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TABLE OF CASES

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Canada Law Journal.

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DIARY FOR JANUARY.

1. Sat.....New Year's Day. Christmas vac. in Ct. of Ap. ends.
2. Sun....2nd Sunday after Christmas.
3. Mon...Heir and Dev. sitt.. and Co. Ct. Terms begin.
6. Thurs.Christmas vacation in Chancery ends,
8. Sat.....Christmas vac. in Exch. Ct. ends. Co. Ct. Term ends.
9. Sun....1st Sunday after Epiphany.
11. Tues..Court of Appeal Sittings begin.
16. Sun....2nd Sunday after Epiphany.
18. Tues..Heir and Dev. sitt. ends. Second Intermedt'e Exam.
19. Wed...Second Intermediate Examination.
20. Thurs.First Intermediate Examination.
21. Fri.....First Intermediate Examination.
23. Sun....3rd Sunday after Epiphany.
25. Tues..Primary Examination.
26. Wed...Primary Examination.
27. Thurs.Primary Examination.
28. Fri.....Final Examination.
29. Sat.....Final Examination.
30. Sun....4th Sunday after Epiphany.

TORONTO, JANUARY 1st, 1881.

The attention of our readers is called to the publishers' notice which appears on the cover. We think they will agree that the LAW JOURNAL, now in its twenty-seventh year, has taken a new lease of life. On this the first day of January, 1881, and at the beginning of another series, we wish our friends, old and new, a Happy New Year.

Sir James William Colville, one of the paid Judges of the Judicial Committee of the Privy Council, died last month at the age of 70. He commenced his professional career as an Equity draughtsman in England, but afterwards went to India and became Chief Justice of the Supreme Court of Calcutta.

Two new law books are announced, one by Mr. Stephens, author of the Quebec Law Digest, on the law and practice of joint stock companies, under the Canadian Acts. The other is by Mr. Kehoe, of the Ontario Bar, on the law of choses in action. Both subjects are important, and if well treated cannot fail to receive a hearty welcome at the hands of the profession in this Province.

In the recently published memoirs of Panizzi, the Librarian of the British Museum, we notice a letter of the Rev. William Shepherd, relative to attorneys' charges during elections, which is worth reproducing: "A scamp of an attorney, who thrust himself into some trifling employment in Sir Francis Burdett's celebrated contest for Middlesex, on sending him his bill, after charging for a journey to Acton, and another to Ealing, &c., &c., closed with the following item—'To extraordinary mental anxiety on your account, £500.'"

In the English legal periodicals we observe that "a gentleman" publishes a card to the effect that he is "prepared to undertake the getting up of evidence and the obtaining of reliable information in any litigious matter of importance." As a recommendation of himself for this sort of work, he further informs the public that he has "very *exceptionable* facilities for obtaining information." In his exceptional desire to use long words, he has failed to frame an unexceptionable advertisement. We notice a similar blunder in the use of this word, at the end of the judgment in *Waddell* v. *Smyth*, 3 Ch. Cham. 413 which may safely be attributed to the reporter.

The well-known case of *Angus* v. *Dalton* is slowly moving onwards in the House of Lords. The practice, which has for some time been neglected, of summoning the judges to advise the House, is to be revived in this appeal. It is said that Sir George Jessel and two of the Vice-Chancellors are to be summoned for that purpose. The result of this case will be watched with much interest. Few more remarkable examples can be found of judicial divergence

than are presented in the various judgments of the many judges who have passed upon the questions of lateral support involved in this case.

Some little caution is required when dealing with growing crops, as certain mortgagees found to their cost in the case of *Re Phillips* (L. J. notes, p. 130.) By a bill of a sale a farmer mortgaged to a bank his furniture, growing crops, etc, The bill of sale was not registered. The farmer became insolvent and a trustee was appointed to his estate. The bank claimed to seize some of the crops which had been cut and stacked. This claim the trustee disputed, on the ground of the non-registration of the bill of sale. The decision was in favour of the trustee, the Court on appeal saying that growing crops, being an interest in land, passed with the land by the deed; and the deed conveying them did not require registration. The mortgagor being left in possession, the rents and profits of the land, by the ordinary law, belonged to him; and he was justified in cutting the crops. But when the crops were cut and severed, they then became chattels: and to entitle the bank to claim then in that character, the deed should have been registered; but, not having been so registered, was void as against the trustee.

Law Reformers are as busy in England projecting their plans as is Attorney-General Mowat. One of their manifestoes which we have noticed is much more attractive reading than the "Proposed Judicature Bill printed for consideration only," which has been lately sent round to the professional public of Ontario. The English pamphleteer refers to the inquiry had two sessions ago before the committee on land titles and transfers, whereat was thoroughly exposed and reprobated the base fee, that monstrous off-spring of the estate tail. He then observes that its subtle and mischievous working has been exhibited more lucidly and artistically than he can hope to do in the pages of "Felix Holt."

It is proposed to assimilate freehold with leasehold tenure. The suggestion is to convert the fee simple of land unsettled at the passing of the Act into a term of 10,000 years; and a contemporary remarks, that the gentleman who drafted the bill, "with a happy assertion of permanence for his work, is careful to provide that the term on its expiration shall be renewed." By this one stroke the draftsman would abolish primogeniture, put real estate on death in the hands of the personal representative, and abolish entails. The *Law Journal* continues:—"To foresee all the results, or even all the important results, of turning realty into personalty requires a comprehensive grasp of the situation, of which we imagine no human brain is capable. Even lawyers shrink from such a leap in the dark; and it can hardly be expected that the Legislature, even if it desires the obvious changes intended, will commit itself to so sweeping a proposition, the effect of which is confessed to be beyond conception."

It is also proposed to abolish the Statute of Uses, which the Duke of Norfolk (*temp.* Hen. VIII) declared to be the worst act ever passed. Then is suggested the remodelling of the present modes of limitation of estates and abolishing the *habendum*, which is not only clumsy but ungrammatical, in consequence of a time-honored mistranslation from the Latin, produced by ignorance of the force in that language of the dative used as an ablative. Thus the Latin form would be a conveyance of "*unum messuagium Johanni habendum predicto Johanni*," which last three words ought to have been rendered into "to be held by the said John," but have been absurdly turned into "to hold to the said John." To treat the "*habendum*" after this fashion is almost as shocking in its way as was the flippancy of that gentleman who, according to Sidney Smith, spoke disrespectfully of the North Pole.

UNLICENSED CONVEYANCERS.

We are pleased to know that our exertions on behalf of our brethren in the country who are afflicted with a plague, not of locusts, but of something almost as numerous, and, in their way, quite as destructive, to wit, "unlicensed conveyancers," is fully appreciated. We have before us two letters on the subject, one of which we publish on another page. The other must stand over until next issue. The writer says: "I am glad to see that we have a staunch friend in your paper." He certainly has, and we only hope that our efforts will some day help to place matters on a proper footing. We should recommend our friends to take united action at once, and bring pressure to bear upon their representatives in the Local Legislature, so that the hands of the Attorney-General may be strengthened to give some measure of relief to those whom he must feel have been cruelly wronged.

JURISDICTION OF DIVISION COURTS.

We are indebted to our valued correspondent "R" for the following note of a case which lately came before Judge Ardagh, in the county of Simcoe, in which an amount exceeding $100, upon an open account, was sought to be recovered. No objection to the jurisdiction had been filed by the defendant, and it was contended for the plaintiff, that the case could therefore be tried, as in the absence of the necessary notice, defendant was now precluded from objecting to the jurisdiction. High authority was quoted in support of this view, but the judge held that such an interpretation of the Act was not warranted, and he refused to try the case. His reasons, shortly, were, that the sections in question were only intended to cover a case entered in the wrong division, that the jurisdiction spoken of in section 4 was one of *place*, and not of amount, and that no consent, or rather absence of objection, could confer upon the Court a jurisdiction beyond that prescribed for it by Act of Parliament. He considered also that the words in section 10, "any suit without the jurisdiction of the Division Court," extended by necessary implication to section 14; and that this section 14 was intended only as a modification of section 62, of the D. C. Act, and not in any way intended to override sections 54 and 56 of the same Act. We shall refer to this case at further length in our next issue.

LEGAL LEGISLATION.

We shall shortly have two mills hard at work manufacturing laws for this much-governed and much-legislated-for people of Canada.

The measure of most interest to the profession in this Province will, of course, be the Judicature Bill. We are compelled to defer any remarks we have to make upon it until next issue. It was, however, discussed at some length in these columns (16 C. L. J. 45), when introduced a year ago. It was then urged upon the Attorney-General to let it lie over for further consideration. This course was adopted and has doubtless borne good fruit, as numerous suggestions have been made, some of which have been drafted into the proposed Act.

In the Dominion Parliament the Government promise to bring in measures for the winding up of insolvent banks and incorporated companies, for the improvement in certain respects of the criminal law and in reference to railway legislation. The Minister of Justice gives notice of a bill to provide for the salaries of two additional judges in Quebec. The following bills have been introduced: A bill to abolish the Supreme Court; a bill to amend the law respecting documentary evidence in relation to public proclamations, &c., and an Act for the better prevention of fraud in relation to contracts involving the expenditure of public moneys.

An enquiry has been placed upon the paper as to whether the Government intend to bring in any measure for the relief of

Insolvents or for the disposition of their estates.

Mr. Blake asked for a statement as to the retiring allowances of the judges in the different Provinces, and for copies of the Orders in Council and correspondence affecting the appointment of the two new judges in British Columbia.

COUNTY JUDGES AND THE PUBLIC SCHOOL ACT.

The Law Journal once spoke of the Ontario County Judge as "the jurisprudential servant of all works," and the remark was strikingly correct. Numerous judicial duties are assigned to him by statute in connection with our Municipal and School systems and otherwise. In some cases the Judge is empowered to act alone—in some cases other persons are associated with him.

Forms are not provided under any of the statutes referred to, and almost nothing prescribed in the way of a detailed procedure. This casts much responsibility on the practitioner as well as on the Judge, and leads to a divergence in practice very embarrassing to the lawyer employed to promote and conduct a statutory appeal. If cases were reported to the Law Journal shewing what had been done by experienced County Judges, it would, it is believed, be a great assistance to all concerned in local administration, and hence this brief note of two cases under the Public School Act which came before the learned senior Judge of the County of Simcoe in December last.

It may be observed the Public School Act confers large powers upon municipal corporations for the establishment and alteration of school sections. These powers are sometimes exercised without due consideration. Action may be stimulated by improper motives—local or individual pressure may be brought to bear, or there may be a plain error in judgment, and what is not in the best interests of education, or is palpably unjust, may be the result, or the same motives may prevail, preventing any action. To remedy this the School Act provides (sect. 88), that a complaint in the nature of an appeal may be made to the County Council, which is empowered to call into existence a tribunal of appeal having power finally to deal with the question. That is, they appoint one, two, or three persons to act in conjunction with two others, "the County Judge and a County Inspector," named in the statute. In practice the County Council of the County of Simcoe and some other counties only appoint one person, and it is certainly a better and less expensive mode that the tribunal should be composed of three persons only.

In the two cases referred to, the practice followed was this: The judge called a meeting of the body, and they settled the day of public meeting, and in the meantime issued notices thereof to the parties concerned, and directed also that the Reeve of the municipality by which the by-law was passed, should appear before them on the day named. The map of the municipality shewing the school sections, and returns shewing the assessed values of the lands affected, the number of children of school age resident in the localities affected, and the average attendance at the schools, etc., were called for.

On the day appointed, the three members of the tribunal (committee) met in open court in the Court House, Barrie, and the Judge declared the enquiry open, and called upon the appellants or complainants to make their statement. Afterwards the parties on the other side were heard. The Reeve of the township was also heard, and the Judge announced that they desired to hear any other person present who wished to make any statement or give any information to them, and one or two ratepayers were heard.

The complainants in one case were represented by counsel, Mr. Pepler, of Barrie, and one or two questions were raised by him of some importance. The first was whether evidence should be taken on oath. The Judge declined to receive evidence on oath as no

power to administer an oath was expressly given; and moreover he did not think evidence of this kind contemplated—that the committee, no doubt, was expected to have before it the material necessary to a proper understanding of the case—to have before them all the material the municipal council had, or *ought to have had* before them, to enable them rightly to determine what was most expedient, having regard to the promotion of education, and the spirit of the school law, but bodies of this kind might act like other legislative bodies, upon a species of evidence not recognized in courts dealing with strictly individual rights. A technical objection was also taken to the sufficiency of the by-law, which, it was contended, was bad, the notice by the Council not being sufficient under section 81.

The Judge declined to enter into any question of the kind. He thought the committee, if the by-law were good on its face, had no power to quash or declare it invalid by reason of non-compliance with any pre-requisite. The Legislature could never have intended that a tribunal composed as this was should attempt to settle questions of law for testing that for which another provision was elsewhere made. His impression, however, was that the parties now objecting having attended the discussion in Council, the notice was sufficient, if, indeed, the question as to what was sufficient notice was not wholly left to the Municipal Council to decide.

The learned judge added, however, that if it appeared that by any trick the parties objecting were thrown off their guard, and diverted from an opposition that *might* have been effective, on a fair consideration, he would not hesitate to restore matters to the original position, as no one ought to be allowed to take advantage of a contrived wrong.

