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DIARY FOR MAY.

16. Sun....*3rd Sunday after Easter.*
17. Mon...Easter sittings of Divl. Ct., Q. B., and C. P. begin.
21. Fri.....Confederation proclaimed 1867. Lord Chancellor Lyndhurst born 1772.
23. Sun. ..*4th Sunday after Easter.*
24. Mon...Queen Victoria born 1819.
27. Thur..Habeas Corpus Act passed 1679. Sir W. Gran Master of the Rolls, 1801.
30. Sun....*Rogation Sunday.*
31. Mon...Parliament first met at Toronto, 1797.

TORONTO, MAY 15, 1886.

The judgment in the County Court case of *Foley* v. *Moran*, noted in our last number (*ante*, p. 167), is not in all respects to be followed. On application for prohibition, Wilson, C. J., is said to have decided that although the defendant did not appear at the hearing there was an adjudication on the merits, and that the application not having been made within fourteen days could not be set aside.

ACTIONS FOR TORTS BY AND AGAINST THE REPRESENTATIVES OF DECEASED PERSONS.

Among the amendments of the law made at the recent session of the Ontario Legislature is one relating to actions of tort, which, besides making a further inroad on the old maxim, *actio personalis moritur cum persona*, will, we think, hereafter occasion considerable difficulty and delay in administering the estates of deceased persons.

Perhaps there was a want of equity in the old rule which deprived the representatives of a deceased person of all remedy for wrongs committed against the deceased in his lifetime, and by the death of the wrong-doer exempted his estate from liability for the wrongs done by him in his lifetime. This rule, however, was relaxed, and for injuries committed to the real estate of any person, committed within six months next before his decease, a right of action was given to his representatives provided they sued within one year after his death. So also in the case of any wrong committed by any deceased person within six months previous to his decease, to the real or personal property of another, his representatives were made liable to suit, provided the action was commenced within six months after they had taken upon themselves the administration of his estate. (R. S. O. c. 107, ss. 8, 9.) These provisions, however, have been repealed. and now by 49 Vict. c. 16, s. 23, the personal representatives may maintain an action for all torts or injuries to the personal property of the deceased (slander and libel only excepted), provided the action is brought within one year after the death of the party injured; and it is further provided that "in case any deceased person committed a wrong to another in respect of his person, or of his real or personal property, the person so wronged may maintain an action against the executors or administrators of the person who committed the wrong. This section does not apply to libel or slander." This clause, we may observe, gives a new right of action against the personal representatives of a deceased person, unqualified by any limitation of time within which the action is to be brought. This, we think, is a serious omission, and personal representatives may in consequence of it be placed in a serious quandary in administering estates. Suppose a personal representative is notified of a claim for a tort

against the deceased, and the claimant refuses or neglects to bring a suit to recover his claim the personal representative will be unable to distribute the estate for an indefinite period, and will have no means of obtaining an adjudication upon the alleged claim.

It is true that there is a period of limitation for actions of tort, so far as the action is against the tort-feasor, but it may be a question whether it has any application to actions against the representatives of a deceased tort-feasor. The statute, it may be argued, has constituted an entirely new cause of action, and has placed no limit on the time within which it may be prosecuted. This appears to us to be a serious blunder.

THE FUTURE DEVOLUTION OF REAL ESTATE.

NOT the least remarkable Act passed by the Ontario Legislature at its recent session is that respecting the estates of deceased persons. By this Act a most important change has been effected in the law of real estate—in fact, one of its distinguishing features may be said to have been almost s ept away.

Hitherto one of the chief characteristics of real estate was the mode in which the fee simple descended to the heirs-at-law. It was this peculiarity which constituted the great difference between the fee simple and wha were called chattel interests in land. But this point of distinction is now to a great extent abolished by the Act in question. It, however, still survives as regards estates tail.

On and after the 1st July next all estates in fee simple, or estates *pur autre vie* limited to the heir as special occupant, in any tenements corporeal or incorporeal within Ontario and whether devised by will or not, will, upon the death of the owner, instead of descending to his heirs-at-law or passing to his devisees direct under his will, devolve upon and become vested in his executors or administrators, and be subject to the payment of his debts, and so far as such property is not disposed of by will, it is thereafter to be distributed as personal property. The widow's right of dower however is not taken away unless she elects to take under the Act; and the husband of a deceased owner may, by deed executed within six calendar mor hs after his wife's death, elect to take his curtesy in lieu of the share he would take under the Act.

Upon this Act coming into force, therefore, the realty as well as the personalty of a deceased person will, in the first place, vest in his personal representatives, who will have full power to administer both classes of property, and upon the debts of the deceased being duly paid, it will be the duty of the personal representative to convey such parts of the realty as have been devised, and are not required for the payment of debts, to the devisee, whose title, instead of coming direct under the will as heretofore, will henceforth come through the personal representative. Such part of the realty as may remain after payment of the debts of the deceased owner, and as to which he shall have died intestate, will be distributed among the next of kin of the deceased in the same manner as the undisposed of personalty.

It will thus be seen that "the heir-at-law" is practically disinherited. Like Othello, his occupation is gone. He will no longer succeed directly or indirectly to the estate of his ancestor. The personal representative and the next of kin have supplanted him. The statute known as the Real Estate Succession Act is virtually repealed.

It will certainly seem rather anomalous to continue to convey land to a man and his heirs, when his heirs can by no possibility any longer have any right to

inherit it, and yet we presume a conveyance of land to a man and "his executors and administrators" would now, as formerly, convey but a life estate for want of proper words of limitation, notwithstanding the provisions of section 4 of the Conveyancing and Law of Property Act, 1886.

An English real property lawyer, without the heir-at-law to conjure with, is very like an actor attempting to produce the play of Hamlet without the melancholy Dane. Possibly it may be held that the legal personal representatives of a deceased person are by the Act now constituted his legal "heirs-at-law," for the purpose of inheriting his estates of inheritance.

No doubt the Act will be found to have produced other apparent incongruities, and it may be somewhat difficult to make it fit in with all the old learning on the law of real estate. But notwithstanding any technical difficulties that may arise, we think the Act will prove to be a move in the right direction, and though it is perhaps not framed in the best mode that could have been devised for simplifying this branch of the law, it will nevertheless remove what has for a long time been felt to be an anomaly, viz., the inability of the personal representative to administer what is often the principal part of a deceased person's assets.

For the protection of those beneficially entitled certain safeguards are provided. An administrator will be required to give security for the value of the land as well as the personal property; and where infants are interested in land, which, but for the Act, would not devolve on the personal representative, the latter cannot sell without the concurrence of the official guardian *ad litem*, or an order of the High Court of Justice. The High Court has power to appoint a local judge or a local Master to concur instead of the official guardian.

SELECTIONS.

It is impossible to agree with the summing-up of Mr. Justice Cave in *Regina* v. *Hyndman* as reported in the daily papers. The questions for the jury in a prosecution for seditious words, as in a case of defamatory words or writings, are—first, were the words charged spoken? and, secondly, had they the tendency alleged? The learned judge's summing-up was, however, concerned almost entirely with the question of malice, an inference which the law presumes against the utterer of words with a seditious tendency. The only reference to the presumption of law upon which the whole case turned seems to have been in the words: "The Attorney-General had said that inciting to disorder was the natural consequence of the words the defendants used, and, therefore, they were responsible for it. He could not agree entirely as to that. There must be, in order to make out the offence of speaking seditious words, a criminal intent. The words must be seditious and spoken with a seditious intent. Although it was a good working rule to say that a man must be taken to intend the natural consequences of his acts, it was very proper to ask the jury if there was anything to show to the contrary." In some reports Mr. Justice Cave is made to say of this fundamental rule of law that it is a legal fiction, but it is difficult to believe that this was meant to be conveyed. The learned judge appears to have relied too much on clause 102 of the Criminal Code (Indictable Offences) Bill, which in an endeavour to be brief is altogether obscure. Mr. Justice Stephen, however, in his "Digest of the Criminal Law," modifies that statement by adding "in determining whether the intention with which any words were spoken was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself." This is a clumsy periphrasis, but that Mr. Justice Stephen meant to draw no distinction between sedition and defamation in this

respect is clear, because he refers as authorities to *Regina* v. *Burdett*, 4 B. & A. 95, and *Regina* v. *Harvey*, 2 B. & C. 257, both cases of libel. It is unfortunate that the case was not begun by information, or removed into the Queen's Bench, so that on a motion for a new trial the true state of the law might be declared.—*Law Journal* (London).

