice before they were put in words, just as every act had its origin in intention. Laws have to do with the conduct of mankind, but they are themselves the result of the conduct of men. They are the result of the enduring sentiments and protests of the good, against the ephemeral backslidings of the lost; all laws float in men's minds long before they send down a precipitate of imperative words, &c."

Mr. Browne has in this work chosen or exposition an interesting and difficult branch of the law, though one which has not as yet troubled us much in this country. He has, discharged his duty with great ability and industry.

The work is divided into three chapters —the first dealing with customs generally, the second with customs of the country and the admissibility of the proof of these, and the third with the usages of trade and the laws of evidence respecting the same.

In the first chapter the author illustrates the principle that custom precedes written law by referring to the custom of

Ulster as to Tenant Right, which, in 33 and 34 Vic., cap. 46, became written law. Custom, he says, is applicable to the law before it has been recognized as law, but more particularly when it is in a condition to claim judicial sanction, whether that sanction is authenticated by judicial decision or by legislative enactment. He then proceeds, in a masterly manner, to state the law as applicable to usages and customs, the rules of evidence which will enable the practitioner to determine the existence of an alleged custom, the rules of law which will enable him to determine its legality when its existence is established, and the rules which will enable him to put the correct legal construction upon it.

In the second chapter the author commences to deal with the important branch of the law of evidence as to the admissibility of evidence of usage for the purpose of modifying the meaning of a written contract. He points out that as a country becomes more civilized its criminal laws become less severe, and at the same time its laws of evidence seem to become less strict. He applies this reasoning with much force to England, showing her increase of civilization, relaxation of her Criminal Law and rules of evidence. In this chapter he deals more especially with the customs of the country as to Agriculture. The chapter is short but instructive.

In the third chapter, however, is to be found the principal part of the essay. The author commences this chapter by showing that evidence of custom was at first only received for the purpose of explaining ambiguities and could not be received to contradict, vary, add to, or subtract, from the terms of a valid written instrument. He next points out the tendency upon the part of Judges of late years to extend the office of usage and to allow usage to supply words and incidents to a written contract not inconsistent with it. He then shows that it soon came to be understood that it was as necessary to allow usage to explain what was purposely not said as what was carelessly ill expressed. The consequence was that many persons became purposely reticent of words as they were aware of the existence of usage. He then refers to a number of cases where evidence of usage was admitted although there was no ambiguity upon the face of the contract. The conclusion which he draws is that the line between "varying" and "adding an incident" is so very fine and so difficult to discover that the more cases which can be accumulated with reference to the question of admissibility the easier will it be for the practitioner to decide in any case whether a custom is admissible in evidence or not. His examination of the many cases bearing on the question displays a considerable amount of vacillation in the minds of various judges as to the extent to which usage should be admitted for the purpose of controlling a written contract and leaves the law on anything but a satisfactory footing.

We look upon this treatise as a valuable addition to works written on the Science of Law.

The British Quarterly Review. The Leonard Scott Publishing Co., New York.

The contents of *The British Quarterly Review*, for January, are as follows: I. Paparchy and Nationality. II. Cox's History of Greece. III. The Adornment of St. Paul's. IV. The Bible's Place in a Science of Religion. V. Early Christian Inscriptions of France. VI. The Greville Memoirs. VII. Europe and Peace. VIII. Erasmus—his Character. Contemporary Literature.

The foregoing list of subjects is a fresh demonstration of the fact so often stated, that this Review, in common with the others of the series regularly republished here, aims to keep its readers well informed on all matters of public interest.

The other reviews for this quarter are fully up to the mark, and with *Blackwood* form a "library" in themselves.

The periodicals reprinted by The Leonard Scott Publishing Co. (41 Barclay Street, N. Y.) are as follows: *The* London *Quarterly, Edinburgh, Westminster*, and *British Quarterly* Reviews, and *Blackwood's Magazine*. Price, $4 a year for any one, or only $15 for all, and the postage is prepaid by the publishers.