The papers put in, where not original documents, were certified by the proper officers having charge of the originals. After the hearing, a day was appointed for giving judgment.

Subjoined are skeleton forms, from the forms of the decisions or judgments in these cases, which were framed by the learned Judge himself, and signed by all. In the one case the action of the Township Council was confirmed—in the other the school boundaries were altered.

Judgment of "Committee" appointed under sect. 88, where school section confirmed:—

"To the Corporation of the County of ———, and to all to whom these presents shall come, greeting:

"We, the undersigned, —— —— County Judge of the County of ———, —— of ———, ——, and —— ——, a County School Inspector, a committee of three named and appointed by the Municipal Council of the said County of ——, under section 88 of the Public Schools Act, to investigate the matter of appeal or complaint of ——— ———, etc., against a by-law of the Corporation of the Township of ———, for the formation of a new School Section, No. ——, within the said Township, having investigated the said matter so committed to us, and having heard and considered the allegations and proofs submitted to us by the complainant or appellant, and by the said Corporation of ———, by the trustees of School section No.——of the said Township, and by all other parties affected by the formation of the said new school section who appeared before us, do, in pursuance of the statute in that behalf, determine and decide the matters complained of, and to us referred as aforesaid as follows: We decide, order, and adjudge that the said by-law of the corporation of———, No.——, establishing a new school section, No.——, in and for the said Township, shall * stand and remain as enacted, and the said By-law and the school section thereby formed, are hereby confirmed.

"Done in pursuance of the statute, and reported in duplicate this——day of——, 188 "

Judgment of Committee appointed under section 88, where boundaries of school section altered:—

*(Follow preceding form down to * and then continue.)*

As regards the boundaries of the school section thereby established, be revised and altered, by striking out of the said by-law ———, and by inserting therein ———,

so that the said school section, No. ——, and the boundaries thereof as now altered, settled, and determined by us, shall be, and are, as follows, viz :—"School Section No.—— of the said Township of————," &c. And the said By law and the school section No.——, thereby established, as thus altered, shall stand and remain. Done, &c.

[*Communicated.*]

RE-ARRANGEMENT OF THE ENGLISH COURTS.

A letter written by Lord Selborne, the Chancellor of England, to the late Lord Chief Justice Cockburn, in October last, has resulted in some important alterations in the judicial arrangements of the High Court of Justice.

By the Judicature Act of 1873, sec. 32, the Queen may, by order in Council, upon the recommendation of a council of judges of the Supreme Court, reduce the number of Divisions of the High Court, and give any necessary consequent directions for that purpose ; and may also provide for the abolition, on vacancy, of the distinction of the offices and salaries, &c., of the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer from the offices, &c., of the puisne judges. Let it also be borne in mind that at the time Lord Selborne wrote. the Chief Barony of the Exchequer was vacant by the death of Sir Fitzroy Kelly.

The Lord Chancellor suggested that advantage might be taken of the present vacancy in the office of Chief Baron for the following purposes : (1) To reduce the number of the Divisions of the High Court of Justice by uniting in a single Division (which might, he thought, bear the name of the Queen's Bench Division), the three Divisions now called respectively the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division ; (2) to abolish the titular and other distinctions between the office, now vacant, of Lord Chief Baron and that of a puisne judge, so that the present vacancy should be supplied by the appointment of an additional puisne judge only ; and (3) to provide for the abolition, in like manner, upon the next vacancy, of the distinctions between the office of Chief Justice of the Common Pleas and that of a puisne judge. The new consolidated Division would, of course, be under the presidency of the Lord Chief Justice of England, and would be capable, under his authority, of full and complete unity of administration.

The letter also suggested a meeting of the Council of judges to take this matter into consideration. This meeting was accordingly held in November last, but in the meantime Chief Justice Cockburn had died, and Lord Coleridge had been appointed in his place. It will therefore be seen that when the meeting took place the only remaining difficulty in the way of carrying out Lord Selborne's suggestion, so far as the Common Law Divisions was concerned, was at an end.

It may here be remarked that Sir Alex. Cockburn had conceived a prejudice against the Judicature Act which, had he lived, might have been opposed to the proposed changes. The cause of this prejudice is said to have been Lord Hatherley's proposal to convert the Court of Queen's Bench into "Chamber No. 2," a suggestion exceedingly repugnant to the chief's conception of the dignity of the office he filled.

At the meeting of the Council it was accordingly resolved that the Queen's Bench, the Common Pleas, and the Exchequer Divisions should be consolidated and hereafter be known as the Queen's Bench Division, and that the distinction of the offices of the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer should be abolished. This resolution will doubtless become law as soon as certain formalities have been complied with; and the vacancies on the Bench, will, under this new arrangement, be filled by two puisne judges in place of the extinguished chiefs. The names of those spoken of as likely to be appointed are Sir Henry M.

Jackson, Bart., Q. C., and Charles Russell, Q. C.

There are not a few who question the policy of thus doing away with these judicial prizes. There may be said to be two main reasons tending to induce successful men to give up their practice and go on the Bench. One is a commendable desire to fill a highly honorable position, and the second is the certainty of a handsome salary for life. Now judicial salaries are not, in comparison with the standard of modern incomes, what they once were. In fact this inducement may be said to be practically at an end, even in England, and more so in this country. The salary will not, therefore, obtain the best men, and we certainly need the very best men, for cheap judges do not by any means ensure cheap justice; in fact much the reverse. As to the other inducement we may aptly quote the language of an English writer, when speaking on the question of judicial policy brought up by the publication of Lord Selborne's letter:—"An 'ordinary' judgeship is not quite what it once was; the very efficiency of the Court of Appeal has turned the courts of first instance in reality into inferior courts. It, therefore, may well admit of doubt whether the abolition of historic posts, such as that of the Chief Baron, is not a mistake. It does not need the example of Sir Alexander Cockburn to prove how great, how salutary, and elevating may be the influence of historical traditions and associations. The future will assuredly gain little by sacrificing the names or the offices which connect the judges of the High Court with an impressive and glorious past."

POWER OF COUNSEL AND SOLICITOR TO COMPROMISE SUITS.

The power to compromise suits and actions is incident to the general authority which attorneys and solicitors have to conduct causes on behalf of their clients. The attorney has been held to have power in the *bona fide* exercise of reasonable care and skill to compromise the pending litigation in any manner he may judge to be in the interest of his client. Such a compromise is binding, even if no express authority has been obtained from the client. But if there be no express authority, and the arrangement consented to is of so unfair a character as to suggest fraud, then the compromise is not binding on the client: *Brady* v. *Curran*, Ir. R. 2 C. L. 314; *Berry* v. *Mullen*, Ir. R. 5 Eq. 368. The general rule may perhaps be stated succinctly thus: The attorney has power to make *bona fide* compromises of the client's case in the absence of any dissent on the part of the latter: *Chambers* v. *Mason*, 5 C. B. N. S. 59.

If, however, the client has given express instructions not to compromise, the better view seems to be that a compromise thereafter effected will be valid as between the parties litigant, if there is nothing in the terms to suggest suspicion or to put the opposite party on enquiry as to the extent of the attorney's authority; but that as between attorney and client, the former is liable to an action for damages, and will not be exculpated though he show that his conduct was reasonable and skilful and for the benefit of his client: *Fray* v. *Voules*, 1 Ell. & Ell. 839.

This implied authority extends not merely to enter into a compromise, but justifies the entire abandonment of the claims of his client in the particular suit, *per* BACON, C. J. in bankruptcy in *Re Wood*, 21 W. R. 104; see also *Rumsay* v. *King*, 33 L. T. N. S. 728, as to *stet processus*.

The proctor who acts for a married woman has the like ample power to compromise on her behalf, and that in litigation affecting her matrimonial rights or otherwise: *Stanes* v. *Stanes*, L. R. 3 Prob. & Div. 42. So also may compromises be carried out on behalf of infants by the observance of certain pre-requisites which are well indicated by the Master of the Rolls in the case of *Wilson* v. *Birchall*, 29 W. R. 27: "Before sanction-

ing a compromise the Court requires an affidavit from the next friend or guardian, as the case may be, and the written opinion of the junior counsel to the effect that it is for the benefit of the infants. In addition, I always ask the leader myself, if I see one in Court, whether he concurs in the advice given."

The power of counsel to compromise is at least commensurate with that of the attorney, but some of the judges are disposed to give him more ample authority, so that he may even disregard the wishes of his client. It is questionable, however, whether the law can be, and it is undesirable that it should be carried to this extent. One of the cases which has gone furthest is *Strauss* v. *Francis*, L. R. 1 Q. B. 379. It was there held that counsel retained to conduct the cause had power in court to consent to the withdrawal of a juror, and to put an end to the cause, that being within his apparent authority, and that his action was binding on his client notwithstanding the client's dissent, unless this dissent is brought to the knowledge of the opposite party at the time. The views of Malins, V. C., in *Jesse* v. *Holt* 24 W. R, 879, somewhat modify this conclusion. He said that where an order is made by consent through inadvertence of counsel or misapprehension on the part of the client, to which order in fact the client did not consent, the Court would not hold the client bound irrevocably thereby. But in this case before him, where the order was made in the presence of the defendant, his solicitor and counsel, and the case was a simple one, the judge declined to interfere upon the defendant alleging that he had not consented, and that his counsel had no authority to consent, and that he had not understood what was being done. A similar case came before Fry J. in the *Attorney-General*, v. *Tomline*, L. R. 7 Ch. D. 388. He refused to give relief where the order compromising the case had been drawn up, passed and entered between two and three weeks after the delivery of the judgment based on the consent. The client alleged that he had been under a misapprehension of facts. But it was held that he was too late in moving, and that it was his duty to ascertain the correctness of the facts within a reasonable time.

A distinction is to be noted which will help to reconcile many of the observations made by different judges, which would otherwise prove rather embarrassing ; that is, special importance is attached to arrangements for a compromise, which are made in open Court, whereas the same conclusive effect will not be attributed to terms of compromise arranged out of Court by the representatives of the clients, whether counsel or attorneys. Some of the cases show that practically it is well-nigh impossible to get rid of a compromise which has been embodied in an order or rule. Mr. Justice Fry observed in the *Attorney-General* v. *Tomline*, that when the order is passed and entered it could only be set aside for reasons which would enable the Court to set aside an agreement. In *Rogers* v *Horn*, 26 W. R. 432, it was held that the consent might be withdrawn at any time before the order was passed and entered, but other authorities are to be found at variance with this ruling ; as, for instance, *In re the North-west of Ireland Deep Sea Fishery Company* (16th March 1871), wherein Bacon, V. C., refused to allow the parties to recede from an agreement made by a junior counsel on his own judgment, and without express authority, on which an order of Court had been made, although it was immediately repudiated by the solicitor, even before the order had been drawn up : 18 Sol. J. 376. No doubt the best plan in all cases is to consult the client before effecting the compromise, and if the client refuses his counsel's suggestions and insists on a course inconsistent therewith, then the counsel should return his brief.

THE RIGHT OF CROWN COUNSEL TO ENTER A NOLLE PROSEQUI.

The practice of entering a *nolle prosequi* is not of very frequent occurrence, but occasions may, and do, arise, when it is expedient that such a pleading should be filed, especially when in the course of a criminal prosecution a new indictment should be preferred, or where the Crown is desirous of calling one of several defendants as a witness against the others.

A *nolle prosequi* stays proceedings upon an indictment, or criminal information, and may be entered at any time before the verdict is recorded: *Rex* v. *Roper*, 1 Cr. & Dix (Irish) 185, or perhaps before judgment has been given: *Rex* v. *Hampstead*, Russ. & Ry. 344. The effect of the entry is not to discharge the crime, but to put the defendant without day: *Rex* v. *Redpath*, 10 Mod. 152.

All criminal proceedings being taken in the name of the Crown and for the public benefit, the Attorney-General may at any stage of the prosecution, either by indictment or criminal information, interpose his authority and stay the proceedings by the entry of a *nolle prosequi*: *Reg.* v. *Teal*, 11 East 307, *Reg.* v. *Redpath*, 10 Mod. 152, *Stretton's case*, 1 Leon. 119). Thus if he sees clearly that the indictment is not sustainable: *Rex* v. *Pond*, 1 Comyns 312; or that the prosecutor is using the name of the Crown as an engine of oppression, by suing and prosecuting at the same time, for the same offence: *Rex* v. *Fielding*, 2 Burr, 720; or by frequently and vexatiously preferring defective indictments: Hayes' Criminal Law, 573, or that the verdict is repugnant: *Rex* v. *Hempstead*, Russ & Ry. 344, or that the defendant has been convicted without evidence when he was given in charge of a jury without evidence: *Rex* v. *Roper*, Cr. & Dix 185. A *nolle prosequi* may be entered to one or more of several defendants: *Rex* v. *Teal* 11 East 307, *Walsh* v. *Bishop*, Cro. Car. 239, 243), or it may be entered as to one of several counts in the indictment or information: *Milliken* v. *Cox*, 1 B. & P. 157, *Bertram* v. *Gordon*, 6 Taunt. 414. And the Attorney-General on the *ex parte* application of the defendant, and without calling the prosecutor before him, may enter a *nolle prosequi*; *Reg.* *Allen*, 1 B. & S. 850.