CODIFICATION.

Ours has been so long the solitary "voice of one crying in the wilderness" in favour of codification, so far as legal journalism is interested, that it is really a comfort to discover that we have an alert and efficient coadjutor at last in the *American Law Review*, the most influential and able publication of its class in America. Our readers who do not agree with us on this subject—and they are numerous—will perhaps have a little more patience with us when they read the following from the *Review*:—"The blind and stupid opposition which the movement in favour of the codification of the law is encountering in the United States, is not a particle above the opposition which the movement in favour of abolishing law French and conducting legal proceedings in English, encountered in the legal profession in England more than two hundred years ago. The question is this, and only this: Shall that portion of the law which is settled, and that which is capable of being definitely and precisely stated, be written and authoritatively published in one book, or shall it be scattered, as now, through several thousand books? A majority, and we are ashamed to say a very large majority, of the New York city Bar Association, at a recent meeting answered this question in the negative. The influence of the legal profession upon public opinion, and the respect which the public entertain for that profession, have been for several years steadily declining. When a body composed of the most cultivated members of that profession will, by a majority which amounts almost to unanimity, vote down a resolution to the effect that the law ought, as far as possible, to be reduced to the form of a statute, it must be said that the poor opinion which the public entertain of the legal profession is fully justified. Enlightened laymen see that no reform in the law is practicable except that it be put on foot, and directed by the members of that profession who alone are learned in the law. They also see that a large portion—a majority, as it appears so far, of that profession—are opposed to what thinking laymen must regard as a most urgent and needy reform, and they draw from this the inference that the real reason why so many lawyers oppose such a reform is that the lawyers are interested in keeping the law in such a state of intricacy, confusion, perplexity and mystery, that whenever a business man wants to know what the law is on any point he must go to a lawyer with a large fee. In our judgment this opinion of laymen is in part justified by the facts. In other words, while we believe and fully concede that a good deal of the opposition to codification springs from learned and honest visionaries who believe that it would have the effect of checking what they are pleased to term the natural growth of the law, another portion of it is real dishonesty, having a foundation in no higher motive than the desire of lawyers to keep the law in a state of confusion and mystery, and thereby increase legal business and enhance legal fees." Now, Messrs. Carter, Dwight and J. Bleecker Millar to the rescue! Here's another heretic to be burned! And really he seems a more "offensive partisan" than ourselves. And as Rip Van Winkle says in the play, "now he'll cotch it."—*Albany L. J.*

EVERY PRISONER HIS OWN WITNESS.

The legislation which for years past has reformed the law of evidence, has, in our opinion, in one respect at least, overstept the mark. To confer upon a prisoner, tried for a felony, the privilege of testifying on his own behalf is to bestow upon him a boon of very doubtful value, and it may well be questioned whether the practice tends to the furtherance of justice or the development of truth. The law which authorizes a prisoner to testify upon his trial places him under a moral duress, compelling him to do so, under the pen-

alty, if he declines, of the most damaging suspicion on the part of the jury, as well as of the public. It is true that the law may say, and the judge may charge, that the jury must not infer from his silence anything to the disadvantage of the prisoner; but the jury will act under the law of human nature which is in this respect a higher law than the law of the land. They will think, and say to each other, that if he was not guilty he would have sworn to his innocence, and there is no law so stringent, and no judge so august as to prevent them from so thinking and so saying. If to avoid this horn of the dilemma, he chooses to encounter the other, and enter the witness box it avails him very little, his testimony is at best, of but little value, generally absolutely worthless, for the jury, still acting under the higher law of common sense, will say that if he is guilty of crime of which he is accused he will not hesitate to add perjury to it. In any event his deliverance must come *aliunde*.

Besides this the average defendant in criminal cases is "unaccustomed to public speaking," and by no means in the habit of arranging his ideas in logical sequence, or expressing them in apt terms. Under the literally and metaphorically, "trying" circumstances of a trial for a felony, it would not be remarkable that he should "should lose his head" and say things that could easily be construed into a confession of guilt. That sort of thing has often happened. Many a man has tied a rope around his neck with his tongue. Flustered and frightened, agitated by the novel circumstances under which he is placed, awed by the solemnity of the proceeding, and anxious beyond measure as to the grave consequences of an error, it is not remarkable that in every point of view he does himself much more harm than good, and, whether innocent or guilty, gives testimony the direct tendency of which is to convict, not to acquit him. He is in a position almost identical with that of the wretches of olden times to whom the wisdom of the law denied the aid of counsel, and who, whether old or young, learned or ignorant, male or female, were obliged to defend their lives by their own eloquence.

The truth is, there are but two words which a person, accused of serious crime, should, if he is well advised, say upon the subject, from the hour of his arrest to the rendition of the verdict, and those two words are "not guilty."

All this is *apropos* of a recent case in Nevada (*State* v. *Maynard*, S. C., Nev. Feb. 8, 1886; West Coast Reporter, p. 248) in which a defendant charged with larceny essayed to testify in his own behalf, and made a mess of it. He was convicted, but luckily for him, the judge of the trial court had misdirected the jury, that: "The actions of the defendant are a safer foundation from which to draw a conclusion as to his intention at the time of the alleged taking than any subsequent declarations in his own favour." This, the Supreme Court held to be error, that the jury should have been instructed that they must draw their conclusions, as to the guilt or innocence of the prisoner, from the whole testimony taken together, his own as well as that of other persons. The Supreme Court further held, that the trial court could not instruct the jury as to the relative weight of different classes of testimony, and that, "such a charge is a decision upon a question of fact."

In commenting on the case of *Regina* v. *Jarrett*, one of the malodorous *Pall Mall Gazette* cases, the *Law Journal* of London points out another anomaly created by this line of legislation. It says: "One fact can clearly be gained from the first trial on an extended scale in which prisoners have given evidence on their own behalf, namely, that criminal trials will be much longer in the future. A most important question remains as yet undealt with, namely: Ought a prosecution for perjury to follow the trial of a case in which a prisoner has given evidence which is untrue? If, in the present state of the law, such a prosecution should take place, a curious result would follow. On the trial for perjury the same facts would be in issue as at the trial under the Criminal Law Amendment Act, but the prisoner could not give evidence. His evidence in the witness-box on the previous occasion would be good evidence against him, but not in his favour; and he cannot give fresh evidence, because the change does not yet apply to perjury. This result is one of the evils of piecemeal legislation.

The *Law Journal* thinks that further legislation on the subject is called for. Our

own opinion is that the proper course is to retrace the steps taken in that direction, and hereafter to proceed *super antiquas vias*.—*Central Law Journal.*

NOTES OF CASES IN UNITED STATES COURTS.

In *Gibbs* v. *Coykendall*, 39 Hun. 141, the plaintiff hired the defendant to pasture cattle on his farm, and they there fell sick and died of Texan fever, which they contracted from the dejections of Texan cattle previously pastured there. The plaintiff did not know of the previous pasturing, and the defendant did not know of this danger of contracting the disease.