COURT OF CHANCERY.

ORDERS OF COURT.

February 18, 1875.

610. In any proceeding in the Court in which it may be necessary to appoint a guardian *ad litem* for an infant the person desiring such appointment shall, upon an allegation contained in the præcipe of the infancy of the person for whom such guardian is sought, be entitled to an order *ex parte* from the Clerk of Records and Writs, or where the bill is filed or the proceedings are taken outside of Toronto, from the Deputy Registrar of the county where such bill is filed, or proceedings are had, appointing a guardian *ad litem* to such infant.

611. With the order appointing such a guardian shall be served on the guardian one copy of the proceedings had up to the time of such appointment, or of such part thereof as may be necessary to enable the guardian to protect the interests of the infant to whom he has been appointed guardian.

612. Any person aggrieved by such order may move before a Judge in Chambers, on such material as he may think proper, to discharge the same, whereupon such order as may be considered most conducive to the interests of the infant, shall be made.

613. Hereafter it shall not be necessary to serve a married woman with an order requiring her to answer separately. A married woman shall be served as a party to a suit or matter, not under any disability, is now served; and the like proceedings may be had on such service and with the like effect, as if the married woman were a *feme sole*.

614. Where it is made to appear to the Court either upon a motion for that purpose, or on the hearing of any application that may be pending before it, that it will be conducive to the ends of justice to permit it, the court may direct any application that may be made before it, to be turned into a motion for decree, or a hearing of the cause or matter; and thereupon the Court may make such order as to the time and manner of the giving the evidence in the cause or matter and with respect to the further prosecution thereof, as the circumstances of the case may require; and upon the hearing it shall be discretionary with the Court either to pronounce a decree or make such order as it deems expedient.

615. In lieu of the fees allowed to the Master in Ordinary, the Local Masters, the Deputy Registrars, the Sheriffs and the Special Examiners, by the former tariff—the fees set forth in the tariff appended to this Order—(which we are obliged to omit from want of space)—may, from this date, be charged in respect of the services there enumerated, and no other fees, costs or charges than are therein set forth shall be allowed in respect of the services therein mentioned. This Order shall not interefere with the matters referred to in Order No. 553, in respect of which the fees heretofore charged shall continue to be allowed.

616. Orders 298, 299, 300, 301, 302 and 303, and all Orders and portions of Orders inconsistent with these Orders now promulgated, are hereby abrogated.

SHORT-HAND REPORTER.

On the certificate of the Judge before whom the examination of a witness or witneeses takes place, the Master may allow on taxation, a reasonable sum for the expense of a short-hand reporter.

J. G. SPRAGGE, C.
S. H. BLAKE, V. C.
Wm. PROUDFOOT, V. C.

BOOKS RECEIVED.

Fortescue's De Laudibus Legum Angliæ, with a Life of the Author. By Lord Clermont. Cincinnati: Robert Clarke & Co. 1875.

Addison on the Law of Contracts. Seventh edition. By J. W. Cave, Esq., Recorder of Lincoln. London: Stevens & Sons. 1875.

Wrongs and Rights of a Traveller; Legal Incidents by Rail, Stage, and Water. By R. V. Rogers, Barrister-at-Law. Toronto: Carswell. 1875.

FLOTSAM AND JETSAM.

A large amount of work seems to be got out of the Great Seal. The "Porter to the Great Seal" informs the Legal Departments Commissioners that the quantity of wax used is about 4 cwt. per month. The Porter says he has charge of the Great Seal during the day, and delivers it up to the Lord Chancellor the last thing at night. The Porter is in attendance for nine hours a day, and longer at times in the Parliamentary Session, as he has to remain at the House of Lords until that House is up, and then to go to the Lord Chancellor's house after him with the Great Seal. The Porter adds that he never had more than a week's holiday in a year.