In Archbold's Criminal Pleading it is said that a *nolle prosequi* cannot be entered either in the Queen's Bench, or at the Assizes, or Quarter Sessions, without the authority of the Attorney-General, or perhaps, in the vacancy of that office, of the Solicitor-General. And this would seem to indicate that the personal assent of one of the law officers of the Crown must be obtained before the *nolle prosequi* can be properly entered.

Of the authorities cited in support of this view of the practice, only one, *Reg.* v. *Dunn*, 1 C. & K. 730, sustains it. Then Mr. Archibold, for the prosecution, proposed to enter a *nolle prosequi* to a defective indictment, but Mr. Justice Wightman held that it could only be entered by the authority of the Attorney-General. An order was then obtained quashing the indictment. In *Rex* v. *Cranmer*, 1 Ld. Raym. 721, a *nolle prosequi* entered by the Clerk of the Crown, without the leave of the Attorney-General, was set aside.

The case of *Rex* v. *Colling*, 2 Cox C. C. 184, also given in Archbold as an authority for his opinion, does not sustain it. In that case Alderson, B., suggested that the record should be withdrawn, and the counsel for the Crown then stated he would enter a *nolle prosequi*. It was objected that, as the indictment had been removed by *certiorari*, a *nolle prosequi* could not be entered without the leave of the Attorney-General. Alderson, B., without apparently deciding the point, said: "It is nonsense going on, when it is quite certain what the result must be. You had better let a verdict be taken against you at once," and thereupon a verdict of not guilty was recorded.

In an Irish case, *Rex* v. *Roper*, *supra*, the prisoner was arraigned on two indictments, one for stealing a half crown piece, and the

other for uttering a counterfeit half crown. Both charges arose out of the one transaction. The prisoner was tried on the larceny indictment, and was convicted. He was then arraigned on the second indictment, but no evidence was offered on the part of the Crown. The jury (an Irish jury!), contrary to expectation, found the prisoner guilty on this also. It was then suggested that a *nolle prosequi* might be entered before the verdict was recorded. Mr. Baron Smith, at first doubted if this could be done, but after the matter had been mentioned to Chief Justice Bushe, who was then sitting in the Civil Court, with the concurrence of both learned judges, a *nolle prosequi* was entered. The Attorney-General was not present, nor does it appear from the report that he was applied to for his consent.

But in the case of *Regina* v. *Campbell*, 3 Cr. & Dix, 33; Irish Cir. R. 770, the question came up directly whether the Crown Counsel, during the course of the trial, could enter a *nolle prosequi* without the personal assent of the Attorney-General. Counsel for the prisoner contended that the Crown could not enter a *nolle prosequi*, after Counsel had gone into the case and failed. Mr. O'Hagan (now Lord Chancellor O'Hagan), as *amicus curiæ*, referred to Hayes on Criminal Law, p. 573; *Rex* v. *Roper*, 1 Cr. & Dix 185, *Rex* v. *Cranmer*, 1 Ld. Raym. 721, in order to show that the Crown, or those who represent the Attorney-General, may enter a *nolle prosequi* at any time before the verdict is recorded. The passage from Hayes reads thus: "A *nolle prosequi* cannot be entered by the Clerk of the Crown or Peace, merely at the instance of the prosecutor, without the direction of the Attorney-General, or those who represent him in the county."

The Chief Baron Brady (afterwards Lord Chancellor), who was then presiding at the Assizes, allowed the *nolle prosequi* to be entered, and said: "I have no doubt that the Attorney-General himself has a power to do so at any time; but the question is, can any one but the Attorney-General himself do so? The public convenience would seem to require that those who represent the Crown, should have such power. I shall therefore make an order that a *nolle prosequi* be entered in this case at the request of Sir Thomas Staples, representing the Attorney-General." This case was decided in 1843, the same year in which *Reg.* v. *Dunn* was decided.

Two cases in the Supreme Court of New Brunswick are to the same effect. In *Regina* v. *Sturges*, 5 Allen N. B. 552, the Court held that a *nolle prosequi* could be entered by the Solicitor-General without the direction of the Attorney-General. But in the case of *Regina* v. *Thornton*, 2 Pugs. & B. 140, a *nolle prosequi* had been entered, during the trial, by the Clerk of the Crown, who conducted the prosecution on behalf of the Attorney-General, and his act was sustained by the full Court. Chief Justice Allen, in referring to the previous case of *Regina* v. *Sturges*, said: "It would seem to establish that the power to terminate a proceeding instituted by the Crown is not confined to the Attorney-General in person, but may be exercised by the officer acting for the Crown in the particular proceeding." From these cases it would appear that Crown Counsel representing the Attorney-General at the Assizes may enter a *nolle prosequi* in cases where the Court thinks it is proper that the prosecution should be so terminated unless Mr. Justice Wightman's *dictum* in *Reg.* v. *Dunn* should be held to be the law. But it is doubtful whether County Crown Attorneys would have such a power, as they act under statutory powers and do not represent the Attorney-General in the same sense that Crown Counsel do, who are specially retained to act for the Attorney-General in Crown prosecutions T. H.

CHIEF JUSTICE COCKBURN.

One of the many great men that England has produced has passed away. Personally, a remarkable man, with many of the qualities that make men famous, he was connected with many noteworthy events that brought

him prominently into the notice, not only of his own nation, but of Europe and America. Not the greatest and not the noblest of the many eminent men who have occupied the seat of Holt and Mansfield, he will probably be known in history as second only to those great light-bearers of British law and justice, though his talents were of a different order, and of a character less lasting in their force.

Sir Alexander Cockburn was born on the 24th December, 1802. His father was in the diplomatic service, and his mother was the daughter of the Vicomte de Vignier. He was descended from a Scotch family of antiquity; his ancestor, Sir William Cockburn, obtained a grant of the lands and barony of Langton, in 1595, and his family held lands of the Crown as far back as the time of David II of Scotland. He obtained distinction as a classical scholar at Cambridge; and, in after life, when presiding at the Tichborne trial, it is said that an application for a card of admission which had been made to him in vain, in English, was granted immediately, when it was repeated in classic Greek.

Mr. Cockburn was a member of the Middle Temple, and was called to the Bar in 1829, and went the Western Circuit and Devon Sessions. He subsequently acquired a large practice in London in railway and election cases. Although he did his best for his clients, he was careful that they should do their duty by him, and the story is told that on one occasion, when an election committee met, Mr. Cockburn, the counsel for one of the parties, was absent because his fee had not accompanied the brief, and the only message left was that he had gone to the Derby, with the remark that "a man might as well play for nothing as work for nothing."

In 1847 Mr. Cockburn entered Parliament, as a Liberal, and proved himself a debater of great oratorical powers. Justin McCarthy, in his interesting "History of our Own Times," thus refers to the famous speech delivered in 1850, which induced Sir John Russell to make him his Solicitor-General:

"Of many fine speeches made during this brilliant debate, we must notice one in particular. It was that of Mr. Cockburn, then member for Southampton. Never in our time has a reputation been more suddenly, completely, and deservedly made than Mr. Cockburn won by his brilliant display of ingenious argument and stirring words. The manner of the speaker lent additional effect to his clever and captivating eloquence. He had a clear, sweet, penetrating voice, a fluency that seemed so easy as to make listeners sometimes fancy that it ought to cost no effort, and a grace of gesture such as it must be owned the courts of law, where he had had his training, do not often teach us. Mr. Cobden observed that when Mr. Cockburn had concluded his speech, 'one half of the Treasury benches were left empty, while honorable members ran after one another, tumbling over each other in their haste to shake hands with the honorable and learned member.' Mr. Cockburn's career was safe from that hour. It is needless to say that he well upheld in after years the reputation he won in a night."

In 1851, on the elevation of Sir John Romilly to the Bench, he was appointed Attorney General. He was engaged in many important trials, among which may be named the libel case of *Achilli* v. *Newman*, the celebrated *Swinfen* case, in which the proceedings were stayed by an agreement made between the counsel, Sir F. Thesiger and Sir Alexander Cockburn, for a certain sum, in defiance, as was alleged, of the instructions to the latter by his client. In the well-known Rugely poisoning case, Sir Alexander acted for the prosecution, and the prisoner, Dr. Palmer, was found guilty and executed.

In 1856 Sir Alexander Cockburn was made Chief Justice of the Common Pleas in the room of Sir John Jervis; and, on 24th June, 1859, he became Chief Justice of England, on Lord Campbell's becoming Lord Chancellor. His career on the Bench is thus alluded to in the English *Law Journal.*

CHIEF JUSTICE COCKBURN.

"The judicial career of the late Lord Chief Justice was a long one, lasting over precisely twenty-four years. His charges to juries were masterpieces of popular oratory; and there was little chance for the most skilful counsel if the Lord Chief Justice became convinced of the duty to sum up against him. His considered judgments were marvels of exposition. It was said of another learned judge that he knew nothing of the law of the case when the other judges began to deliver their judgments, but that by the time they had finished he could produce an admirable piece of eclectic reasoning. Sir Alexander Cockburn was also quick to pick up points from counsel or his learned brethren. An indisputable merit of Sir A. Cockburn was that he took pains with his work, especially with such portions of it as came into more than usual publicity; and he would, in important cases, find some reason for adjourning the court, in order that he might prepare a judgment or a charge which would be of classical excellence." But the most important trial in which he was concerned was, of course, the Tichborne trial, which began in 1873. "Thomas Castro had lost his action for ejectment in 1871, before Lord Chief Justice Bovill, in the Common Pleas; his indictment for perjury was tried at bar for 188 days in the Queen's Bench before the Lord Chief Justice and Justices Mellor and Lush. Sir John Coleridge had led in the civil action, Mr. Justice Hawkins (then Mr. Hawkins, Q. C.,) led in the prosecution which sprang out of it. Dr. Kenealy was the leading counsel for the defence. Sir Alexander Cockburn's chief task was to control the zeal of Dr. Kenealy. His patronage had formerly been invaluable to this powerful but unscrupulous advocate, but he met with nothing but insults and ingratitude. Even when the trial was over Dr. Kenealy pursued him with the grossest calumny in a scurrilous paper which he published. How severe was the constraint to which the Chief Justice could subject himself was shown in the Kenealy incidents of this trial. Such was the impression of power which the Chief Justice produced on the bench that there were few men who dared take a liberty with him. A word from the voice which could speak daggers was generally enough. Dr. Kenealy's manner, therefore, was little likely to be brooked by a Chief Justice so accustomed to respect and almost subservience. But the Lord Chief Justice knew that Dr. Kenealy's committal for contempt would seriously embarrass the trial of the Claimant in public estimation, and he refrained from that step, although it was fully deserved. The Tichborne trial in other respects was such as to test to the utmost the moral side of the judicial nature. The Lord Chief Justice was unwearying in patient listening, and untiring in collating and expounding the facts. His summing up was a model of lucid statement and elaborate reasoning. It lasted eighteen days, and made the aquittal of the prisoner impossible."

The *Law Times*, speaking on the same subject, takes a view less favourable, saying:—

"It is equally certain that, whilst he carried on to the bench this high code of honor, the very loftiest sentiments which could animate a judge, the deepest regard for his office, and the keenest sense of its responsibilities, he never thoroughly shook off the passion of the advocate. If there is one fault which can be laid to his charge as a judge, it is that with too rapid a judgment he formed his opinion, basing it frequently upon the evidence and bearing of particular witnesses. The opinion formed, it was put forward in the summing up with the art of the advocate, repressed more or less, but still preceptible, and occassioning sometimes the impression that the scales of justice had not been held with that absolute impartiality which is essential to the strict administration of the law. No one who has attempted the perusal of the summing up in the *Tichborne* case—an effort which the Lord Chief Justice subsequently published separately, and which in itself forms a volume—can fail to perceive with what dexterous skill the case for the defence was broken

down. And again, no one who followed the course of that trial, with its frequent conflicts between the bench and the bar, could honestly say that the outrageous conduct of the prisoner's counsel was altogether unprovoked. If any doubt had ever existed in the minds of the jury, the demeanor and the summing up of the Chief Justice told them very plainly that they must convict."

Lord Coleridge, when announcing in the Court of Common Pleas the death of the late Chief Justice thus alluded to the late Chief Justice. "As a Judge, his chief and leading characteristic appeared to me to be a sleepless and ardent desire to do justice as between man and man to the suitors who came before him. Though naturally inclined to ease and pleasure, he shrank from no trouble, he declined no toil, that might lead him to the truth. He kept his mind open to the very end, and he was always ready to listen to any piece of evidence or weigh any argument that in his judgment was likely to lead him to justice. Like other men, he had prejudice and bias of opinion, which he shared with the rest of mankind. He never permitted them, so far as I saw, for a single instant to divert him from a single-minded and most earnest pursuit of what he believed to be right between the parties. If you had a good case, however complicated it might be, however much prejudice there might appear to be against it, only make Sir Alexander Cockburn understand it, and you were perfectly safe in his hands. Now this is simple, literal truth. No one, I am satisfied, can deny it. Yet stand and reflect what high and great qualities of head and heart this simple truth implies. He died, as he often said in my hearing he wished to die, in harness, enjoying life and doing duty to the very end."