Held, that the defendant was not liable. The Court, Haight, J., said: "Counsel for the plaintiff requested the court to charge the jury 'that if the jury believed that Texan cattle had been pastured in the lot, and that Texan fever could be communicated to native cattle pasturing in the lot where Texan cattle had been pastured, that the plaintiff's cattle died of Texan fever communicated to them from the noxious emanations of the Texan cattle pastured before they went into the pasture, then the plaintiff was entitled to recover; that the defendant was bound to furnish a healthy and safe pasture, so far as poisonous substances in the field were concerned.' Plaintiff's counsel also requested the court to charge 'that the effect of the introduction of Texan cattle was a matter of public notoriety; that it had been known since 1868, and had been the subject of public discussion; that commissioners had been appointed by the United States government to investigate it, and that the defendant was bound to know of the effect of pasturing Texan cattle where native cattle were to be pastured from the publicity that had been given to it, and that it was his duty to notify the plaintiff that Texan cattle had been pastured on the lot when the bargain for pasturing was made.' Both of these requests were refused, and the exceptions taken on such refusal present the only questions which we are called upon to determine this appeal. The questions thus presented are somewhat novel, and yet we think they may be properly disposed of upon well recognized principles. An agister of cattle is a bailee for hire, and as such is bound to use ordinary diligence properly to care for and protect the cattle placed in his charge, and is responsible for loss occasioned by his negligence. He is bound to furnish a pasture secure against the ordinary accidents incident to the cattle to be pastured. The field must be properly fenced, and be free from dangerous places or obstacles. A failure in these respects will render him liable for damages occasioned thereby. But he is not an insurer of the property, and unless he is guilty of negligence he would not be liable for injuries that may be suffered through other causes, and over which he has no control. He is bound to use ordinary care, that care which an ordinarily prudent person would exercise over his own property of like character. . . . *Claflin* v. *Meyer*, 75 N.Y. 260; S. C., 31 Am. Rep. 467. Again, it is claimed that he ought to have known of the deleterious influence that such cattle would create. It is true that like trouble had been occasioned in several of the western States, and to some extent in this State, that it had been the subject of investigation by the government, and in some of the States laws had been passed prohibiting the pasturing of Texan cattle. But the liability of native cattle to contract the disease from Texan cattle was but little known or understood in this State. It was not a matter of such public notoriety among our farmers as would justify the court in charging, as a matter of law, that the defendant was bound to have known it. We are consequently of the opinion that the court did not err in refusing to charge as requested."

In *Boyle* v. *New York, etc., R. Co.*, 39 Hun. 171, it was held that as to cattle trespassing on a railroad track, the engineer, having sounded the whistle to alarm them, is not bound to reduce the speed of the train, and the company is not liable. The court, Baker, J., said:—"The defendant was under no legal obligation to reduce the speed of the train, and there is no evidence that the speed was accelerated after the engineer knew that the horses were on the tracks. The defendant was engaged in operating its road in the usual

and customary way, as it had a clear and lawful right to do. The defendant had the unqualified right to use its property in any way and manner it was pleased to do, up to the point of doing an intentional injury to the property of another. There was no obstacle to prevent the horses escaping from the tracks to a place of safety any moment, and at any time after they were discovered by the engineer up to the instant they were struck and killed on the bridge. The usual and ordinary means adopted to drive cattle from the tracks is the noise of the train and the sounding of the whistle or bell, and such signals are generally sufficient for that purpose without checking the speed of the train. *Bemis* v. *Conn. R. Co.*, 42 Vt. 381; S. C., 1 Am. Rep. 339. We are not aware of any rule of law that requires a railroad company to do more with a view of avoiding injury to cattle trespassing upon its tracks. It is impossible to conjecture why the engineer should have purposely and maliciously done this injury to the plaintiff's property. The evidence was not sufficient to sustain the conclusion reached by the jury that the engineer acted wantonly and maliciously, and the question should not have been submitted to their consideration. The most that can be said in criticising his action is that his conduct was heedless and morally wrong. *Nicholson* v. *Erie R. Co.*, 41 N. Y. 525. The precise question has been passed upon in the courts of other States, and the same conclusions were reached on a state of facts similar to those before us. *Maynard* v. *Boston and Maine R. Co.*, 115 Mass. 458; S. C., 15 Am. Rep. 119; *Darling* v. *Boston and Albany R. Co.*, 121 Mass. 118. The jury should have been instructed to render a verdict for the defendant. *McCanless* v. *C. and N.-W. R. Co.*, 45 Wis. 365; *Price* v. *New Jersey, R. & T. R. Co.*, 31 N. J. L. 230; *Indianapolis P. & C. R. Co.* v. *Candle*, 60 Ind. 112." *Chic. & Alton R. Co.* v. *Kellam*, 92 Ill. 245; S. C., 34 Am. Rep. 128, seems to the contrary. See also *Cincinnati, etc., R. Co.* v. *Smith*, 22 Ohio St. 227; S. C., 10 Am. Rep. 729, and note, 732.

In *Matter of Gould & Co., West. Pub. Co., and Lawyers' Co-Op. Pub. Co.*, the Supreme Court of Connecticut have held that the State having a contract with a publishing house for the publication of volumes 49 to 54 of the reports of its Supreme Court of Errors, and provided that a copyright of each volume should be taken out in the name of the secretary of the State, for the benefit of the State, the official reporter will not be compelled, by order of the court, to deliver to any applicant who offers to pay the legal fees copies of the judicial decisions of the court, when the same are desired for publication before the publication thereof in the official reports, or the advance sheets thereof. The court said: "For the information of the public the State of Connecticut publishes reports of cases argued and determined in the Supreme Court of Errors. The volume is prepared for publication by the official reporter, and contains the opinions written by the judges, together with head-notes to all cases, foot-notes to some of them, statements of facts, a table of cases, and an index to subjects, the work of the reporter. The judges and the reporter are paid by the State, and the product of their mental labour is the property of the State, and the State, as it might lawfully do, has taken to itself the copyright. The statute requires the comptroller to supervise the publication of the volumes, taking a copyright for the benefit of the State. Under this, that officer for a valuable consideration granted to Banks & Bros., who agree to print and sell the reports at a fixed price, the protection of the copyright for a limited period. During three or four years the State, with knowledge, has acquiesced in the terms of this contract, and accepted the resulting benefits. If therefore we should now direct the reporter to furnish copies of opinions to the petitioners, that they may sell them to the public in advance for their own profit, we should in effect advise the State to a breach of contract. It is for the State to say when and in what manner it will publish these volumes, and the taking of the copyright in no sense offends the rule that judicial proceedings shall be public. The courts and their records are open to all. The reasons given by the Supreme Court of Errors for its determination in a given cause constitute no part of the record therein. The judgment stands independently of these. Moreover, these are accessible to all who desire to use them in the enforcement of their rights."—*Albany Law Journal.*

PUBLISHING A JUDGE'S JUDGMENT.