In *Grey* v. *Jackson*, 51 N. H. 9, it is held that where a common carrier between P. and B. takes a package at P. for R., a place in another State, beyond his terminus, the question whether he undertakes as a carrier beyond B. is one of fact, and the law of the place where the loss occurs governs the rights of the parties. The first and much mooted question is learnedly discussed by Judge Doe, in an opinion of thirty-nine pages. The judge quoted the following humorous language of Senator Bockee, in the old Court of Errors in this State, in the celebrated case of *Van Santford* v. *St. John*, 6 Hill, 157: "Suppose the box had been marked 'Brown's Hole, Rocky Mountains,'" says the Senator; if the law implies a contract to deliver the box at that place, he observes, as it is the duty of every man faithfully to fulfil his contracts, the carrier "must abandon his ordinary avocations and business, leave the delights of domestic association, embark with his dear-bought freight, and follow the long line of internal navigation until he reaches the Yellow-stone. Then he must traverse a vast desert, with Indian horses and pack-saddles, exposed to famine, to the wintry storms, to wild beasts and savages; and if Providence should protect him through every danger, he returns, after years of suffering, a worn-out beggar, to a ruined home." This language was quite effectual in its day; but the journey to "Brown's Hole," now-a-days, is a very different affair, and instead of being tedious, perilous or difficult, is a much-sought recreation. The Senator's law is still good, but his rhetoric has lost its force.—*Law Journal.*

Definition of "Gentleman."

Common Pleas, Jan. 22, 1874.

Sittings in Banco.—(Before Lord Coleridge and Justices Keating, Grove and Denman.)

SMITH V. CHEESE AND ANOTHER.

This case was tried a day or two ago before Mr. Justice Brett, when the verdict was for the plaintiff. It was an interpleader issue, the question being as to the validity of a bill of sale. The statute says that the affidavit of the execution of the deed should set out the name, address, and description of the attesting witness. In the present case the attesting witness was described as a "gentleman," and his circumstances were these. He had been for many years managing clerk to a firm of proctors, but the throwing open of that profession caused his services to be no longer required, and he left six years ago. Since then he had lived at Ealing, chiefly on an allowance from his mother, but being well-known, he was frequently asked to write letters, and advise people, and occasionally to collect debts, and do other things. He was sometimes paid for this but more often not.

Mr. G. O. Brown moved, pursuant to leave, to enter a verdict for the defendants, upon the ground that the description of the attesting witness was, in the words of the learned judge "inaccurate, insufficient, or wrong."

Mr. Justice Keating—How should he have been described?

Mr. Brown thought that he might have been described as a letter writer or a debt collector.

Mr. Justice Keating supposed that in an indictment he would be called a "labourer;" but it would not be easy to hit upon his exact description.

Mr. Brown—He was employed at the time in winding up the estate of a Mr. Perkins. In *Allen* v. *Thompson* (25 L. J.), a government clerk was held to be improperly described as a "gentleman;" and in *Beales* v. *Tennant* (29 L. J.), there was a similar decision as to a person who had been an attorney's clerk and was then employed making out bills of costs and so on. It was difficult to say who was a "gentleman," but Mr. Talfourd at that trial contended that the term would include anybody who had nothing to do, and was out of the workhouse. (Laughter).

Mr. Justice Denman—"Having no visible means of support."

Lord Coleridge—Some such definition of a "gentleman" might be found in the old books. It had been held that you need not put down a temporary or chance occupation, and that if a man had been "this, that, and the other," the description of "no occupation" would do.

Mr. Justice Denman—This was a very serious question, for if they held that this person was a "gentleman," it would be quoted as an authority all round the world. (A laugh).

Lord Coleridge—Was that the way to test it? It was like holding that A-s-h-a spelt Asia; if it did not spell "Asia" what did it spell? (Laughter).

Mr. Justice Grove—This person had no regular employment, but he occasionally wrote letters and so on, and therefore was a man of education, which was part of the modern though not of the ancient description of "gentleman."

Lord Coleridge—The term "gentleman" does not now exclude education. (A laugh.)