Sir Alexander Cockburn was a prominent figure in the prosecution of Governor Eyre in the Jamaica case, where, in his address to the Grand Jury, he laid down the limits of military law, as opposed to the personal liberty of the subject. The *Pall Mall Gazette* thus alludes to his share in this transaction, and although there are many who think that the grand Jury were not far wrong, the tribute to Sir Alexander Cockburn's memory may here be appropriately inserted :—

"The Chief Justice of England alone almost among the English official world remembered that the first duty of a judge is to see that justice is done on oppressors. His efforts failed. The Governor was not brought to trial. It is, however, a permanent gain for English justice, which no perversity of a grand jury can destroy, that the Chief Justice of England used all his power, his eloquence, and his position to ensure that British subjects, even though they happened to be blacks, should not appeal in vain to English courts for justice. He failed; but his efforts to ensure justice for the oppressed will be a monument both of Sir Alexander Cockburn's fine public spirit and of the virtues, now too much forgotten, which belong to the rhetorical character."

His connection with the Geneva Award under the Washington Treaty, is a matter of history. The brilliant document in which he dissented from the rest of the arbitrators was a masterly protest in favour of his country's rights. He at least was not of the stuff of which most of the modern statesmen of England are made, who too often weakly give up what her sons have bravely won.

We notice that our American exchanges have little praise to bestow upon this remarkable man. His attitude in connection with this same matter is doubtless the reason. He was in his lifetime shamefully abused by public men in the United States because he had the courage to express his opinions fearlessly against a wrong done to his country, and because his unanswerable arguments, couched in his own vigorous language, and vivified with the fire of his brilliant intellect, were too much for the composure of a nation that as such had not been in the habit of receiving

such a "facer;" if Sir Alexander Cockburn had had his way it would not have been necessary to squabble over money, to which they have since been compelled to admit they were never entitled.

Sir Alexander was a man of versatile talent, of great mental force, and of personal qualities that gave him great influence with men. He had, moreover, a voice of remarkable flexibility and power, a gift of language seldom excelled; and is said to have been the best speaker of his day, or perhaps of the century.

One striking feature in his character was his reverence for the position he held, and a high sense of the responsibilities thereby devolving upon him. This, though unfortunately not exhibited in private to the same extent as in public life, is well put by the same paper from which we have already culled. —"To feel the greatness of a great position, to appreciate the dignity and the responsibility involved in being a successor to men whose names will live as long as English history endures, to delight in the forms and names and ceremonies which recalled the traditional importance of his office, was in Sir Alexander Cockburn's case no mere joy in childish pomp, nor any mere gratification of personal vanity, but the expression of the sentiment which has again and again elevated smaller men than he was into great characters—the feeling that great place demands the display of public virtues. He belonged in truth by character to the eighteenth rather than to the nineteenth century."

We regret that a record of Sir Alexander Cockburn's life compels the faithful journalist to notice the great blot in his character, viz: the irregularity of his domestic relations. Offences of this nature are bad enough in any man, but however society may excuse them when committed by private citizens, they cannot be passed over without severe censure when charged against one occupying the position which the Chief Justice did.

He died suddenly on the 20th November last at the age of seventy-eight. A few hours previously he was presiding over the Court for the consideration of Crown Cases Reserved. He was buried, at his own request, in Kensal Green cemetery, and not in Westminster Abbey.

LAW SOCIETY.

MICHAELMAS TERM, 1880.

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

MONDAY, 15th November.

Present,— Messrs. Irving, Kerr, Crickmore, MacKelcan, Maclennan, McMichael, Bethune, Benson, Smith, Hoskin.

Mr. Maclennan was appointed chairman in the absence of the Treasurer.

The minutes of last meeting were read and approved.

The Report of the Examiners on the examination for call to the bar, and the Secretary's Report, were received, read, and adopted.

Ordered, that Messrs. P. C. MacNee, R. H. Myers, and A. D. Perry, be called to the bar, and that Messrs. Ponton, Ede, Brown, Moffat, and Irving be called on completing their papers.

The Report of the Examiners on the examination of candidates for certificates of fitness, and the Secretary's Report, were received, read, and adopted.

Ordered, that the following gentlemen do receive their certificates of fitness, namely:—

Messrs. A. D. Perry, J. Harley, W. A. Wilkes, D. H. Cooper, F. C. Moffatt, J. R. Lavell, W. N. Ponton, P. E. Irving and W. D. Swayze; and that the cases of Messrs, R. Harcourt, C. H. Allen, E. B. Brown, J. L. Dowlin, R. H. Myers, and W. B. Mcalise, be referred to the Committee on Legal Education for report.

The Report of the Examiners on the first intermediate examination, and the Secretary's Report thereon, were received and read.

Ordered, that the following gentlemen be allowed their first intermediate examination as students and articled clerks, namely:—

J. A. C. Reynolds, J. A. Walker, G. B. Douglas, E. J. Hearn, D. H. Tennent, H. I. Eberts, C. R. Irvine, C. H. Cline, Jas. Campbell, J. E. Bullen, I. Stewart, F. E.

Bertrand, F. W. Garvin, E. R. Reynolds, W. H. Wardrope, F. S. Wallbridge, H. White, J. Carruthers, A. P. E. Panet.

The Report of the Examiners on second intermediate examination, and the Secretary's Report thereon, were received and read.

Ordered, that the following gentlemen be allowed their examinations as students and articled clerks, namely:—

C. G. O'Brian, W. L. Palmer, Jas. Garbutt, J. H. D. Munson, T. A. O'Rourke, A. J. Snow, A. W. Ford, H. Nason, H. Widdifield, J. W. Curry, A. W. Hughson, A. H. Clarke, G. Beavers, A. Howden, J. W. Russell, C. A. Forster, E. R. C. Proctor, F. E. Curtis, W. T. Easton, R. Gilray, J. Christie, F. A. Eddis, C. E. Carbert, T. H. Dyre, J. G. Dowse, A. N. Duncombe, W. A. Adair, J. W. Smaill, H. V. Carter, W. M. Elliott.

The Report of the Legal Education Committee on the primary examination was received and read.

Ordered, that the following gentlemen, who have been reported as entitled as graduates, be entered on the books of the Society as students-at-law, namely:—

GRADUATES.

D. C. Ross, Andrew C. Muir, William Cook, W. A. Shortt, Cornelius Arthur Masten, William Clark Widdifield, George W. Allen, James M. Duncan, George Ingles, Joseph B. Chambers, and Andrew Watson.

Ordered, that the following gentlemen, who have been reported as entitled as matriculants of Universities be entered on the books as students-at-law, namely:—

William Andrew Dixon Lees, Donald McArthur. J. M. Duggan, Lincoln Hatton, Hugh T. Kelly, John Edward O'Meara, George Alfred Payne, A. M. Dymond, and P. McCullogh.

Ordered, that the following gentlemen, who have been reported as having passed the examination, be entered on the books as students-at-law, namely:—

John Campbell, W. E. McKeough, Jno. Youell, J. H. McArthur, Eli Hodgins, C. B. Jackson, Thomas Farmer, A. E. Kennedy, W. M. Campbell, P. J. Madden, Robert Walker, D. A. Haggart, A. Hoyles, F. A. Roe, C. Horton, Thos. Lafferty, L. C. Raymond, A. Rennie, H. H. Bolton, A. Skinner, G. E. Burns, L. H. Baldwin. W. D. McPherson, T. E. Griffith, C. C. Johnson, James A. Loughead, A. G. Chisholm.

Ordered that the following gentlemen be allowed their examination for articled clerks, F. E. McDonald, and O. E. Fleming.

Mr. Crickmore presented the Report of the Legal Education Committee on the question of the scholarships and the mode of conducting the examinations, which was received and read as follows:

The Report of the Legal Education Committee upon the questions submit ed to them by the Special Committee on Scholarships.

This Committee recommend as follows:

1. That from and after Michaelmas Term, 1880, the Intermediate Examinations should take place during the third week next before the beginning of each Term, the Second Intermediate to take place on the Tuesday and Wednesday, and the First on the Thursday and Friday.

2. That the candidates for the Second Intermediate should present themselves for examination at 9 o'clock, a. m., on the Tuesday, and that the candidates for the First Intermediate should present themselves for examination at 9 o'clock, a. m., on the Thursday of the third week before each term.

3. That the examinations should be held as well in the Convocation Room as in the Lecture Room, for the more effectual isolation of the students, until the new examination hall shall be built.

4. That there should be a paper by each of the four examiners for each of the two Intermediate Examinations.

5. That there should be a recess of one hour in each Intermediate Examination—each examination to begin at 9.30, a. m., and continue until 1 o'clock, then recess, and beginning again at 2 o'clock, p. m., and ending at 5.30, p. m., two papers to be given out, and answers taken up in the morning session, and two in the afternoon session.

6. That all four examiners should be present and enter on the business of the examination not later than 9.30, a. m., on each of the same four days, and should be present, two in each room, during the whole of the examinations.

7. That on the second day of each Intermediate Examination, the Honor and Scholarship Examination should be conducted in one room, and the Orals in the other—And that for each of the Honor and Scholarship Examinations, a paper of questions should be prepared by each of the four Examiners—and that they should so manage and regulate the other details of the examin-

ations as to secure the objects of the examinations, and the obtaining of the best and truest tests of the qualifications of the candidates for the standing, honors or scholarships to be awarded.

JOHN CRICKMORE.
Michaelmas Term

Ordered for immediate consideration, and adopted.

Mr. Crickmore presented the report upon the petitions of John McCabe, Horace Comfort, and F. W. Garvin, which was received, read, and adopted.

Ordered, that Mr. McCabe be permitted to present himself next term for examination for certificate of fitness, and that upon passing the required examination he receive his certificate of fitness upon payment of the ordinary fees.

That Horace E. Comfort receive his certificate of fitness on passing the usual final examinations.

And that the prayer of Mr. Garvin's petition be granted, and his time allowed as if his articles and assignment had been filed in proper time.

Mr. MacKelcan presented the report of the Committee on Reporting.

Ordered for consideration on Saturday next.

The petition of Mr. J. B. Davis, a solicitor, respecting his fees, was received, read, and referred to the Finance Committee with power to act.

The petition of William Larmour was received, read, and referred to Committee on Discipline for preliminary enquiry and report.

The petition of the Osgoode Literary and Legal Society was received and read.

Ordered to be considered on Saturday next.

A letter was received from Mr. James A. Miller, dated 26th October last, and received on that date, resigning his seat as a Bencher.

Ordered, that his resignation be accepted, and that notices issue for the election of a Bencher in place of Mr. Miller, on the last Friday of this Term.

A communication from Mr. Carswell on the subject of the Reports was read and referred to the Committee on Reporting.

A communication from Mr. Carswell relating to the supply of books for the Library was read and referred to the Library Committee.

Mr. Crickmore, Mr. MacKelcan, and Mr. Kerr, were appointed a committee to examine the Journals of Convocation, and report upon any vacancy in the Bench without delay.

Mr. Irving having drawn the attention of Convocation to the resignation of his employment by Mr. G. H. Esten, it was referred to the Library and Finance Committees jointly to consider and report upon the question of assistance to the Librarian and Secretary.

Mr. Irving brought to the attention of Convocation the case of a volume of Lindley on Partnership, which had been removed from the Library by some gentleman through inadvertence, and which had been returned by a clerk in Mr. W——'s office.

Ordered, that Mr W—— be requested to communicate to Convocation the name of the gentleman who took the book from the Library.

The report of the Committee to examine Journals was received and read, reporting that Mr. E. Crombie's seat had become vacant on the last day of Easter Term last, from non-attendance.

Ordered, that a Bencher be elected in place of Mr. Crombie on the last Friday of this term, and that the usual notices be issued.

The Secretary having stated that Eudo Saunders and W. M. Elliott, articled clerks on the books of Convocation, are reported to be practising as attorneys and solicitors without qualifications,

Ordered that their cases be referred to the Committee on Discipline for enquiry.

Dr. Smith gave the following notice of motion for Tuesday, 16th November, 1880:

That the Finance Committee be requested to procure such information as may be necessary for obtaining a likeness of the late Chief Justice Osgoode, to the end that a portrait of him may be painted and placed upon the walls of the building, and to report thereon at an early day.

Convocation adjourned.

TUESDAY, 16th November, 1880.

Present.—Messrs. Crickmore, MacKelcan, Kerr, Irving, Martin, Hoskin, Maclennan, Read, Benson, Bethune.

Mr. Maclennan was appointed Chairman of Convocation in the absence of the Treasurer.

The minutes of last meeting were read and approved.

The Secretary reported that Messrs. Ponton, Brown, Moffat, Ede, and Irving, had completed their papers.

Messrs. MacNee, Myers, Ponton, Brown,

Irving, Moffat, Ede, and Perry were then called pursuant to order of Monday last.

Mr. Irving presented report from Library Committee.

Ordered for immediate consideration and adopted.

Mr. Crickmore presented the report of the Joint Committees of Library and Finance on assistance to the Librarian and Secretary.