On February 26th, before Baron Huddleston and a special jury, the case of *M'Dougall* v. *Knight* was tried. The case raised the question whether the publication of a judgment by one of the parties to an action can be made the foundation of an action for libel. In the year 1884 an action was tried in the Chancery Division between the present plaintiff . gentleman residing at Battlefields, near Bath, and the present defendants, a firm of auctioneers in Bath. In delivering judgment in this action, Mr. Justice North made certain observations upon the behaviour of Mr. M'Dougall during the trial, and expressed certain conclusions unfavourable to that gentleman's conduct in the course of the transactions in question. This judgment was subsequently printed and circulated in pamphlet form by the defendants, with a preface in which, after stating that the reports in the local papers were fragmentary, the defendants said they offered to their friends "a *verbatim* report of the very able judgment of Mr. Justice North, which contains an impartial statement of facts with the facts deducible from them, and really gives all the information necessary to be known." This pamphlet contained the libels complained of in the present action, the passages relied on in the statement of claim being the passages of Mr. Justice North's judgment above referred to. At the beginning of the case Baron Huddleston asked how the plaintiff could succeed, this being an action for the publication of a judgment in which a learned judge delivered certain findings after five days' trial. It was contended that by their preface the defendants made the words their own. It was further submitted that a publication was only privileged when it was a fair report of the whole proceedings, not of the judgment merely. Moreover, it was proposed to show express malice, in which case there would be no privilege. The cases of *Lewis* v. *Levy*, 27 Law J. Rep. Q. B. 287; E. B. & E. 537; *Millisich* v. *Lloyd*, 46 Law J. Rep. C. P. 404; and *Stevens* v. *Sampson*, 49 Law J. Rep. Q. B. 120; L. R. 5 Exch. Div. 53, were cited. Mr. Alexander William M'Dougall, the plaintiff, gave evidence as to what had occurred at the trial before Mr. Justice North, his evidence being directed to showing that the judgment did not give a fair and accurate report of the proceedings. He stated that the only evidence given on the points above referred to, on which Mr. Justice North had found against him, was that of himself and his wife, their evidence being opposed to the finding, and that no charges of the kind made by his lordship had been laid by the counsel for the defendants. The plaintiff also said that after the judgment he saw Mr. Knight and told him that he intended to appeal, though the judgment was substantially in his favour. (Evidence as to what subsequently passed in the Court of Appeal was excluded by his lordship.) In cross-examination at a later stage of the case, Mr. M'Dougall said that the report as published was not a fair or accurate report of what Mr. Justice North had said, and pointed to passages in support of this, particularly passages where the learned judge had read evidence from his notes, which the report did not profess to reproduce, only the beginning and end of such passages being given, and the hiatus marked by the words, "&c., &c." The plaintiff said that evidence favourable to himself was omitted in some of these passages, but failed to point to any other place in which evidence in his favour was not noticed in the judgment. Mrs. M'Dougall gave corroborative evidence on these points.

On objection that there was no case to answer, it was contended that, apart from the question of privilege, there was evidence that the report was not accurate, and it rested with the defendants to prove that it was, and that there was evidence of express malice—first, in the publication of the report for his own ends by a party to the action, as distinguished from a newspaper reporter or other disinterested party; secondly, in the publication after notice of an intended appeal; and, thirdly, in the failure to withdraw or apologize after the Court of Appeal had negatived Mr. Justice North's finding on these points. Baron Huddleston, having stated that he should take the opinion of the jury on the issues raised by the pleadings, called the shorthand writer, who stated that the report as published was a *verbatim* report of the judgment, except as to a few

minor words and the passages where the learned judge read from his notes, where it was impossible for a shorthand writer to follow him. Baron Huddleston, in terms of the defence, asked the jury to say—(1) whether the pamphlet was a fair, accurate, and honest report of the judgment of Mr. Justice North; (2) whether it was published by the defendants *bona fide*, and with the intention of making known the true facts of the case for the protection of their own interests; (3) whether there was malice on the part of the defendants. The jury at once answered the first two questions in the affirmative and the third in the negative, and judgment was given for the defendants accordingly, the learned judge refusing to stay execution.—*The Irish Law Times.*

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

BEATTY v. THE NORTH-WEST TRANSPORTATION CO.

Corporation—Sale by director to company—Ratification of by-law by shareholders—Vote of owner of property.

A director of a joint stock company personally owned a vessel which he wished to sell to the company; he was possessed of a majority of the shares of the company, some of which he assigned to other persons in such numbers as qualified them for the position of directors, which position they accordingly filled. Upon a proposed sale and purchase by the company of the said vessel, the board of directors, including the owner of the vessel, passed a by-law approving of such purchase by the company; and, subsequently, at a general meeting of the shareholders, at which the said owner and those to whom he had transferred the portions of his stock were present and voted, a resolution was passed confirming the said by-law, which resolution was opposed by a number of the shareholders representing nearly one-half of the total stock of the company.

Held, reversing the decision of the Court of Appeal, 11 Ont. App. R. 205, that the board of directors had no power to pass the said by-law, and under the circumstances the resolution of the shareholders confirming the by-law was invalid.

Appeal allowed with costs.

Mowat, Atty.-Gen., and *Maclennan*, Q.C., for appellants.

Robinson, Q.C., and *McDonald*, Q.C., for respondents.

STARRS (Defendant), Appellant, AND COSGRAVE BREWING AND MALTING COMPANY (Plaintiffs) Respondents.

Suretyship—Contract of with the firm—Continuing security to firm and member or members constituting firm for the time being—Death of partner—Liability of surety after.

Appeal from the Court of Appeal for Ontario.

S., by indenture under seal, became surety to the firm of C. & Sons for goods to be sold to one Q., and agreed to be a continuing security to the said firm, or "to the member or members for the time being constituting the said firm of C. & Sons," for sales to be made by the said firm or "any member or members of the said firm of C. & Sons" to the said Q., so long as they should mutually deal together.

P. C., the senior member of the said firm, having died, and by his will appointed his sons, the other members of the firm, his executors, the latter entered into a new agreement of co-partnership, and continued to carry on the business under the same firm name of C. & Sons, and subsequently transferred all their interest in the said business to a joint stock company.

An action having been brought against S. for goods sold to Q. after the death of the said P. C.

Held, reversing the judgment of the Court of Appeal, 11 Ont. App. R. 156, and restoring

the judgment of the Common Pleas Division, 5 O. R. 189, that the death of P. C. dissolved the said firm of C. & Sons, and put an end to the contract of suretyship.

Appeal allowed with costs.

Ma... nan, Q.C., and *O'Gara*, Q.C., for appellant.

Osler, Q.C., for respondents.

GRAND TRUNK RAILWAY COMPANY v. BOULANGER.

Accident—Loss of Life at ferry wharf—Com... ny —Liability of—Damages.

Appeal from Quebec.

L. B. brought an action of damages against the G. T. R. Co. for the loss of her husband, L. H. F., who was drowned on the night of the 6th of November, 1883, by falling off the pontoon in the River St. Lawrence at the wharf owned by the company in the city of Quebec, when he was going to cross over to Levis by the company's ferry between Levis and Quebec, on his way to take the cars at Levis, and alleged her husband's death had been caused by the default and negligence resulting from his own imprudence and of the company's in not having put rails, guards and gates, and lights sufficient to ensure the safety of passengers. The company contended there was sufficient light, and that they were not bound to have guards or gates. At the trial there was evidence that this was a dangerous place, being a dark narrow passage leading down to the ferry; that two lights were usually lighted, and that only one was lit on the night of the accident. That after the accident two were lighted and a chain placed across the end of the passage, so as to prevent persons falling off the pontoon when the ferry was not at its moorings. The Superior Court found there was sufficient light, and dismissed the plaintiff's action on the ground that the death of the respondent's husband resulted solely from his own imprudence, negligence and want of care.

The Court of Appeal reversed the judgment of the Superior Court, and awarded $1,000 damages to the plaintiff. On appeal to the Supreme Court of Canada,

Held, that the evidence showed culpable negligence on the part of the railway company in not having sufficient lights, and in not having a gate or chain to guard against accidents.

That damages should not be increased, but interest should be allowed by the Court of Queen's Bench from the date of the demand.

BEATTY (Defendant), Appellant, AND OILLE ET AL. (Plaintiffs), Respondents.

New trial—Verdict for plaintiff—Technical breach of contract—Defendant entitled to nominal damages for.

Appeal from the Court of Appeal for Ontario.

In an action to recover the balance of the contract price for work done for the defendant, the declaration also containing the common count for work and labour, the evidence showed that there was a technical breach of the contract, by which, however, the defendant had sustained no substantial damage. A verdict was found for the plaintiff, and a rule for a new trial was refused by the Divisional Court and also by the Court of Appeal.

Held, affirming the decision of the Court of Appeal, that a verdict would not be set aside merely to enter a verdict for the other party for nominal damages.