Mr. Brown—If it was said that this person had really no occupation, then he should have been so described; but in such a case the word "gentleman" would be a misleading term.

Lord Coleridge said that it was no doubt im-

portant, if possible, to place this matter upon some intelligible footing, for if the word "gentleman" were allowed to cover all sorts of nondescript occupations it might be misleading. Therefore, without saying at all what might happen, or indicating at all what might be the opinion of the Court, the learned counsel could, if he thought fit, take a rule.

Rule granted.

When we reflect how some of our English barristers treat the public, we read with something like veneration the funeral orations of American lawyers over their departed great. It is indeed unfortunate that these surviving orators occasionally give a description of their deceased colleagues and friends which strikes a foreigner as humorous; and with most unfeigned respect for the late Hon. John Meredith Read, an ex-Chief Justice, of Philadelphia, we cannot help thinking that (if the records before us be faithful) he must have been a nuisance, as well as an ornament to the Bar and the Bench. The Hon. Theodore Cuyler tells us, that when at the Bar, the ex-Chief Justice, "in the dead of the night, between two and three o'clock in the morning," gathered the counsel associated with him in the Christiana treason trials, "at his house, for consultation upon points that being in his mind prevented him from sleeping!" This occurred three times in a few weeks. Further, Mr. Cuyler says that "In an important cause, a few years ago, Judge Read appointed six o'clock in the morning of the 2nd of January in the dead of winter to hear the argument, and there before daylight while the stars were yet shining, a thorough and elaborate argument was held upon a great question of equity law, and an injunction was awarded by Judge Read before eight o'clock in the morning of that day." Early rising is no doubt an admirable practice, but it is difficult to believe that the argument would not have been equally elaborate, and the injunction quite as efficacious, after breakfast as before. To the few things we have to be thankful for in connection with our English judicature we must now add the fact that there is no Judge Read on the English Bench.—*Law Times.*

The joint committeee of Benchers of the four Inns of Court, some time ago appointed to consider the subject of Lord Selborne's two bills, which were brought into Parliament on July 10, 1874, have unanimously come to the following resolutions: 1. "That Lord Selborne's bill to incorporate the Inns of Court and interfere with their property and internal management, having been introduced into Parliament, notwithstanding the unanimous resolution of the joint committee of the four Inns, of March 4, 1874, disapproving of his original draft bill, a resolution since confirmed by each of the four Inns, this committee resolve that the four societies be recommended to take all proper steps for opposing such bill in Parliament if again brought in." 2. "That this committee disapprove of Lord Selborne's bill for establishing a general school of law, and especially for the provision contained in it, whereby students for the bar and the articled clerks of solicitors shall be under one joint system, and are of opinion that the legal education of students for the bar should continue to be under the control of their own branch of the profession."

Sir Henry Singer Keating will resign his seat in the Court of Common Pleas before the Spring Circuits. The learned Judge was appointed in December, 1859.

The following epitaph for Lord Westbury, suggested by his famous *Essays and Reviews* judgment, at one time circulated through the Inns of Court:—

"Richard Baron Westbury,
Lord High Chancellor of England.
He was an eminent Christian,
An energetic and successful Statesman,
And a still more eminent and successful Judge.
During his three years tenure of office
He abolished
The time-honored institution of the Insolvents'
Court, the ancient mode of conveying land,
And
The eternity of Punishment.
Towards the close of his earthly career,
In the Judicial Committee of the Privy Council,
He dismissed Hell with costs,
And took away from the orthodox members of the
Church of England,
Their last hope of everlasting damnation"