Ordered for immediate consideration.

Adopted with certain amendments.

Report amended accordingly.

Ordered, that notice be given of the appointment of the officers mentioned in the report for the last Friday of Term.

Ordered, that it be referred to a Special Committee, composed of the Treasurer and the Chairman of the several Standing Committees, to select and recommend persons suitable for appointment.

Moved by Mr. Read,—

That the Finance Committee be requested to procure such information as may be necessary for obtaining a likeness of the late Chief Justice Osgoode, and report thereon at an early date.—Carried.

Mr. Read gave the following notice for Saturday next, namely:

That the Treasurer and Messrs. Crickmore, Bethune, Smith, Maclennan, and Read be appointed a committee to consider of and report a plan for the establishment of honor examinations and rewards of merit in connection with call to the Bar.

Mr. Crickmore presented a report upon all the cases referred to the Legal Education Committee yesterday, to enquire into the sufficiency of the papers, which report recommended that Messrs. Brown, Maclise, Myers, Allen, Dowlin, and R. Harcourt, do receive their certificates of fitness. The report was received and adopted, and it was ordered accordingly.

Convocation adjourned.

SATURDAY, 20th November, 1880.

Present—Messrs. Richards, Irving, Kerr, Benson, Maclennan, Read, Crickmore, Smith.

Mr. Maclennan was appointed Chairman, in the absence of the Treasurer.

Mr. Read presented the petition of G. A. Montgomery respecting his fees, which was read and referred to the Finance Committee with power to act.

A communication was read from Messrs. Brocker and Gallway, respecting a gas saving apparatus for Osgoode Hall, and referred to Finance Committee with power to act.

Mr. Crickmore presented the report of the Legal Education Committee, to the effect that Mr. James Gordon Jones, a graduate, was entitled to be entered as a student of the Laws.—Ordered accordingly.

On motion of Mr. Read, pursuant to notice, the following gentlemen were appointed a Committee to consider and report a plan for the establishment of Honor Examinations and rewards of merit in connection with call to the Bar, namely: The Treasurer and Messrs. Crickmore, Bethune, Smith, Maclennan and Read; the Committee to report without delay.

The report of the Reporting Committee, dated November 15, was received, read, and adopted, as follows:

The Committee on Reporting, beg leave to report as follows:—

Your Committee have arranged for 250 extra copies of the Supreme Court Reports at one dollar per volume.

They recommend that the copyright in all the reports for Ontario, to be issued in future, be secured to the Society.

They recommend that the editor and reporters be required to prepare, from the present time, the materials for a triennial digest of all the Ontario reports, including appeals to the Supreme Court and Privy Council from Ontario, and to issue the same to the profession promptly at the end of each triennial period.

They also recommend that the salary of the reporter of appeals and elections cases be increased to $1,200 per annum from the present time.

Nov. 15th, 1880. JAMES MACLENNAN.

Mr. Read gave notice that on the last Friday of this Term he would move as follows:

That a By-law be proposed for enactment by the Law Society for establishing a benevolent fund under the section of the Act of Parliament relating thereto; and that a committee be appointed to prepare and introduce such By-law, with leave to introduce the same at the next meeting of Convocation, and that the committee be composed of the following Benchers, namely: Messrs. Read, Crickmore, Smith, Kerr, Richards, and Hoskin.

Mr. Irving gave notice on behalf of the Treasurer that he would, on the last Friday of Term, move the adoption of a plan to encourage, by prizes, attend-

ance at lectures to be given by the Osgoode Literary Society as follows, namely:

That the Osgoode Literary and Legal Society having arranged for a course of lectures on various branches of law extending over the period from 23rd Oct., 1880, to 5th March, 1881, as follows:

Criminal Law—Mr. Delamere.
Partnership—Mr. W. Mulock.
Mortgages—Mr. C. R. W. Biggar.
Commercial Law—Mr. J. McDougall.
Statute of Frauds—Mr. G. T. Blackstock.
Fraudulent and Voluntary Conveyances—Mr. C. Moss.
Constitutional History—Mr. I. Campbell.
Real Property—Mr. Ewart.

With a view to encourage the efforts and promote the objects of the Society, prizes be placed at its disposal on the following terms:

In case the Society arranges for a written examination at the close of the course open to all law students, to be conducted by not less than two of the lecturers, embracing at least three questions on each subject, or twenty-four in all; of the competitors who obtain at least three-fouths of the aggregate marks obtainable in all the subjects, and at least one-half the marks obtainable in each subject, the first shall be entitled to a prize of books of the value of $50; the second, to a like prize of the value of $30, and the third, to a like prize of the value of $20.

That the result of the examinations be certified to the Treasurer by the examiners, and the prizes shall be awarded according to such certificate.

The petition of the Osgoode Literary and Legal Society for the use of books, was considered, and referred to the Library Committee to confer with a committee of the Literary Society on the subject of the petition.

Convocation adjourned.

FRIDAY, 3rd December.

Present.—The Treasurer, and Messrs. Martin, McKelcan, Smith, Irving, Maclennan, Kerr, Benson, Ferguson, McCarthy, Meredith, Hoskin, Cameron, McMichael, Crickmore, Britton, Read, Richards.

The minutes of last meeting were read and approved.

The report of the Examiners on the Scholarship Examinations was received, read and adopted.

Ordered, that the Scholarships be awarded as follows:—

4th Year,	MR. P. H. DRAYTON.
3rd "	" W. BURGESS.
2nd "	" J. L. MURPHY.
1st "	" J. DENOVAN.

The report of the select Committee appointed to consider and report a plan for the establishment of Honor Examinations and rewards of merit, in connection with Call to the Bar, was received, read, and adopted.

Mr. Martin, seconded by Mr. Ferguson, moved the first reading of the following rule, in pursuance of the recommendation contained in the Report, namely:—

1. That in each Term after Michaelmas Term, 1880, the persons who obtain at least three-fourths the marks obtainable on the papers at the examination for Call, be entitled to present themselves on the following day for a further written examination for honors in the same subjects, embracing the same number of questions with the same aggregate value of marks obtainable in each subject.

2. That the persons obtaining at least three-fourths of the aggregate number of marks obtainable on the papers in both the Pass and the Honor Examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject, in both examinations, be called with honors, and that the diploma of each person so called shall certify to his call with honors.

3. That of the persons called with honors the first three be entitled to medals on the following conditions:—

The first, if he has passed both Intermediate Examinations with honors, to a gold medal, otherwise to a silver medal.

The second, if he has passed both Intermediate Examinations with honors, to a silver medal, otherwise to a bronze medal.

The third, if he has passed both Intermediate Examinations with honors, to a bronze medal.

And that the diplomas of each medallist shall certify to his being such medallist. That, for the purposes of this rule, only the passing of any Intermediate Examination heretofore taken without an oral, shall be deemed equivalent to passing such examination with honors.—Carried.

Mr. Ferguson, seconded by Mr. Maclennan, moved that the general rule be suspended, and that the rule just read be now read a second time.—Carried unanimously.

The rule was read a second time.

Resolved, that the rule be adopted.

The report of the Select Committee on the appointment of assistants in the library, was received and read.

Mr. Maclennan, seconded by Mr. McKelcan, moved the adoption of the first clause, which recommended the appointment of Mr. Grasett, as senior assistant.—Carried.

Ordered, that Mr. Charles Grasett be appointed senior assistant from January 1st, 1881, at a salary of $600 per annum.

The second clause of the report was then read.

The votes were taken, and Mr. Williams was declared elected.

Ordered, that Mr. Williams be appointed junior assistant, at a salary of $400 per annum, from 1st January, 1881.

The report of the Legal Education Committee on the Primary Examinations was received and read, as follows:

The Legal Education Committee recommend that for the years 1882, 1883, 1884, and 1885 the books and subjects in Classics and English for the Primary Examination of Students-at-law and Articled Clerks shall be as follows:—

Students-at-Law.

CLASSICS.

1882	Xen. Anabasis, Book I.	Cæsar, Bel., Brit. B. G. B. IV. C. 20-36
	Homer, Iliad, Book VI.	B. Vc. 8-23. Cicero, Pro. Archia.
		Virgil, Æneid, B. II W. 1-317.
		Ovid, Heroides, Epistles, V. XIII.
1883	Xen. Anabasis Book II.	Cæsar, Bel'm Brit'm.
	Homer, Iliad, Book VI.	Cicero, Pro Archia. Virgil, Æneid, B. V., VV. 1-361. Ovid, Heroides, Epistles V. XIII.
1884	Xen. Anabasis, Book II.	Cicero, Cato Major.
	Homer, Iliad, Book IV.	Virgil, Æneid, B. V. VV. 1-361. Ovid, Fasti, B. I., VV., 1-300.
1885	Xen. Anabasis, Book V.	Cicero, Cato Major.
	Homer, Iliad, Book IV.	Virgil, Æneid, B. I., VV. 1-304. Ovid, Fasti, B. I., VV. 1-300.

ENGLISH.

1882 { The Deserted Village. The Task, B. III.

1883 { Marmion, with special reference to Cantos, V. and VI.

1884 { Elegy in a Country Churchyard. The Traveller.

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

Articled Clerks

will be examined in the same years in the same portions of Ovid *or* Virgil as noted above. For Students-at-Law at the option of the candidate.

(Signed) JOHN CRICKMORE,
Chairman.

The report was adopted.

The report of the Finance Committee on the subject of a portrait of Chief Justice Osgoode, was received and read.

Mr. Smith moved, seconded by Mr. Read, That a half length portrait of Chief Justice Osgoode, of the size of those in the Convocation Room, be painted from the miniature in possession of Dr. Scadding, and that Mr. Berthon be employed to paint the same at a cost not exceeding $260, including the frame, which is to be approved of by the Finance Committee—Carried.

YEAS.	NAYS.
Crickmore,	Richards,
Read,	Martin,
Mackelcan,	Britton,
McMichael,	Irving.
Hoskin,	Maclennan,
Benson,	
Smith,	

The report of the Library Committee on the petition of the Osgoode Legal and Literary Society was received and read, as follows:—

REPORT.

The report of the Library Committee upon the subject of the Petition of the President, Secretary, and members of the Osgoode Literary and Legal Society, to the Benchers of the Law Society, which was referred to your Committee to consider, after an interview to be had between your Committee and a Committee of the Osgoode Society.

1. Your Committee beg leave to report that they have met a Committee of the Osgoode Society, and have been informed that the Constitution of that Society requires that all members thereof should be members of the Law Society.

2. That between the months of October and April, the Society, by way of winter session, meets generally once a week for the purpose of debate and discussion of legal and kindred subjects.

3. That it would be considered a boon by

the Osgoode Society, if the Benchers' Committee Room, in which the miscellaneous books of the Library are at present shelved—should be open to the members of the Osgoode Society, under circumstances which would enable them to refer to the books therein in aiding to prepare for their debates.

4. And further, that those members of the Osgoode Society who are from time to time appointed debaters in such Society should be allowed the privilege of taking out such books as they require for their debates for an evening, twice before their debate is to come up.

(2.) Your Committee have considered these proposals, and while they have agreed to recommend that, during the winter session (and to be limited to the current winter session for the present) the Benchers' room should be open to all members of the Law Society on the afternoons of Tuesdays and Fridays, between the hours of two and half-past five—they do not recommend any permission being given for the removal of any books from the Benchers' room on the occasions proposed.

(3.) But some members of Convocation having expressed the opinion that it is within the scope and aim of the Law Society to aid the objects of the Osgoode Society by providing certain literature bearing upon their discussions, your Committee think that some books might be provided for their use and placed more freely at their disposal than the expensive volumes which are to be found in the miscellaneous collection of the Law Society.

If Convocation approves of the freedom of access by the Osgoode Society to the Benchers' room on the occasions mentioned, your Committee will give the Librarian directious npon the rules to be observed while the room is so opened.

(4.) The Library Committee take this occasion of referring to Rule 127, sub-division 4, page 24:—"No book shall be carried out of the Library except under the circumstances authorized by order of Convocation, the observance of which there is difficulty in maintaining, and the existence of which is so often matter of complaint, as to suggest to your Committee the propriety of some modification, and your Committee suggests that the following exceptions be added thereto.

1. Where there are duplicate copies of a book in the Library, and any member of the Society apply for the loan of one of the copies for a night, or for temporary use in the Assize Court or County Court, the Librarian may in his discretion accede to such application.

2. When an application of the like nature is made for a book of which only one copy is in the Library, the Librarian may, if the court is actually in session in Osgoode Hall at the time, or if there is no likelihood of the book being required in the Library during the time the application covers, accede to the application, if in his discretion it appears reasonable and necessary.

3. That the Librarian keep a record of such temporary loans for the information of the Committee.

(Signed) On behalf of Committee,
Æ. IRVING.

The Report was then considered clause by clause.

Clause second, relating to access to the Benchers Committee room, was adopted.

Mr. Martin moved that clause three be referred back to the Committee, with instructions to report more fully as to the books proposed to be purchased, and their probable cost.—Carried.

Clause four was by leave withdrawn.

The report of the Finance Committee, refusing to grant the prayers of the Petitions of Messrs. G. A. Montgomery and J. B. Davis, was received, read, and adopted.