Appeal dismissed with costs.

S. H. Blake, Q.C., and *McDonald*, Q.C., for appellants.

Osler, Q.C., and *Cox*, for respondents.

ONTARIO AND QUEBEC RAILWAY COMPANY (Appellants), AND PHILBRICK (Respondent).

Railway company—Lands taken for railway purposes—Arbitration—Award—Matters considered by arbitrators—Costs.

Appeal from the Court of Appeal for Ontario.

A railway company, having taken certain lands for the purposes of their railway, made an offer to the owner in payment of the same, which offer was not accepted and the matter was referred to arbitration under the Con. Railway Act, 1879. On the day that the arbitrators met the company executed an agreement for a crossing over the said land in addition to the money payment, and it appeared

that the arbitrators took the matter of the crossing into consideration in making their award. The amount of the award was less than the sum offered by the company, and both parties claimed to be entitled to the costs of the arbitration, the company because the award was less than their offer, and the owner because the value of the crossing was included in the sum awarded, which would make it greater than the offer.

Held, affirming the judgment of the Court of Appeal (GWYNNE, J., dissenting), that under the circumstances neither party was entitled to costs.

Appeal dismissed with costs.

Blackstock, for appellant.

McMichael, Q.C., for respondent.

HOBBS ET AL. (Plaintiffs), Appellants, AND NORTHERN ASSURANCE COMPANY (Defendants), Respondents.

SAME (Plaintiffs) Appellants, AND GUARDIAN FIRE AND LIFE ASSURANCE COMPANY (Defendants), Respondents.

Fire Insurance—Condition in policy—Loss by explosion—Loss by fire caused by explosion—Exemption from liability.

Appeal from the Court of Appeal for Ontario.

A policy of insurance against fire contained a condition that "the company will make good loss caused by the explosion of coal gas in a building not forming part of gas works, and loss by fire caused by any other explosion or by lightning."

A loss occurred by the dropping of a match into a keg of gunpowder on the premises insured, the damage being partly occasioned by the explosion of the gunpowder, and partly by the gunpowder setting fire to the stock insured. The company admitted their liability for the damage caused by fire, but not for that caused by the explosion.

Held, reversing the decision of the Court of Appeal, 11 Ont. App. R. 741, TASCHEREAU, J., *dubitante*, that the company were not exempt by the condition in the policy from liability for damage caused by the explosion.

Appeal allowed with costs.

Gibbons, for the appellants.

Marsh, for the respondents.

CHANCERY DIVISION.

Boyd, C.] [January 20.

RE TRENT VALLEY CANAL.

RE WATER STREET AND THE ROAD TO THE WHARF.

Public works—Expropriation—Compensation—Ownership of roads—Soil vested in Crown—Parties.

Certain lands on which were two roads called "Water Street" and "The Road to the Wharf," being required for public works, were expropriated by the Dominion Government, and the compensation therefor was claimed by the corporation of the village in which the roads were and by one R. C. S., through or over whose lands the roads ran. It appeared that roads were established as public highways by the municipal authorities by by-law in the years 1842 and 1845 respectively, under 4 & 5 Vict. c. 10, ss. 39 & 51, although no compensation was paid to the owners therefor.

Held, that although originally the soil and freehold of the roads or streets may have remained in the private owner subject to the public easement (the right of user) since the year 1858 at all events it became vested in the Crown by virtue of 22 Vict. c. 99, s. 301, and that the Attorney General of Ontario should be added as a party to give protection to the Dominion in expropriating the land.

The Master's findings were therefore overruled.

McCarthy, Q.C., and *Barron*, for R. C. Smith.

G. T. Blackstock, and *Moore*, for the corporation of Fenelon Falls.

C. Robinson, Q.C., and *Nelson*, for the Dominion Government.

McMichael, and *Creelman*, for mortgagees.

Proudfoot, J.] [March 6.

IN RE MELVILLE.

Sale subject to a condition—Breach of condition—Will—Devise—Possibility—R. S. O. c. 106, s. 2—Right of entry for condition broken—Valid condition of re-entry—Heirs-at-law—Devise.

On Sept. 26, 1844, J. LeB. by deed bargained and sold, etc., to the municipal council of D. District, in consideration of five shillings, a

certain lot for the purpose of erecting thereon a schoolhouse for the use of D. District, to have and to hold the same for the purpose aforesaid unto the municipal council forever. The deed was subject to a proviso that the said council should, within one year from its date, erect a schoolhouse for the use of the said District; or if the said council should at any time erect any other building save said schoolhouse and necessary offices, or should sell, lease, alien, transfer, or convey the said land, it should be lawful for the said J. LeB. and his heirs to re-enter and avoid the estate of the said municipal council.

J. LeB., by his will dated July 23rd, 1847, devised all his real estate to certain nieces, and died in the year 1848 without having revoked or altered said will. The municipal council complied with the condition by building a school-house, and at the time of the making of the will the condition had not been broken, but the successors of D. District dealt with the land otherwise than was authorized by the deed and broke the condition. The land having been sold, a petition was filed to have it declared whether the devisees under the will of J. LeB. or his heirs-at-law were entitled to the proceeds thereof.

Held, that the word "possibility" in R.S.O. c. 106, s. 2, includes a right of entry for condition broken mentioned in sec. 10, and is more extensive than that phrase, and might, therefore, be a subject of a devise, and is covered by the general name of "land." And that upon the breach of the condition, no new estate was acquired so as to require words applicable to after acquired estates to be found in the will.

The possibility of reversion was a contingent interest that existed in the testator when the will was made; the subsequent breach of the condition gave a right of entry by which the contingent interest might be converted into an estate in possession.

Held, also, that "a condition of re-entry," or condition strictly so-called, as distinguished from a conditional "limitation," is a means by which an estate or interest is to be prematurely defeated and determined, and no other estate created in its room. The condition in this case was perfectly valid. The devisees, and not the heirs of J. LeB. were consequently held entitled to the land or the money representing it.

W. H. Miller, Q.C., for the petitioners, the devisees.

Rae, for the heirs-at law.

Maclennan, Q.C., for the infants.

Ferguson, J.] [April 16.

HUGGINS V. LAW.

Guardian of infants—Right to receive infants' legacies.

This was an action brought by certain legatees against the executors of the will under which they claimed, claiming the amount of their legacies. It appeared that the will devised the real and personal estate among the plaintiffs and certain other parties share and share alike; that the executors had collected the estate, converted it into money, and invested the proceeds on mortgage security, and had paid the other legatees their legacies on their attaining their respective majorities; but as to the plaintiffs' legacies, they being infants, the defendants had paid their legacies over to their guardian duly appointed by the Surrogate Court. The guardian afterwards absconded with the amount of the legacies; and the plaintiffs brought this action accordingly.

Held, that the defendants by their dealings with the estate had put themselves in the position of trustees as to the moneys aforesaid, and they were wrong in paying it over to the guardian, and judgment must go for the plaintiffs, with costs.

Guthrie, Q.C., and *Watt*, for the plaintiffs.

Bain, Q.C., and *Scanlon*, for the defendants.

Boyd, C.] [May 5.

DOBBIN V. DOBBIN.

Dower—Husband and wife—Equitable dower—Equity of redemption.

The plaintiff claimed dower against the heir-at-law of the intestate who created a mortgage on the lands prior to his marriage, which mortgage was still unsatisfied. He died possessed of no other property.

Held, that the mortgage being paramount to the wife's dower, which attached only upon

the equity of redemption she could not found any claim to have the heir's estate onerated with the payment of this mortgage in order to give her the full measure of her dower at law, and if she sought more than dower on the value of the estate after deducting the amount of the mortgage, she must contribute rateably to the payment of that encumbrance: that this was to be worked out in this way—getting one-third of the rents and profits for life she may keep down the one-third of the interest attributable to the mortgage debt for the like period. The yearly value of her dower was to be ascertained by deducting from one-third of the rents, issues and profits of the whole estate one-third of the yearly interest of the mortgage, and with that basis the value of an annuity to produce that sum during her life must be computed according to the methods usually employed in fixing a gross sum for dower.

