DIARY FOR AUGUST.

1. Sat....*Lammas.* Slavery abolished in British Empire, 1834.
2. SUN. .*9th Sunday after Trinity.*
5. Wed..First Atlantic Cable laid, 1858.
6. Thurs.*Transfiguration.*
8. Sat....Cand. for Attorney to leave articles with Sec. of Law Soc. (28 V. c. 21, s. 5.)
9. SUN..*10th Sunday after Trinity.*
10. Mon..Battle of Montmorenci, 1759.
11. Tues..Prim. Exam. of Law Students and Articled Clerks.
13. Thurs.Last day for service for County Court York.
14. Fri....Last d. for Co. Clk's. ret. to Local Clks. (32 V. c. 36, s.77).
15. Sat....Last day for Local Clerks to deliver voters' lists to Clk. of Peace (32 V. c. 21, s. 7.)
16. SUN..*11th Sunday after Trinity.*
18. Tues..Intermediate Examinations begin.
19. Wed..Last d. for set. down and giving not. of re-h. in Chancery.
20. Thurs.Atty's. ex. Cands. for call to pay fees and leave papers.
21. Fri....Long Vac. ends. Exam. for call to the Bar H. R. H. the Prince of Wales landed at Quebec, 1860.
22. Sat....Examination for Call with Honours.
23. SUN..*12th Sunday after Trinity.*
24. Mon..Trin. T. begins. Last day to decl. for Co. Court York.
26. Wed..Prince Albert born, 1819.
27. Thurs.Rehearing Term in Chancery begins.
28. Fri....Last d. for not. trial in Sup. Ct. case for Co. Ct. York.
30. SUN..*13th Sunday after Trinity.*

CONTENTS.

THE

Canada Law Journal.

Toronto, August, 1874.

Mr. Whalley has elicited the information, in the House of Commons, that the total cost of the prosecution of Arthur Orton was £55,315 17*s.* 1*d.* The amount of counsel fees was £11,450; the short-hand writers received £3,493, and the jury £3,780.

A London solicitor, of twenty years' standing, was lately suspended from practice for a term of six months, and condemned in costs, by Jessel, M. R., upon an application to strike him off the rolls, for making an interlineation in an affidavit after it was sworn: *Erskine* v. *Adeane*, 18 Sol. Jour. 573.

The *Albany Law Journal* has an article on the legal aspects of the woman-praying temperance crusade, wherein the conclusion is arrived at that the whole demonstration, in law, amounts to a *nuisance* in restraint of trade. While not sympathising with the absurdities of the movement, surely our contemporary goes rather far the other way. No doubt Demetrius, the silversmith at Ephesus, made much the same argument against one Paul, but many people have since thought the apostle was substantially right.

Touching the benefits and disadvantages of cremation, one of the New York papers makes a forcible objection against the adoption of such a practice. It observes that, in nine cases out of ten, the crime of poisoning is detected by a chemical analysis of the contents of the stomach

after interment. So long as the body remains undecayed the poisoner is not safe. But let the corpse be burnt into a handful of white ashes, and thereby, with the disappearance of the danger of detection, the chances of impunity for the murderer are multiplied.

We have delayed the issue of this number to publish the very important decisions of the Election Court in the North Victoria, Cardwell, and North Simcoe Cases. These reports will be invaluable to those concerned in the numerous Election Petitions to be tried this autumn, as they decide most of the points of importance likely to arise. We have been requested to strike off an extra number of copies, for the convenience of the profession, which can be had from the publishers. As these cases will not appear elsewhere, an early application would be desirable. Some others will follow, and we shall continue, as heretofore, to make Election Reports a specialty of this Journal.

LAW SOCIETY.

Easter Term—37th Victoria.

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

Monday, 18th May.

The several gentlemen whose names are published in the usual lists were called to the Bar, received certificates of fitness, and were admitted as Students of the Laws.

The Treasurer reported the result of the Law School Examinations, as follows :

SENIOR CLASS.

				Maximum 1,000.
J. D. Lawson,	allowed	18	months,	870 Marks.
R. W. Evans,	"	18	"	851 "
John Bruce,	"	18	"	850 "
Alex. Ferguson,	"	12	"	799 "

All the above passed the Junior Class last year.

W. M. Hall,	allowed	6	months,	802 Marks.
G. A. Cooke,	"	6	"	795 "
M. E. O'Brien,	"	6	"	783 "
James Pearson,	"	6	"	765 "

JUNIOR CLASS.

		Maximum 1,000.
Matthew Wilson,	passed.	867 Marks
D. W. Clendenan,	"	847 "
R. Pearson,	"	834 "

Certified by President of Law School.

The Treasurer reported the result of the Intermediate Examinations.

The Report of the Examining Committee was read and adopted.

Mr. Evans was appointed Examiner for next Term, and his fees for this Term were ordered to be paid.