The report of the special Committee on the consolidation of the rules of the Society, was received and read.

Mr. Read moved that the draft of the consolidated rules be printed in galley form for the use of the Benchers, and distributed before the next meeting of Convocation; that the type be kept up, and that the consideration of the draft be postponed to the next meeting, with leave to the Committee to make such alterations in the draft before distribution as they may think advisable.—Carried.

Mr. Irving gave notice that he would at the next meeting of Convocation move for the rescission of the resolution authorizing the painting of a portrait of Chief Justice Osgoode, at a cost of $260.

Mr. Hoskin gave notice that he would at the next meeting of Convocation, namely, on the last Tuesday of December inst., introduce a rule in pursuance of sections 38 and 41 of the "Act respecting the Law Society of Upper Canada," enabling Convocation to deal with matters relating to the discipline and honor of the Bar, in such manner as to Convocation shall seem meet.

A letter from Mr. Neilson, in reference to the existing arrangement with the Toronto Telephone Despatch Company, was read and referred to the Finance Committee.

The order for the election of a Bencher to fill the vacancy created by the resignation of Mr. Miller, was read.

Mr. Britton B. Osler was elected in Mr. Miller's place.

The order for the election of a Bencher to fill the vacancy created by Mr. Crombie's seat having been declared vacant by non-attendance, was read.

Mr. Charles Moss was elected in Mr. Crombie's place.

The notice of motion given by Mr. Irving on behalf of the Treasurer, referring to prizes for examinations held by the Osgoode Legal and Literary Society, was read.

Mr. Crickmore moved the adoption of the following rule in pursuance of the notice, namely:

That the Osgoode Literary and Legal Society having arranged for a course of lectures, on various branches of Law, extending over the period from 23rd October, 1880, to 5th March, 1881, as follows:—

Criminal Law, by Mr. Delamere.
Partnership, by Mr. W. Mulock.
Mortgages, by Mr. C. R. W. Biggar.
Commercial Law, by Mr. J. McDougall.
Statute of Frauds, by Mr. G. T. Blackstock.
Fraudulent and Voluntary Conveyances, by Mr. C. Moss.
Constitutional History, by Mr. I. Campbell.
Real Property, by Mr. Ewart.

With a view to encourage the efforts and promote the objects of the Society, prizes be placed at its disposal on the following terms:

In case the Society arranges for a written examination at the close of the course open to all law students, to be conducted by not less than two of the lecturers, embracing at least three questions on each subject or twenty-four in all: of the competitors who obtain at least three-fourths of the aggregate marks obtainable in all the subjects, and at least one-half of the marks obtainable in each subject, the first shall be entitled to a prize of books to the value of $50, the second to a like prize of the value of $30, and the third to a like prize of the value of $20.

That the result of the examination shall be certified to the Treasurer by the examiners, and the prizes shall be awarded according to such certificate.

Mr. Blake moved that it be referred to a Select Committee, composed of the Treasurer and Messrs. Crickmore, Robertson, Mackelcan, Martin, Maclennan, McCarthy, and Ferguson, to consider and report a plan for the encouragement of legal studies by the Law Students in various parts of the Province, through the giving of prizes for examinations on the subjects of lectures, which may be delivered by members of the local Bars to the students of the locality.

Mr. Kerr moved, seconded by Mr. Britton,

That the printing of the journals separately be dispensed with, and that one hundred copies of the proceedings of Convocation, contained in the LAW JOURNAL, be ordered for the use of Convocation—Carried.

Convocation adjourned.

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

Chancery.] [Dec. 20, 1880.

MARTINDALE v. CLARKSON.

Dower.—42 Vict. c. 22.

Held, that the statute, 42 Vict. c. 22, sections 1, 2, 3, only apply to mortgages since it was passed.

McClive for the appellant.

J. H. McDonald for the respondent.

Appeal dismissed.

C. C. York.] [Dec. 20.

HOERNER v. KERR.

Married woman—Separate estate.

Held, reversing the judgment of the County Court, that the rents derived from real estate acquired between 1859 and 1872, by a married woman, married before 1859, are her separate estate.

Reeve for the appellant.

J. W. Kerr for the respondent.

Appeal allowed.

C. C. York.] [Dec. 20.

IN RE BEATTY, AN INSOLVENT.

Insolvent Act of 1875—Secured creditor—Proof.

Held, that a creditor, who holds security from the insolvent at the time of his insolvency cannot realize on the security and rank on the estate for the balance of the debt, as the as-

signee has thus no opportunity of taking the security at a valuation for the benefit of the creditors.

Merrit and *Blackstock* for the appellants.

Bain for the respondent.

Appeal allowed.

C. C. Northumberland.] [Dec. 20.

ROSS v. FITCH.

Attorney and client—Principal and agent.

W. & Co., attorneys, in the Province of Quebec, requested the defendant an attorney in the Province of Ontario, to take proceedings to collect the amount due on a promissory note, which certain clients of theirs, living in the Province of Quebec, were the holders. The defendant issued the writ in the name of B. & Co., and endorsed theron his own name as attorney. He, however, never had any communication with them, treating W. & Co. as his principals, and he credited them with the amount of the note when collected.

Held, that the plaintiff, who was assignee of B. & Co., was entitled to recover the amount of the judgment so recovered from the defendant; the rule, that the town agent of a country principal is not responsible to a client of the latter, not being applicable, as it was held that W. & Co. were the plaintiff's agents, to retain the defendant to act as their attorney, and the relation of attorney and client was, therefore, created between them.

C. Robinson, Q. C., for the appellant.

J. B. Clarke for the respondent.

Appeal dismissed.

C. C. Grey.] [Dec. 20.

TROUT v. MOULTON.

Promissory note—Double stamping.—42 Vict., c. 17, sec. 13.

The plaintiff objected to purchase a note from one C., on the ground that it was insufficiently stamped, whereupon C. affixed double stamps and then transferred it to the plaintiff, who did not notice that C. had omitted to cancel the stamps until some time afterwards, when his attorney mentioned it to him, when he at once double stamped it, and cancelled the stamps in accordance with 42 Vict., c. 17, sec. 13.

Held, that the evidence shewed that the plaintiff took the note in the full belief that it had been properly double-stamped by C., who was, at the time, the holder, and that he was entitled to cure the deficit by double stamping.

Bethune, Q.C., for the appellant.

J. K. Kerr, Q.C., for the respondent.

Appeal allowed.

Proudfoot, V. C.] [Dec. 27.

FINN v. DOMINION SAVINGS & INVESTMENT CO.

Fraud—Principal and agent.

The plaintiff, who applied to the defendants, through one W., their agent, for a loan, requested them, by his application, to send the money "by cheque, addressed to W." In accordance with their custom to make their cheques payable to their agent, and the borrower to insure the receipt of the money by the latter, they sent W. a cheque payable to the order of himself and the plaintiff. W. obtained the plaintiff's endorsement to the cheque, drew the money, and absconded. The plaintiff swore that he did not know that the paper he signed was a cheque, and there was no evidence to shew that he had dealt with W. in any other character than as the defendant's agent, through whose hands he expected to receive the money.

Held, affirming the decree of Proudfoot, V. C., restraining proceedings on the mortgage which the plaintiff had given the defendants as security for the loan and directing a reconveyance; that W.'s duty to the plaintiff was to endorse the cheque to him, or to see that the money reached his hands, and that the defendants, who had put it into his power to commit the fraud, must bear the loss occasioned by their agent.

Maclennan, Q.C., for the appellant.

Bethune, Q.C., *contra.*

Appeal dismissed.

QUEEN'S BENCH.

In Banco.] [Nov. 22, 1880.

NICHOLSON v. PHOENIX FIRE INSURANCE CO.

Insurance—Grocery—Sale of liquor—Non-avoidance of policy.

Held, that by insuring a village "Grocery" an insurance company had notice that liquor might be sold therein; and that the non-dis-

closure of the fact did not avoid the policy.

W. Mulock for plaintiff.

Bethune, Q. C., *contra.*

MOSER v. SNARR.

Promissory note—Defence of forgery—Expert evidence—New trial refused.

In an action by an innocent holder against the endorser of a promissary note the defendant pleaded that the alleged endorsements were forgeries. On the first trial the jury disagreed, and on the second found for the plaintiff. No expert was called at either trial, and the court refused a new trial to enable such evidence to be given.

Bigelow for plaintiff.

Ferguson, Q.C., *contra.*

BEAUMONT v. CRAMP.

Chattel mortgages—Renewal.

Kissock v. *Jarvis*, 9 C. P. 156, as to the yearly renewal of a chattel mortgage approved and followed, notwithstanding the recent legislation since the decision of that case.

Ferguson for application.

COMMON PLEAS.

In Banco.] [Nov. 27.

STEELE v. THE GRAND TRUNK RAILWAY COMPANY.

Railways — Carriage of goods — Notice of arrival.

This was an action against the defendants for breach of contract to safely carry and deliver to the plaintiff certain goods delivered by the plaintiff to the defendants, to be carried from Hamilton to Toronto. The defendants objected that the action being in case, the plaintiff must fail, as they contended the evidence shewed that the plaintiff was not the owner of the goods, having sold them to one H.; and further that the plaintiff had omitted to give notice to the defendants within thirty-six hours after the delivery of the goods to him by the defendants, as required by the terms of the agreement under which the goods were alleged to have been carried.

Held, that the objections failed: for that the evidence showed, (1), that the plaintiff was the owner of the goods; and (2) that the goods were not safely carried to Toronto and there delivered to the plaintiff, and therefore the defendants could not set up the omission to give the said notice. The plaintiff was therefore held entitled to recover.

MacKelcan, Q.C., for the plaintiff.

McMichael, Q.C., for the defendants.

HENRY v. GILLEECE.

Will—Determination of Life Estate by Marriage or Death.

The question in this case was as to the construction of the following clauses in a will: "Third: I give and bequeath to my daughter-in-law, E. D., widow of my son W. D., deceased, the proceeds of the remains of my real estate, situate," &c. "To have and to hold the same to her use and support of my son W. D.'s children during her natural life, and so long as she remains the widow of my son, W. D.; and in the event of the death of my daughter-in-law then to my said grand-children. To have and to hold the same as long as they remain minors. Fourth: I give, devise and bequeath to my grandson, P.D., his heirs and assigns, *all* my real estate, being," &c., (the same land above mentioned.) To have and to hold the same to him and his heirs and assigns, to his and their use and behoof forever, subject to the condition set forth in the third clause of this instrument." E. D., the widow of W. D., after the death of the testator, and before the commencement of this suit, married again and was still living.

Held, that the proper construction of the above clauses was to give the land to the minors immediately on the determination of the mother's estate, whether it be by marriage or death.

Milligan (of Brampton), for the plaintiff.

MAYER v. THE GRAND TRUNK RAILWAY COMPANY.

Railways—Warehousing of goods—Condition as to liability.

The plaintiff shipped goods from Montreal to Toronto by the defendants' railway, which duly arrived at Toronto and was placed in the defendants' warehouse there. By one of the conditions under the heading, "Notices and Conditions of Carriage," endorsed on the back of the request note, signed by the plaintiff, and the

shipping receipt received from the defendants at the time of shipment at Montreal, as well as on the freight advice to be received by him on the arrival of the goods at Toronto, and specially referred to on the face thereof respectively, it was provided that the company should not be liable for any goods left until called for, or to order, and warehoused for the convenience of the parties to whom they belong, or by or to whom they are consigned, and that the warehousing of all goods will be at the owners risk and expense. The plaintiff, without having as he stated, read over the conditions on receipt of the freight advice had called at the warehouse, and received permission to leave the goods there, nothing being said about storage. The goods having been lost, the plaintiff sued the defendants to recover their value.

Held, that he could not recover; for that under the terms of the special condition, no liability, which, if at all, would be that of warehouseman, was imposed on the defendants.

Tilt for the plaintiff.

J. K. Kerr, Q.C., *contra*.

HARVEY V. PEARSALL.

Dower—Declaration claiming dower and damages after admission of right to dower—Sufficiency of pleading.

To a writ issued under the Dower Act with the statutory notice endorsed thereon, notifying the defendant to enter either an appearance with a denial of his being the tenant of the freeeold or an appearance only ; and that unless such appearance with or without such denial was entered, the plaintiff could sign judgment for the dower claimed with costs of suit ; and further notifying the defendant that she claimed damages for the detention of her dower. The defendant filed, and served on the plaintiff's attorney, an appearance together with an acknowledgment that he was tenant of the freehold, and consented to the plaintiff having judgment for her dower therein, and that she might take the necessary proceedings to have the same assigned to her. The plaintiff thereupon filed and served a declaration claiming dower and damages.

Held, declaration bad, in claiming dower, which defendant had acknowledged the plaintiff was entitled to ; but leave was granted to the plaintiff to amend on payment of costs, restricting the declaration to the claim for damages alone, so that the question could be determined whether in such case damages are recoverable.

Alan Cassels for the defendant.

VACATION COURT—Q.B.

Cameron J.] [Nov. 16, 1880.

REGINA, v. HOWARD.

Selling Liquor without License—Liability of Servant—R. S. O. c. 181—Power of Provincial Legislature.