Poussette, Q.C., for the plaintiff.

Dumble, for the defendant.

Boyd, C.] [May 5.

BOYER V. GAFFIELD.

Fraudulent conveyance—Lapse of time—Statute of Limitations.

This was an action brought by a judgment creditor having unsatisfied writs in the hands of the sheriff, seeking to set aside a certain voluntary deed of conveyance made by the judgment debtor in September, 1873, of certain lands and premises, alleging that the said judgment debtor was then largely in debt, and that the plaintiffs' debt was then still unpaid. The defendants, the grantees under the voluntary conveyance, set up that, even if the plaintiffs ever had any right to resort to the said lands for the recovery of the debt, such right had been extinguished and lost by the delay.

Held, that inasmuch as the plaintiffs' debt was shewn to have existed prior to the deed of conveyance impeached, which conveyance was of an entirely voluntary character, the plaintiff was entitled to the relief claimed; for a deed which is by the statute of Elizabeth fraudulent as to creditors is not validated because it has not been attacked for ten or twenty years. It is a fraudulent deed, and it remains so to the end of time, though it may be not effectively impeachable because of purchasers for value without notice having intervened, or because the claims of all creditors have been barred or extinguished by lapse of years, neither of which elements obtained in the present case.

Hoyles and *Riddell*, for the plaintiffs.

W. Cassels, Q.C., and *J. W. Kerr*, for the defendant.

Boyd, C.] [May 5.

RE TRENT VALLEY CANAL.

RE WATER STREET AND THE ROAD TO THE WHARF.

Highway—Property in soil—Expropriation—Compensation.

This matter reported *ante*, *p.* 183, having been amended by adding the Attorney-General of Ontario as a party, was re-argued, when it was

Held, that the soil of the roads was vested in the Crown represented by the Attorney-General of Ontario, and to him as a public officer the compensation is payable. Even if there was jurisdiction, the discretion of the Attorney-General, or rather that of the Lieutenant-Governor in Council, as to the ultimate disposition of the fund, should not be interfered with. When the highway is no longer needed for public use the infallible justice of the Crown will regard the rights of all interested.

McCarthy, Q.C., and *Barron*, for Smith.

Irving, Q.C., for the Ontario Government.

G. T. Blackstock, for the corporation o Fenelon Falls.

Nelson, for the Dominion Government.

McMichael, Q.C., for a mortgagee.

PRACTICE.

Boyd, C.] [March 31.

RE MORPHY.

Administration order—Judgment, entry of—Execution creditor of legatee—Receiver—Mistake—Action.

A summary order was made for the administration of the personal estate of M. deceased. The order was not entered as a judgment, as it should have been by rule 485, owing to a mistake of an officer of the Court. The London and Canadian Loan and Agency Co., who were execution creditors of one of the legatees and devisee of M., obtained an order appointing the company receiver of the share of the excution debtor, and served notice of this receivership upon the executors of M., but received no notice of the proceedings under the administration order. The company, however, were informed of the proceedings, and upon an *ex parte* motion procured the administration order to be properly entered as a judgment, and then applied for the carriage of the proceedings under it.

Held, that the status of the company was not that of assignee of the legatee, but only of a chargee or lien holder upon the fund or property to which the legatee was entitled; and therefore, the company would not have been entitled in the first instance, to ask *in invitu a* for a summary order to administer; and the slip which was made in not having the order to administer properly entered did not give them any additional right in that respect; but notice of the proceedings should have been given to the company in order that they might be bound by what was done.

A receiver appointed as the company were here has a right to assert his claims actively, though he may require in some instances the sanction of the Court; and, a contention having been raised as to a forfeiture of the interest of the legatee, leave was given to the company to assert their claim by an action.

Arnoldi, for the company.

Moss, Q.C., and *Millar*, contra.

Boyd, C.] [May 3.

MCCAW v. PONTON.

Appeal—Setting down—Dies non—Objection.

An appeal from an order made by a local master on Saturday, the 17th April, in an action in the Chancery Division, was set down to be heard on Monday, the 26th April, which was Easter Monday and a *dies non*. The appeal was put upon the paper for the following Monday.

Held, that the practice followed was a convenient one, and an objection to it was overruled.

Held, also, that the proper mode of taking such an objection was by motion to strike the appeal out of the list.

Neville, for the appellant.

E. Douglas Armour, for the respondent.

Armour, J.] [May 4.

LAIDLAW MANUFACTURING CO. v. MILLER.

Judge in Chambers—Divisions of High Court—Distribution of business.

There is now only one Superior Court of original jurisdiction—the High Court of Justice. The different divisions exist merely for convenience in the distribution of work. There is no reason why a judge of the Queen's Bench or Common Pleas Division should not hear a Chambers motion in an action in the Chancery Division, even where it is not a matter of urgency, and where it might as easily have been brought before a judge of the Chancery Division.

W. H. P. Clement, for the plaintiffs.

Holman, for the defendants.

Boyd, C.] [May 5.

GOULD v. BEATTIE.

Slander—Particulars—Examination.

An order for particulars, under the statement of claim in an action of slander, of the names of the persons to whom the alleged slander was spoken, was rescinded because the examination of the plaintiff gave to the defendant all the discovery that he sought to obtain by the order for particulars.

Fullerton, for the plaintiff.

Allan Cassels, for the defendant.

CORRESPONDENCE.

SURROGATE COURT FEES.

To the Editor of the Law Journal:

Sir,—Suppose A makes his promissory note for $1,000,000, payable to B three months after date; and at the same time B makes his promissory note payable to A for a like amount and at the same time. Before the three months are up B dies, and his executors seek to have his will proved. B's total assets amount to $1,000 and the promissory note. Is the total estate to be administered $1,000, or $1,000,000? The million dollar note is wiped out by a million dollar debt; but according to the judgment of Mr. Justice Cameron in *Re Kerr*, 44 Q. B. p. 210, in computing the amount of duty payable under the Surrogate tariff, the assets of the estate are to be computed and the liabilities ignored. If this be the law, and it seems to have been so held in the case referred to, it calls for the prompt attention of our legislature.

Yours truly,

C.

COUNTY COURT JUDGMENTS.

To the Editor of the Law Journal:

Sir,—I desire to correct the statement of facts in the cases of *Parsons* and *Duncan* v. *Turner*, and *Madill* v. *Turner*, reported *ante*, 167. As I understand it, the facts were that Turner absconded. Before leaving he assigned his books to his father who was surety for him to Madill. Parsons and Duncan sued Turner, and got judgment on 17th December, and at the same time obtained judgment against Smith as garnishee for $87. Madill got two judgments the same day; and on 30th December and 2nd January following filed transcripts in the County Court, issued execution, and gave it to the sheriff on 2nd January. The garnishee paid the money into the Division Court for P. and D. Madill's solicitor, who was collecting the account on Turner's books, on 2nd January paid sheriff $9.75 for defendant Turner, and the sheriff entered that sum in the book as required by section 2 of Creditors Relief Act. Hayes notified the clerk of Division Court not to pay over to P. and D., and then applied to Judge Dartnell for an order for the clerk to pay the $87 over to the sheriff, and the judge made the order. Now this application and order were made in the suit o *Parsons* and *Duncan* v. *Turner*, on the application of Madill in the name of the sheriff, without any notice whatever to Parsons and Duncan. It was objected that the judge had no power to make such an order on the application of a stranger. On this his judgment is silent. It was also objected that the Creditors' Relief Act did not apply as it was clear that Act was intended for all creditors, whereas no creditors could get certificates under sec. 7, as the debtor's goods had not been advertised by the sheriff, and that the payment of the $9.75 to the sheriff, if not really paid by Madill, as contended, was a voluntary payment by the defendant, and such payments could not *per se* have the effect of putting the Act in force. These points are not touched upon in the judgment.