At a banquet recently given to the judges by the Lord Mayor of Dublin, in response to a toast of the Lord Mayor, "The Bench of Ireland," the Lord Chief Justice of Ireland, referring to the ridicule which laymen frequently cast upon the legal profession for their strict adherence to precedents, used the following eloquent language:—"It was said of the judges of the present day that they slavishly followed in the steps of their predecessors; and why not? Were they to reject the accumulated treasures reserved for them in the judgments of the great men who had lived before them? Were they to reject the matchless expositions of the law by Mansfield? Were they to neglect the bright example of Holt, or the deep learning of Hay? No, it should be their pride in humility to study, to understand, to apply, the everlasting principles of justice which these great judges

taught. It was said by some that the images of men's wits were preserved in books, and so were capable of perpetual renovation. Others said, and truly said, that while the piece dropped and the picture faded, the ideas of the great and good were indistructible, and should more properly be compared to seeds which, cast in the minds of other men, perfect infinite thought and action through succeeding ages. They had the ideas of the great and good of all time before them; they had it in the long and illustrious line of the magistrates who had preceded them in the administration of justice. It was not caprice, it was not fancy or folly, it was their duty to preserve, maintain and consolidate the maxims of justice, equity and knowledge which they in their illustrious careers practiced and enforced. Look back through the history of the world! Is there any country in which there was civilization and freedom where the profession of the law had not been honoured? and of the English nation they found that in all ages it has been upheld, honoured and respected, and, as Lord Coke said, it had founded a greater number of noble families than any other profession in the land; and why? Because as a nation they loved justice."

SPRING CIRCUITS—1875.

EASTERN CIRCUIT.—HON. MR. JUSTICE MORRISON.

Ottawa	Tuesday	9th March.
Cornwall	Tuesday	23rd March.
Perth	Tuesday	30th March.
L'Orignal	Tuesday	4th May.
Pembroke	Tuesday	11th May.

MIDLAND CIRCUIT.—HON. MR. JUSTICE PATTERSON.

Brockville	Tuesday	23rd March.
Kingston	Tuesday	30th March.
Napanee	Tuesday	13th April.
Belleville	Wednesday	21st April.
Picton	Tuesday	11th May.

VICTORIA CIRCUIT—THE HON. THE CHIEF JUSTICE OF ONTARIO.

Brampton	Tuesday	9th March.
Whitby	Monday	15th March.
Cobourg	Tuesday	23rd March.
Peterborough	Wednesday	31st March.
Lindsay	Tuesday	6th April.

BROCK CIRCUIT.—HON. MR. JUSTICE GWYNNE.

Owen Sound	Wednesday	17th March.
Walkerton	Tuesday	6th April.
Goderich	Tuesday	13th April.
Woodstock	Thursday	22nd April.
Stratford	Tuesday	4th May.

NIAGARA CIRCUIT.—HON. MR. JUSTICE GALT.

Milton	Tuesday	9th March.
Hamilton	Monday	15th March.
St. Catharines	Tuesday	6th April.
Cayuga	Wednesday	14th April.
Welland	Tuesday	20th April.

WATERLOO CIRCUIT.—HON. MR. CHIEF JUSTICE BURTON.

Barrie	Tuesday	23rd March.
Berlin	Monday	5th April.
Guelph	Monday	12th April.
Simcoe	Tuesday	27th April.
Brantford	Monday	3rd May.

WESTERN CIRCUIT.—HON. THE CHIEF JUSTICE OF THE COMMON PLEAS.

Chatham	Monday	15th March.
London	Tuesday	30th March.
St. Thomas	Tuesday	13th April.
Sarnia	Tuesday	20th April.
Sandwich	Monday	26th April.

HOME CIRCUIT.—HON. MR. JUSTICE STRONG.

Toronto, (Oyer and Terminer and General Gaol Delivery)	Tuesday	23rd March.
Toronto, (Assize and Nisi Prius)	Tuesday	6th April.

(Note.—The learned Judge holding the Toronto Assizes will take the *Jury trials*, at the sitting commencing on *Tuesday*, the *6th April*. The cases to be tried by a Judge without a Jury, will be taken on *Tuesday*, the 4th *May*, and subsequent days, unless otherwise ordered; and if the Jury trials are concluded before that day, the Court will adjourn to that day.

The Hon. Mr. Justice Wilson will be the Judge under the Statute, to dispose of the business of both Common Law Courts during vacation after Term.)