The defendant, a servant of one Ward, the keeper of an unlicensed tavern, was convicted for selling liquor in her master's absence.

Cameron, J., held the conviction good, the case being undistinguishable in principle from *Regina* v. *Williams*, 42 U. C. R. 462, though he would otherwise have held the master alone responsible, under "The Liquor License Act, R. S. O. c. 181.

Quære, per Cameron, J., as to the power of the Local Legislature to limit, or authorize municipalities to limit, the number of licenses ; and as to the effect of the decision of the Supreme Court in *City of Fredericton* v. *The Queen*, 3 Sup. Ct. 505.

Fenton for plaintiff.

A. MacNabb, *contra*.

CHANCERY CHAMBERS.

The Referee.] [June 21.

HILDERBROOM V MCDONALD.

Production before and after decree—Practice.

An order to produce is only made for the purposes of the hearing. After the hearing and a decree with reference to the Master, it will not be enforced for the purposes of the reference, although not complied with in the first instance.

The proper course is an application to the Master.

The Referee.] [September.

JELLETT V. ANDERSON.

Report—Confirmation of—Execution under.

A report must be filed before an execution can issue under it.

Where a decree ordered payment forthwith after the making of a report, an execution which was issued before the report was filed was set aside, but it was held that the report did not require confirmation under the wording of the decree.

REPORTS.

QUEBEC.

NOTES OF RECENT DECISIONS.

Q. B.] [Nov. 24.

GUY et al., Appellants, & THE CITY OF MONTREAL, Respondents.

Public street—Dedication by proprietor to the public—Prescription by open use to public.

A writing is not required to establish that property has been abandoned to the public for use as a public street; but the acts from which a dedication or abandonment can be inferred must be of a totally unequivocal character.

The fact that a street was openly used by the public without dispute for upwards of ten years as a highway, and that the corporation of the city exercised visible ownership by constructing a sidewalk thereon and filling in a swamp, more than ten years before the institution of an action, is sufficient proof of dedication by the proprietor.

BELL v. DOMINION TELEGRAPH CO.

Johnson, J.] [Nov. 30.

Telegraph message—Failure to deliver—Damages.

A Telegraph Company is responsible to the party to whom the message is directed, for negligence in failing to deliver a telegram. The fact that the sender did not repeat the message does not affect the rights of the person to whom the message is addressed.

GUILLAUME v. CITY OF MONTREAL.

CITY OF MONTREAL v. LAROSE.

Corporation—State of sidewalks—Responsibility of proprietor.

The Corporation of Montreal is liable for damages caused by the bad state of the public footpaths in the city, and the Corporation has a recourse en garantie for such damages against the proprietor of the premises opposite the footpath.

LAW STUDENTS' DEPARTMENT.

THE LAW SOCIETY AND ITS STUDENTS.

We refer our young friends to some information of considerable interest to them, to be found in the *resume* of the proceedings of the Benchers in Convocation (*ante*, pp. 17 &c.). The Benchers are, we are sure, desirous of lending a helping hand to the students, although their action some time since may have given rise to a somewhat different conclusion. Let it also be remembered that "Providence helps those who help themselves."

EXAMINATION QUESTIONS.

The following are some of the questions given at the Law Society Examinations, last Michaelmas Term. We shall continue the publication of these questions from time to time.

FIRST INTERMEDIATE.

Williams on Real Property.

1. A, B, C, and D were joint tenants of certain land. A conveys to E. By his will B devises to G. (1) By whom and (2) in what manner is the land now held?

2. What estates pass by the following conveyances: (1) Grant to A and his seed, (2) grant to A and the offspring of his body, (3) grant to A to have and to hold to him and his assigns forever, (4) grant to A and the heirs male of his body, (5) grant to A and his heirs forever.

3. What was the doctrine of the Court of Chancery as distinguished from that of the Courts of Law with reference to uses or trusts of land prior to the Statute of Uses? For what purpose was that statute passed, and what was its effect?

4. Apply the maxim that Equity follows the law to its mode of dealing with equitable estates, showing any limit there may be to its application.

5. What is an estate by entireties? What are the incidents of such an estate?

6. Can a man in any way convey lands to his wife? Explain.

7. What was formerly known as *general* and *special occupants?* How is it that there cannot now be estates held in such manner?

CERTIFICATE OF FITNESS.

Smith's Mercantile Law—Common Law Pleading and practice—The Statute Law.

1. In how far is community of profit a test of partnership? Discuss fully.

2. Give a short sketch of the duties of a factor towards his principal.

3. What is necessary to entitle a ship to the name and privilege of a *British vessel?* Explain fully.

4. What is meant by an *acceptance supra protest* of a bill of exchange? Explain fully the rights of an acceptor in such a case?

5. What statutory remedy is given to the person entitled to a lost bill or note? What remedy had he before the statute?

6. Define affreightment by charter party. Who is the proper person to execute the contract?

7. What is the necessity for the insertion in a marine policy of the words *lost or not lost?*

8. What remedy has a seaman for his wages? Answer fully.

9. Explain the nature and grounds of defence to an action under a plea of set-off, pointing out the cases to which such plea is applicable, and the limits of its applicability.

10. A landlord proceeds by action of ejectment against his tenant for nonpayment of rent, under a lease, obtains judgment, issues execution thereunder, which is duly executed, and the landlord placed in possession. What remedy has the tenant, if any, the lease being a valuable one with a long term unexpired?

CALLS TO THE BAR.

Equity Jurisprudence.

1. When are annual rests charged in accounts between mortgagor and mortgagee?

2. What was the general intent of the Statute of Uses; and to what three classes of trusts has it been held not to apply?

3. How will a Court of Equity deal with a trust created for an illegal purpose, where the illegal purpose has failed?

4. In what cases, and on what allegations of fact, will a Writ of Arrest be ordered?

5. Where a party, after making a contract for the sale of lands, dies intestate, and before payment and conveyance, who can receive the consideration money and execute the conveyance?

6. What is the effect where a legacy is given to a person under a particular character, which such person does not fill?

7. What is a bill of discovery, and for what purposes may such a bill be filed?

8. How is the doctrine of election applied in cases of (1) gift under a mistake of fact, (2) disability of beneficiary, (3) death of beneficiary before election?

9. What are the statutory provisions in Ontario amending 13 Elizabeth ch. 5, respecting Fraudulent Conveyances?

10. What is the mode of proceeding in cases where a trustee applies to the Court of Chancery for advice or direction in matters affecting the trust estate?

REVIEWS.

COMMENTARIES ON THE LAWS OF ENGLAND APPLICABLE TO REAL PROPERTY. By Sir William Blackstone, Knt. Adapted to the present state of the Law in Ontario, by Alexander Leith, Q. C., and James Frederick Smith, LL.B., of Osgoode Hall, Barrister-at-Law. Second Edition. Toronto: Rowsell & Hutchison, 1880.

It is safe to say that few announcements could have given greater pleasure to all classes of the profession, than that of a new edition of "Leith's Blackstone;" and when it became known that this long-felt *desideratum* was to be at length supplied, the appearance of the work was anxiously looked for and heartily welcomed The original work of Mr. Leith was published many years ago, and has long since been out of print. This latter fact of itself caused an immense amount of inconvenience, more especially to the many law students who have found themselves reduced (humiliating alternatives!) "to beg, borrow or steal" a book which was so indispensable an element in their legal training—to say nothing of the passing of "Intermediates" and final examinations. We are glad, indeed, that this state of things now belongs to the past, and that every lawyer and student can (and if he is wise, will) possess himself of an invaluable addition to his library in the new and excellent edition of this work which lies before us.

We made merely a brief editorial reference to this volume on its first appearance, believing that the great importance of its subject, as well as the variety and difficulty of the topics embraced within its range, merited a more careful

and extended study than a reviewer can in general give, to the volumes which he is called on to examine. We are well aware, indeed, how impossible it would be within the limits of one, or half a dozen articles, to attempt anything like an exhaustive survey of a book that treats of a subject so complex and manifold as the principles of Real Property Law. These principles are the very *arcana* of legal science, though strange to say, they have suffered more than any others at the rude hands of the "unlicensed conveyancer," who, "rushing in" with easy confidence where angels might well "fear to tread," has scattered broadcast over Ontario curious and interesting specimens of the working of *his* mind on this intricate head of Law. Trusting the readers of the LAW JOURNAL will pardon this allusion to a very "real" grievance, not unfrequently commented on in these columns, we will return to the subject more immediately before us by stating that it is not our purpose to attempt the exhaustive review of which we have spoken, but simply to call attention to the salient features of this adaptation of a portion of the great English jurist's *opus magnum* to Ontario law, and in particular to specify the more important points wherein the edition just published differs from the earlier one.

In this connection we may fitly notice the change in the title page, on which there is now associated with the name of the original author, that of Mr. James F. Smith, a gentleman long and favourably known in the profession as a sound and well-read real property lawyer. No one who examines with any care the edition now issued, and compares it with the former, will be surprised that Mr. Leith was anxious to secure the services of a coadjutor in so arduous a task as that of bringing up to the standard of the real property law of 1880, a work which was originally published in 1864, and it will be universally acknowledged that the result has proved Mr. Smith to be a worthy associate of one who is admittedly a "past master" in the conveyancer's craft.

During the period of sixteen years which has elapsed since the publication of the first edition of this book, the law of Real Property has been subject in a marked degree to that mutability which is characteristic of all human institutions. The axe of the Legislative woodman has been hewing vigorously at the time-honoured growths of legal precedent, and some of his weightiest strokes have been dealt at the old doctrines of the *jura rerum*. This tendency of Canadian legislation is commented on, not very sympathetically, by Mr. Leith in the preface to his learned work on the Real Property Statutes, published in 1869, since which date each successive volume of our Statutes has borne witness to its continued prevalence.

It would be foreign to our present object to discuss the merits or demerits of this tendency. The most enthusiastic advocate of change must admit (to quote from the "preface of the work just referred to) that very often the mutability of our laws is to be ascribed. . . . to their being framed with no sufficient appreciation of the existing law, or its mischief, or its remedy." The sturdiest champion of the ancient customs o the realm will not deny that the legal author must be content to take the law as it stands, and to remember, as a Mansfield or an Eldon must, that his province is to interpret, not to question, the wisdom of senates. Such is the end at which the authors of the work now under review have aimed. In a brief and modest prefatory note, they refer to the many changes in the law, and the lack of any similar work applicable to this Province, as the chief commendations of their work to the favour of the profession. No more cogent reasons could be adduced for the publication of any law book, but we are sure that all candid critics will go further than this, and ascribe to their work no small share of that intrinsic merit which they seem disposed to disclaim.

The most superficial examination of the present edition can hardly fail to disclose abundant evidence of its marked superiority to its predecessor. To begin with, the typographical execution is vastly better. This of itself is a great boon to those who have found their appetite for what Mr. Joshua Williams calls "the ample and varied entertainment" of Blackstone in no wise stimulated by the manner in which the banquet is set forth in the closely printed pages of the first edition with its curious brackets and asterisks. While speaking of matters of this kind it will not be amiss to refer to the analytical table of contents prefixed to the present edition, which is a new feature worthy of cordial commendation, and to the excellent and well arranged index. The general arrangement of the work is much the same as in the first edition, the principal change made in this re-

spect being the relegation of the chapter on the Law of Descent from the central position it formerly enjoyed to one much nearer the end. This is not the only, nor the most important change which the authors have made in this famous chapter—we fear that some would suggest a slight change in the epithet. The long and intricate discussion of the law of descent at Common Law and under the Statute of William has been entirely omitted, and the attention of the student is directed exclusively to the Statute of Victoria. The authors state in a foot-note that they "have not thought it advisable to treat of the former law as by the lapse of time since 1851, and the effect of the present Statute of Limitations, a knowledge of that law is of little service." The work was designed, both by its original author and by its Canadian adapters as a manual for students, not a mine of learning for professors of the law, and the great drawback to its usefulness in this, its primary object, was the distressing effect of this chapter upon the young student, who too often found that his herculean efforts to master the intricate pedigree of the *English* "John Stiles," and the priorities of "his sisters and his cousins and his aunts," had left him but little strength or spirit to grapple with the much more practically important difficulties of the present law of descent in Ontario.

In instituting a comparison between the work under review, and its predecessor, the first noticeable point of difference will be found in the second chapter,—that treating of the laws in force in Ontario, and the authority for their application and for legislation by the Dominion and Provincial Parliaments. This important chapter which, like the chapter on descent already referred to, consists entirely of original matter, has been re-written, and greatly amplified. This has, of course, been rendered necessary by the momentous changes which have been effected in the political and legislative relations of Ontario by the British North America Act of 1867. Reference is made to the sections of that Act which treat of the nature and limitations of the legislative authority of our parliaments, and to the interpretation which these sections have received at the hands of our judges in cases such as *Smiles* v. *Belford*, and *Severn* v. *The Queen*. Much labour must have been expended upon this chapter, and the result must be most beneficial in giving the student, at the outset of his investigations, a clear idea of their ultimate standard and source.