Yours, etc.,

Lex.

OSGOODE HALL LIBRARY.

The following is a list of books received at the Library during the months of January, February and March, 1886:—

Armstrong on Intestacy, Montreal, 1885; Beach on Contributory Negligence, New York, 1885; Beach on Sterling Exchange, New York, 1885; Browning & Lushington's Admiralty Reports, London, 1868; Bules on Bills, 14th edition, London, 1885; Birbeck's Distribution of Land in England, London, 1885; Bishop's Directions and Forms, Boston, 1885; Cababé & Ellis' Reports, Vol. I., London, 1885; Criminal Law Magazine, Vol. VI., Jersey City, 1885; Central Law Journal, Digest to Vols. I. to XX., St. Louis; Carver on Carriage of Goods by Sea, London, 1885; Challis' Real Property, London, 1885; Clerke & Humphrey's Sales of Land, London, 1885; Dicey's Law of the Constitution, London, 1885; Danforth's U. S. Supreme Court Digest, New York, 1885; Dos Passos on the Stock Brokers, etc., New York, 1882; Desty's Federal Reporter Digest, St. Paul, 1885; Emden's Practice Statutes, London, 1885; Emden's Digest for 1885, London, 1886; Ermatinger on Franchise of Elections, Toronto, 1886; Gray on Telegraphic Communication, Boston, 1885; Goodeve's Real Property, 2nd edition, London, 1885; Hincks (Sir F.), Life of, Montreal, 1884; Haight's Country Life in Canada, Toronto

1885; Hansard's Debates, Vols. 293-301, London, 1884-5; High's Extraordinary Legal Remedies, Chicago, 1884; Journal of Jurisprudence, Vol. 29, Edinburgh, 1885; Jackson's "Century of Dishonour," Boston, 1886; Kansas Reports, Vols. 1-33, Topeka; Leigh & Le Marchant on Elections, 4th edition, London, 1885; Lely & Foulke's Parliamentary Election Acts, London, 1885; Lawrence's Public International Law, Cambridge, 1885; Lewis on Shipping, Toronto, 1886; Mackenzie's Life of the Hon. Geo. Brown, Toronto, 1882; Morris' Treaties with the Indians, Toronto; Mew's Digest for 1885, London, 1886; Mair's Drama, "Tecumseh," Toronto, 1886; Murfree on Official Bonds, St. Louis, 1885; North-Eastern Reporter, Vol. 1, St. Paul, 1885; Piggott on Torts, London, 1885; Pulling's Index to London Gazette, London, 1885; Roberts & Wallace on Employers, 3rd edition, London, 1885; Reed on Statute of Frauds, 3 vols., Philadelphia, 1884; Stephen's Dictionary National Biography, Vol. 5, London, 1886; Whittaker's Almanac for 1886; Williams' Real Property, 15th edition, London, 1885; Wood on Mandamus, Albany, 1880; Wallace's "Bad Times," London, 1885.

FLOTSAM AND JETSAM.

THE *San Francisco Wasp* says a jury is "a number of persons appointed by a court to assist the attorneys in preventing law from degenerating into justice"; which is lucky for the newspapers.—*Albany Law Journal.*

ONE of the most characteristic remarks ever heard from a Welsh witness was elicited in the course of a recent trial. The witness, after answering a question in chief, blandly inquired of the examining counsel, "Have I said right?"—*Irish Law Times.*

THE Supreme Court of the United States in *Little* v. *Hackett* holds that a person who hires a public hack, and gives the driver directions as to the place to which he wishes to be conveyed, but exercises no other control over the conduct of the driver, is not responsible for his acts or negligence, or prevented from recovering against a railroad company for injuries suffered from a collision of its trains with the hack, caused by the negligence of both the managers of the train and of the driver.—*Albany Law Journal.*

IT cannot be said that England does not pay its judicial officers well. The recent death of the second Lord Brougham, at the age of ninety-one, will relieve the Government from the payment of a pension of $3,225 a year, which was granted in 1852, on the abolition of the office of Master in Chancery, which he held. Thus in thirty-three years the Government must have paid that person about $532,000. Great reforms cost, it seems. It must have cost much more for England to get rid of that office than it cost this State to get rid of the common-law practice.—*Albany L. J.*

INSURANCE agents may note that it has been held in the United States in *Crandal* v. *Accident Insurance Co.* (Chicago Legal News, Ap. 10), that death by hanging, when insane is a death from bodily injury, effected through "external, accidental and violent means," within the meaning and intent of a policy of accident insurance. The policy in this case provided that the insurance should not extend to death or disability, "which may have been caused wholly or in part by bodily infirmities or disease." *Held*, that the death of the insured was not caused within the meaning of the law or the intent of the policy, by the disease of insanity, but by the act of self destruction.

SOME time ago we alluded to a hard case, where a man convicted of manslaughter appealed, and obtained a new trial, and then was convicted of murder and sentenced to be hanged. It is now stated in the newspapers that he has appealed to the Federal Supreme Court. This is a good way to get his case "hung up," if he himself is not. It seems that there is an element of mitigation in his case. The killing grew out of a dispute over the spelling of the word "pedler." Inasmuch as the standard lexicographers spell it in several different ways, one might reasonably be excused for falling into a homicidal passion on the subject. We ourselves have more than once refrained from immolating a proof-reader for a like cause, only by a powerful exercise of the will, especially when he has calmly corrected a word purposely misspelled. —*Albany Law Journal.*

UNIQUE VERDICT OF CORONER'S JURY.—"State of Arkansas, County of ——, Township of ——, an inquisition taken this 4th day of February, 1886, —— J. P. for the county aforesaid upon the view of the Dead Boddie of ——, who is about 5 ft. 6½ high, weigh about 130 pounds, dark complected, find that he came to his death by ——Special Deputy Constable, the said —— attempted to kill the said —— who after a tussle, managed to shoot him with a shot gun, which shot taken affect in the stomach & killed him the said ——, who was proved to be a desperate character from the evidence & according to Law we the undersigned Justice & Jurors find that —— did the killing in *extreme justifiable homicide* and that he done it to save his own life—$2.15 was found on his person which was used to pay for a coffin and a bottle of whiskey."

There is a painful ambiguity in the last sentence of this verdict. Was the $2.15 used to pay for the coffin, and for a bottle of whiskey? Or was the bottle of whiskey, as well as the money, found upon the person of the deceased? As there is no probability that the verdict will be amended, there is scope for conjecture. As the deceased was found to be a "desperate character," and came to his end after a "tussle," the presumption would be that any bottle found on his person would be a whiskey bottle, empty, not a bottle of whiskey. We are therefore led to the conclusion that the bottle of whiskey was bought with the money—to console the survivors.—*Ex.*

THE following is taken from the January number of the *Law Quarterly Review*. It is a very interesting reminiscence:—

OXFORD, 23 *June*, 1753.

In *Michaelmas* Term next will begin

A

COURSE of LECTURES

ON THE

LAWS of ENGLAND.

By Dr. BLACKSTONE, of *All-Souls* College.

THIS Courfe is calculated not only for the Ufe of fuch Gentlemen of the Univerfity, as are more immediately defigned for the Profeffion of the Common Law; but of fuch others alfo, as are defirous to be in fome Degree acquainted with the Conftitution and Polity of their own Country.

To this End it is propofed to lay down a general and comprehenfive Plan of the Laws of *England*; to deduce their Hiftory; to enforce and illuftrate their leading Rules and fundamental Principles; and to compare them with the Laws of Nature and of other Nations; without entering into practical Niceties, or the minute Diftinctions of particular Cafes.