CHANCERY SPRING CIRCUITS, 1875.

THE HON. VICE-CHANCELLOR PROUDFOOT.

Toronto	Monday	April 12th.

THE HON. THE CHANCELLOR.

WESTERN CIRCUIT.

Goderich	Tuesday	March 23rd.
Stratford	Tuesday	March 30th.
Sarnia	Friday	April 2nd.
Sandwich	Tuesday	April 6th.
Walkerton	Thursday	April 29th.
Chatham	Tuesday	May 4th.
Woodstock	Friday	May 7th.
London	Wednesday	May 12th.

THE HON. VICE-CHANCELLOR BLAKE.

EASTERN CIRCUIT.

Cornwall	Tuesday	March 30th.
Ottawa	Friday	April 2nd.
Brockville	Wednesday	April 7th.
Kingston	Saturday	April 10th.
Belleville	Wednesday	April 14th.
Cobourg	Monday	April 26th.
St. Catharines	Thursday	May 20th.
Hamilton	Tuesday	May 25th.
L'Orignal	Tuesday	June 29th.

THE HON. VICE-CHANCELLOR PROUDFOOT.

HOME CIRCUIT.

Lindsay	Tuesday	April 27th.
Peterborough	Friday	April 30th.
Guelph	Wednesday	May 5th.
Owen Sound	Tuesday	May 11th.
Simcoe	Friday	May 14th.
Whitby	Thursday	May 20th.
Brantford	Thursday	May 27th.
Barrie	Wednesday	June 2nd.

LAW SOCIETY OF UPPER CANADA.

Osgoode Hall, Hilary Term, 38th Victoria.

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law, (th names are given in the order in which the Candidates entered the Society, and not in the order of merit):

G. Morrice Rogers.
Warren Burton.
Colin G. Snider.
George B. Gordon.
John Bruce.
Louis W. P. Coulter.
Charles Gamon, under special Act.
W. Darby Pollard, " "

The following gentlemen received Certificates of Fitness:

Haughton Lennox.
J. D. Matheson.
J. T. Lennox.
W. H. Ferguson.
Francis Ryk.
John G. Robinson.
F. E. P. Pepler.
T. Caswell.
Alexander Ferguson.
Warren Burton.
David Ormiston.
J. C. Judd.

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

Graduates.

William Malloy.
George F. Shipley.
Eugene Lewis Chamberlain.
——— Nicholls.

Junior Class.

James Haverson.
J. R. Kerr.
Thomas Stewart.
Michael J. Gorman.
Charles Edward Hewson.
John Cowan.
James Alexander Williamson.
J. Pasman Ross.
Henry S. Lemon.
Hugh Blair.
Peter V. Georgen.
Frederick Wm. Gearing.
Daniel Byarde Dingman.
Christopher Wm. Thompson.
Reginald D. Pollard.
Peter Stewart Ross.

The following are the days fixed by the general orders or the various examinations:

Preliminary Examinations—Second Tuesday before Term. Intermediate Examinations—Tuesday and Wednesday next before Term. Examination for Certificate of Fitness—Thursday before Term. Examination for Call to the Bar—Friday and Saturday before Term.

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 a Term's 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 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. S. caps. 42 and 44).

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, Statutes of Canada, 29 Vic. c. 28, Insolvency Act.

That the books for the final examination for students-at-law shall be as follows:—

1. For Call.—Blackstone Vol. i., Leake on Contracts, Watkins on Conveyancing, Story'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, Jarman 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, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story'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:—

1st year.—Stephen's Blackstone, Vol. i., Stephen on Pleading, Williams on Personal Property, Griffith's Instatutes of Equity, C. S. U. S. c. 12, C. S. U. C. c. 43.

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

3rd year.—Real Property Statutes relating to Ontario. Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, Vol. 1, and Vol. 2, chaps. 10, 11 and 12.

4th 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 preliminary examination as an Articled Clerk.

J. HILLYARD CAMERON,
Treasurer.