We have not space at our disposal to linger over the many points of interest suggested by our comparison of the editions of 1864 and 1880, and must confine ourselves to a few of its more obvious results. This much however may be said, that the authors have nowhere slighted their work, which bears evidence throughout of careful and conscientious revision, and adaption to the present state of the law. In many subjects of the most vital importance, the mass of new matter to be incorporated has been so great that whole chapters have been recast or rewritten. We would refer more particularly in this connection to the chapter on "Freehold not of Inheritance" which contains a most valuable and suggestive *resume* of the present law of dower, and to that on "Estates upon Condition," which now contains 55 pages instead of 7, as in the first edition. This increase in bulk is due to a sketch, admirable in expression and arrangement, of the existing law of mortgage, and the principal statutes relating thereto. The treatment of this subject, the most important in a practical point of view that can engage the attention of the student of real property law, was wholly inadequate in the first edition, and the authors have nowhere shewn greater judgment, or met with more success, than extending the range of this chapter so widely as they have done.

Other chapters which have been to a great extent re-written are that on "Title by Alienation," in which we may specially remark the able treatment of the intricate questions turning on the construction of the "Married Woman's Property Act"—that on "Alienation by Devise," the greater part of which is very properly devoted to the consideration of the radical changes introduced by the Wills Act of 1873—and those which treat of the pre-eminently difficult and recondite subjects of title by prescription and conveyances by tenants in tail.

The authors say with truth that "much contained in the first has been omitted" in the second edition. We have already spoken of one important omission as being likely to meet with general approbation. We are not sure that the total excision of the chapter on "Alienation by Matter of Record and under Execution" will meet with equal favour in the eyes of the profession. It may be true, as the authors as-

sert, that the law on this subject should be looked on as "not appertaining to a work dealing chiefly with the general principles of the law of Real Property," but some will think that the great practical importance of this head of Law and the difficulties which attach to it, might have pleaded for the retention in the present edition, of some portions at least of Mr. Leith's learned and elaborate discussion. On the other hand, we think the authors might without much loss have dispensed with the leasing of advowsons and copyhold tenures, which is practically superfluous in this country.

We have given the barest outline of the scope and character of the important work, some of whose more interesting characteristics have been passed in rapid review. The authors, we are well assured, have no desire to claim infallibility, nor do they expect that criticism will fail to find some vulnerable points in their armour; but when every allowance has been made for possible errors and omissions in the treatment of a subject so vast and complete, there can be no question in the mind of any fair-minded critic as to the real and permanent value of the results of their labours.

CORRESPONDENCE.

Unlicensed Conveyancers, and unfair competition.

To the Editor of THE LAW JOURNAL.

DEAR SIR,—Having read the communication signed "S." on "Unlicensed Conveyancers" appearing in the LAW JOURNAL for this month, I would like, with your kind permission, to add a word in the same direction.

The question whether members of the legal profession, duly admitted and licensed, are entitled to protection against unlicensed competition may not be one of vital importance to some practitioners, but to the majority of them it is a matter of serious consequence. When it is considered that the regular practitioner has spent five of the best years of his life in a special course of legal training, that he has paid the Law Society $92 on primary examinations, and $174 on being called and obtaining his certificate to practise, that he has to furnish himself with a library of expensive books, and that he must pay a license fee of $20 every year, and maintain an office in which to do business, it does seem to me that your correspondent is justified in inferring something like an inducement, if not an actual promise on the part of that Corporation, acting through the Benchers, under the sanction of Statute law, that the persons whose money they so receive and whom they so license shall be entitled to the fees properly incidental to the profession, and that they shall be entitled to some protection against the competition of persons who pay nothing for license, and who have been at no expenditure of money or time in preparation for the work they undertake.

It is well understood that conveyancing in its several branches, including the drawing of deeds, mortgages, leases, wills, agreements, bills of sale, etc., forms a large part of a lawyer's work, particularly if he has settled in a country town or village. In your correspondent's village there are four unlicensed conveyancers, any one of whom can command more business than he, for the reason, no doubt, that as it costs them nothing they can afford (borrowing an expression from trade) to undersell him. It may be the "unlicensed" include the schoolmaster, a Justice of the Peace, the Division Court Clerk, and a clergyman or minister, as well as real estate agents, and "agents" generally. In early times, and in the back settlements, there may have been good reason for allowing any person who could write a fair hand, to do lawyers' work and collect fees, but the Province has now become so well settled, and the means of travelling and postal communication have been so much improved, that such reasons no longer hold good, and I think with "S." that a remedy should be looked for.

I believe the subject has been brought under the notice of the legislature in times past, but without effect, probably because legislators, even though they be lawyers, go for what is popular as a general rule; and if votes would be lost to the party by compelling every man who does conveyancing to pass an examination, pay fees, and take out an annual license, the legislators might prefer to retain the votes rather than amend the law. All, or nearly all, of the gentlemen composing the Government of Ontario are

lawyers, but it must be remembered they have attained positions in which they could be personally benefited but very little by such a law. I would suggest that "S." should request his representative in Parliament to ask for a return, as nearly as can be ascertained, of all instruments, registered or filed, within the past two years, which have not been drawn by professional men; as they almost invariably endorse their names on the instruments prepared by them, while others avoid doing so. There would be no difficulty in approximating the amount of work done for other persons by non-professional men. And if it should appear that the unlicensed practitioners bear the same proportion throughout the country to the licensed which they do in your correspondent's village, there is little doubt that some amendment in the law could be obtained; if not, the information would be very useful in enabling persons to form correct ideas upon the advisableness of entering the legal profession.

Another matter of which the profession may justly complain is the following: It is well known that various public officers (being lawyers) while in receipt of handsome incomes from permanent offices of public trust which they have accepted, probably as the reward of political services, continue the general practice of law in connection with their official duties. Amongst these are Clerks of the Peace and County Attorneys. They are provided with comfortable offices, free of rent, in the Court House. In their official duties they acquire an extensive knowledge of the affairs of people in the county, coming in contact with a much larger number of persons than the ordinary practitioner, and they enjoy a prestige and influence, especially in country places, attracting clients and business, which, but for the public office, would not have gone to them, and having an independent income from the public office they can afford to do work very cheaply, even *gratis* in many instances, rather than allow clients to go to a rival practitioner. We frequently see county attorneys leaving their counties and coming up to Toronto, taking briefs in the courts at Osgoode Hall in cases altogether outside their official duties. If I might venture to express an opinion, I would say that it would only be fair to the general profession, as well as to the public, that these gentlemen should be required to elect between serving the Crown in public office, and serving themselves and clients in their private practice, and if they prefer to take or retain office, that they should not be allowed to meddle with the general business of the profession.

X. Y.

December, 1880.

Barron on Chattel Mortgages.

To the Editor of THE LAW JOURNAL.

SIR,—I noticed in the December number of the LAW JOURNAL, "Lex's" letter on the above work, and I shall supplement it by pointing out another what seems to be a serious defect, which I have noticed in a cursory perusal of Mr. Barron's work.

At page 51 *et seq*, Mr. Barron devotes considerable space to prove the right of a mortgagee to take possession of the mortgaged goods at any time after the execution of the mortgage and before default, if the mortgage does not contain a re-demise clause; and he discusses at considerable length the old cases bearing on that point.

The case of *Bingham* v. *Bettison*, 30 U. C. C. P. 438, in which judgment was delivered by Wilson, C. J., in December, 1879, Mr. Barron evidently had not seen, as it reverses or distinguishes the cases cited in his work as authorities for his position; and holds that a mortgagee has no right to possession until default, even when there is no re demise clause.

I might also point out that the decision in *Hodgins* v. *Johnston*, 5 Ap. Rep. 449, settles all doubt as to the meaning of the words, "subsequent purchases" in sec. 10 of the Chattel Mortgage Act, which is discussed by Mr. Barron at pages 188-9.

I am inclined to agree with Mr. Barron on the point questioned by "Lex," as to registration of an assignment of a mortgage being notice to the mortgagor, though I agree with "Lex" in questioning the principle. In the case of *Gilleland* v. *Wadsworth*, 1 Appeal Rep. p. 82, it was unanimously held by the Court of Appeal, reversing the Judgment of the Chancellor (reported in 23 Grant; p. 547), that, though a mortgagor had paid the mortgage money in good faith to the original mortgagee, after an assign-

ment of which he had no notice (other than the registration), the land was still liable for the mortgage money in the hands of a person who purchased from the mortgagor, subsequent to such payment, and who assumed that the land was discharged, because he knew that the mortgagor had so paid the mortgage money. Mr. Barron makes no allusion to this case. Probably he did not see it.

While I take pleasure in according to Mr. Barron a just meed of praise for the work he has accomplished, I fear that an omission to refer to the latest authorities may be often misleading to young members of the profession. I doubt not that if a second edition of the work be necessary, it will receive a rigid and careful revision.

Yours, &c.

M. J. G.

FLOTSAM AND JETSAM.

The following is a list of Lords Chief Justices of the King's and Queen's Bench since 1756: Lord Mansfield, from 1756 to 1788, 32 years; Lord Kenyon, from 1788 to 1802, 14 years; Lord Ellenborough, from 1802 to 1818, 16 years; Lord Tenterden, from 1818 to 1832, 14 years; Lord Denman, from 1832 to 1850, 18 years; Lord Campbell, from 1850 to 1859, 9 years; and the Right Hon. Sir Alexander Cockburn, Bart., G.C.B., just deceased, from 1859 to 1880, 21 years.

LORD COLERIDGE, the new Lord Chief Justice of England, is the eldest son of the Right Hon. Sir John Taylor Coleridge, who was one of the Judges of the Court of Queen's Bench from 1835 down to 1858. He was born in the year 1820, and was educated at Eton, whence he was elected, in 1838, to a scholarship at Balliol College, Oxford. He was called to the bar at the Middle Temple in Michaelmas Term, 1846, and went the Western Circuit. In 1855 he was appointed Recorder of Portsmouth, and 1861 obtained a silk gown, and was chosen a Bencher of the Middle Temple. In 1865 he was elected one of the members for the city of Exeter, and in the following year resigned his recordership. He was appointed Solicitor-General on the formation of Mr. Gladstone's Administration in December, 1868, and succeeded Sir Robert Collier in the Attorney-Generalship in 1871. In November, 1873, he became Lord Chief Justice of the Common Pleas, in place of Lord Chief Justice Bovill.

Cross-examinant: "Have you ever been in a penitentiary?" Coloured witness: "Yes sah." "How often have you been in the penitentiary?" "Twice, sah." "Where?" "In Baltimore, sah." "How long were you there the first time?" "'Bout two hours, sah." "How long the second time?" "'Bout an hour, sah. I went dar to whitewash a cell for a lawyah who had robbed his client."

THE WRONG LEG.—The Portland ADVERTISER tells the following story:—There was an eminent sergeant-at-law some years ago who had a cork leg that was a triumph of artistic deception. None but his intimates knew for certain which was the real and which was the sham limb. A wild young wag of the "utter bar," who knew the sergeant pretty well, once thought to utilise this knowledge of the sergeant's secret to take in a green, newly-fledged young barrister. The sergeant was addressing a special jury at Westminster in his usual earnest and vehement style, and the wag whispered to his neighbour: "You see how hot old Buzfuz is over his case; now I'll bet you a sovereign I'll run this pin into his leg up to the head, and he'll never notice it, he's so absorbed in his case. He's a most extraordinary man in that way." This was more than the greenhorn could swallow so he took the bet. The wag took a large pin from his waistcoat, and leaning forward, drove it up to the head in the sergeant's leg. A yell that froze the blood of all who heard it, that made the hair of the jury stand on end, and caused the Judge's wig almost to fall off, ran through the court. "By Jove, it's the wrong leg, and I've lost my money," exclaimed the dismayed and conscience-stricken wag, quite regardless of the pain he had inflicted upon the learned sergeant.

AT THE recent meeting of the Social Science Congress in Edinburgh, ladies took an active part in the discussion which arose upon the law as affecting women's rights of property and over their children.

The griffin on the top of the Temple Bar memorial bears a shield on which is inscribed, in letters of gold, the legend "Domine, dirige nos." There are not wanting profane persons who say that cabmen, van-drivers and others passing that way, will require this and other prayers to prevent their running into one another.

RULES AS TO BOOKS AND SUBJECTS FOR EXAMINATIONS, AS VARIED IN HILARY TERM, 1880.

Primary Examinations for Students and Articled Clerks.

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

All other candidates for admission as articled clerks or students-at-law shall give six weeks notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects:—

Articled Clerks.

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bs. 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.

Students-at-Law.

See next issue of LAW JOURNAL.

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

INTERMEDIATE EXAMINATION.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the final Examination, shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery; O'Sullivan's Manual of Government in Canada; the Dominion and Ontario Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117, R. S. O., and amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall 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; Underhill on Costs; Caps. 49, 95, 107, 108, and 136 of the R. S. O.

FINAL EXAMINATION.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Harris's Principles of Criminal Law, and Books III. and IV. of Broom's Common Law, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith 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.

SCHOLARSHIPS.

1ST YEAR.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Haynes's Outline of Equity, C.S.U.C. c. 12, C.S.U.C. c. 42, and Amending Acts.

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, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

4TH YEAR.—Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleadings, Equity Pleading and Practice in this Province.

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