The Courfe will be completed in one Year; and, for greater Convenience, will be divided into four Parts; of which the firft will begin to be read on *Tuefday* the 6th of *November*, and be continued three Times a Week throughout the Remainder of the Term: And the following Parts will be read in Order, one in each of the three fucceeding Terms.

Such Gentlemen as propofe to attend this Courfe (the Expence of which will be fix Guineas) are defired to give in their Names to the Reader fome Time in the Month of *October*.

*** The broadsheet of which the above is a reduced facsimile, and of which I am not aware that another copy has been preserved, was found by me in a recently purchased copy of the now somewhat rare "Privilegia Universitatis." It would be interesting to know more of the circumstances which attended the beginnings of the study of the Common Law at Oxford. Blackstone's brother-in-law and biographer, Clitherow, in the preface to the Reports, tells us that the lectures of 1753 "even at their commencement, such were the expectations formed from the acknowledged abilities of the lecturer, were attended by a very crowded class of young men of the first families, characters, and hopes." In 1758 Blackstone was elected to the newly founded Vinerian Professorship, and Bentham, who had returned to Oxford early in December, 1763, writes as follows: "I attended with two collegiates of my acquaintance. One was Samuel Parker Coke, a descendant of Lord Coke, a gentleman commoner, who afterwards sat in Parliament and the other was Dr. Downes. They both took notes, which I attempted to do, but could not continue it, as my thoughts were occupied reflecting on what I heard. I immediately detected his fallacy respecting natural rights. . . . . Blackstone was a formal, precise and affected lecturer, just what you would expect from the character of his writings; cold, reserved and wary; exhibiting a frigid pride. But his lectures were popular, though the subject did not then excite a wide-spreading interest, and his attendants were not more than from thirty to forty" (Works, x. p. 45). Lord Eldon in the case of *Abernethy* v. *Hutchinson* (1825), 3 L. J. Ch. 209 (for a reference to which I am indebted to the present holder of the Vinerian chair, Professor Dicey), says: "We used to take notes at his [Blackstone's] lectures. At Sir R. Chambers' lectures also the students used to take notes." It must however be remarked that Eldon did not matriculate till 15th May, 1766, the year in which Blackstone finally severed his connection with Oxford, after for some time previous lecturing by deputy. He had resumed his London practice in 1759, and in 1761 had entered Parliament and had become a King's Counsel. The Vinerian Professor's statutory right of reading by deputy, upon which Blackstone had successfully insisted in 1761, was very amply conceded to his successor, Sir R. Chambers, who held the office for three years after he had gone out as a judge to India (1774-77). The future Lord Eldon was duly appointed to be his deputy, at a salary of £60 per annum, and as such (according to the story which he told long afterwards) had to read, soon after his elopement with Bessy Surtees, "with about 140 boys all giggling at the Professor," a previously unseen lecture, sent to him by Chambers, upon the Statute 4 & 5 Phil. & M. c. 8, *for the punishment of such as shall take away maidens that be inheritors, being within the age of sixteen years, or that marry them, without consent of their parents.*

T. E. HOLLAND.

DEFAMATION OF CHARACTER.—A rural justice of the peace is usually a man of good sense and sound judgment. He may not know much law, but the community trusts him to do substantial justice between man and man, even if he violates legal technicalities. Uncle Johnny Woodman, of Sumner county, West Virginia, knew more about farming than he did about books, but he was honest and shrewd, and his common sense never failed him. His neighbours elected him justice of the peace, and not long after his appointment he gave them an illustration of the fact that a bad name will make a man suspected wh[illegible] ppearances are never so slightly against him.

One day a noted "hard case" was brought before Uncle Johnny, charged with stealing a horse. The evidence against the man was not very strong, and his lawyer, Gen. Bently, insisted that his client should be dismissed. But Uncle Johnny decided to commit him to gaol to await the action of the grand jury.

Gen. Bently then moved the Court to release the prisoner on bail, and offered good security for his appearance at the upper Court. Uncle Johnny adjusted his spectacles, examined the "code," and said with great dignity—

"The Court declines to bail the prisoner."

"On what grounds do you decline?" demanded the attorney.

"Well, General," said Uncle Johnny, "if you must know, the Court is afraid he'll steal another horse."

"You had better be careful," replied the lawyer. "My client will sue you for his character."

"You needn't put yourself to the trouble," rejoined the magistrate, with provoking coolness. "Just get two or three disinterested men to say what his character is worth, and I'll pay for it on the spot."—*Criminal Law Magazine.*

Law Society of Upper Canada.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—North America and Europe.
- Elements of Book-Keeping.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose.

MATHEMATICS.

Arithmetic; Algebra, to end of Quadratic Equations: Euclid, Bb, I., II. and III.

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

English History from William III. to George III. inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography, Greece, Italy and Asia Minor. Modern Geography, North America and Europe.

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar,

Translation from English into French prose.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de B[illegible]onnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

First Intermediate.

Williams on Real Property, Leith's Edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and cap. 117 Revised Statutes of Ontario and amending Acts.

Three scholarships can be competed for in connection with this intermediate.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

For Certificate of Fitness.

Taylor on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

For Call.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

Candidates for the final examinations are subject to re-examination on the subjects of Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

1. 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 on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Socity as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

3. Every other candidate for admission to the Society as a Student-at-Law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with clause four of this curriculum.

4. Every candidate for admission as a Student-at-Law, or Articled Clerk, shall file with the secretary, six weeks before the term in which he intends to come up, a notice (on prescribed form), signed by a Bencher, and pay $1 fee; and, on or before the day of presentation or examination, file with the secretary a petition and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

8 The First Intermediate examination will begin on the second Tuesday before each term at 9 a.m. Oral on the Wednesday at 2 p.m.

9. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

14. Service under articles is effectual only after the Primary examination has been passed.

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six

months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive certificates of fitness, examinations passed before or during Term shall be construed as passed at the actual date of the examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

17. Candidates for call to the Bar must give notice, signed by a Bencher, during the preceding Term.

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

PRIMARY EXAMINATION CURRICULUM

FOR 1886, 1887, 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1886.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Cæsar, Bellum Britannicum.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. VI.

1887.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.
- Cæsar, Bellum Britannicum.

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (vv. 133.)
- Cicero, In Catilinam, I.
- Virgil, Æneid. B. I.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. V.
- Cæsar, B. G. I. (vv. 1-33)

1890.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, II.
- Virgil, Æneid, B. V.
- Cæsar, Bellum Britannicum.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's Composition, and re-translation of single passages.

Paper on Latin Grammar, on which special stress will be laid.

MATHEMATICS.

Arithmetic: Algebra, to the end of Quadratic Equations: Euclid, Bb. I., II., and III.

ENGLISH.

A Paper on English Grammar.

Composition.

Critical reading of a Selected Poem :—

1886—Coleridge, Ancient Mariner and Christabel.

1887—Thomson, The Seasons, Autumn and Winter.

1888—Cowper, the Task, Bb. III. and IV.

1889—Scott, Lay of the Last Minstrel.

1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography — Greece, Italy and Asia Minor. Modern Geography—North America and Europe.

Optional Subjects instead of Greek :—

FRENCH.

A paper on Grammar.

Translation from English into French Prose.

1886, 1888, 1890 — Souvestre, Un Philosophe sous le toits.

1887, 1889 — Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics; *or* Peck's Ganot's Popular Physics, and Somerville's Physical Geography.

ARTICLED CLERKS.

Cicero, Cato Major; *or*, Virgil, Æneid, B. I., vv. 1-304, in the year 1886: and in the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, as noted above for Students-at-Law.

Arithmetic.

Euclid, Bb. I., II., and III.

English Grammar and Composition.

English History—Queen Anne to George III.

Modern Geography—North America and Europe.

Elements of Book-Keeping.

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.