Ordered that any Student or Clerk passing the Law School, and being allowed any diminution of his period of Studentship or service thereon, shall also be allowed his final Examination in the Law School as an Intermediate Examination, and in lieu thereof.

Mr. Read gives notice for the last Friday in this Term, of a By-law to establish a Widows' and Orphans' Fund.

Saturday, 23rd May.

This being the day for the Election of Treasurer, according to the provisions of the Statute of Ontario, 34 Vict. cap 15, and no quorum being present, the Hon. J. H. Cameron, the present Treasurer, continues Treasurer, by law, for the ensuing year.

Friday, 5th June.

The Chairman of the Reporting Committee drew the attention of Convocation to the advisability of having the reports printed on better paper than that at present used.

Referred to the Finance Committee for their report on the Ways and Means in next Term.

Ordered that the Editor-in-Chief do cause certain Chamber reports, left unfinished by Mr. Cooper, to be printed.

Mr. E. G. Patterson's petition to be allowed his examination for certificate of fitness passed last Term, in advance of the expiration of his articles, which have eighteen months to run, was refused.

Mr. Read, pursuant to notice, introduced a by-law to make provision for the widows and orphans of members of the Society. Read a first time, and referred to a special committee of five members, to report next Term; such committee to consist of Messrs. McKenzie, McLennan, Martin, Vankoughnet, and Read.

Ordered that the order of Michaelmas Term, 1871, respecting Attorneys' Certificates, be rescinded, and that the Secretary shall provide a book to keep a record of the certificates taken out and the names of Attorneys who have not taken out certificates in this and each succeeding year, and that he lay before Convocation, on the first Tuesday of each Easter Term, a list of Attorneys who have not taken out certificates for the current year.

The Examining Committee for next Term will be Messrs. Read, Armour, Gamble, Vankoughnet, and Patton.

Sittings After Term.

Tuesday, 30th June.

On the application of Mr. John Wright, that Convocation would prescribe the examination to be passed by him, under the Statute, 37 Vict., ch. 103, enabling the Law Society to call him to the Bar:

Ordered that Mr. Wright may be admitted to the Bar on passing a *viva voce* examination before the Convocation, without any written examination by the Examiners.

J. Hillyard Cameron,
Treasurer.

*CURIÆ CANADENSES.**

In this age of the world, the number of facts which ought to be retained in the memory of any one who pretends to be educated is so enormous, that those who seek to convey information in an attractive guise, which makes the task of remembering less painful, are justly looked upon as benefactors of the human race. We certainly owe a great deal to those wise teachers who have attempted to "popularize" various branches of learning: to the scientists, metaphysicians, lawyers and theologians who have instituted the plan of dressing their subjects in the sprightly style which is essential to the modern magazine article. One of the most useful forms in which the desire to impart information to the many has taken shape, though by no means a novel one, is the clothing of dry and unromantic facts in the garb of poetry. There is little excuse for ignorance when the kings of England, the lengths of the months, the whole science of chemistry, nay even a portion of the laws of the land are reduced to poetry, which requires no effort to learn and remember. One of the most benevolent ideas ever conceived was that of Coleridge, who, sympathising keenly with the sufferings of youth in striving to master the Elements of Euclid, proposed to convert that useful work into verse. Unhappily the idea, like too many of that great man's ideas, was never carried into effect, and he has only left us a metrical version of the 1st Proposition of the 1st Book, to make us regret that the rest knew not the hand of the bard. What can be more admirable than this

* *Curiæ Canadenses;* or, The Canadian Law Courts: being a poem describing the several Courts of Law and Equity, which have been erected from time to time in the Canadas, with copious notes, explanatory and historical, and an appendix of much useful matter. By Plinius Secundus. Toronto: H. & W. Rowsell, King Street. 1843.

commingling of moral reflection with mathematical statement?

"The unanimous three,
CA and BC and AB,
All are equal, each to his brother,
Preserving the balance of power so true:
Ah! the like would the proud Autocratix* do!
At taxes impending not Britain would tremble,
Nor Prussia struggle her fear to dissemble," etc.

To keep to what concerns ourselves more especially, the purely legal, we know that Lord Coke did not disdain the aid of poetry to make his teachings generally acceptable. The popularity of his reports is said to have been much increased by the publication of a metrical abstract of the points determined, distinguished by the name of the plaintiff in each case. Thus:

"HUBBARD.—

If lord impose excessive fine,
The tenant safely payment may decline.
[4 Rep., 27.]

CAWDRY.—

'Gainst Common Prayer, if parson say
In sermon aught, bishop deprive him may."
[5 Rep., 1.]

The greatest judges, when at a loss for an authority in prose, have referred to an authority in verse in proof of the soundness of their law. Witness the quotation of Lord Mansfield in a libel case:

"Sir Philip well knows
That his innuendoes,
Will serve him no longer
In verse or in prose:
For twelve honest men have decided the cause,
Who are judges of fact, though not judges of laws."

According to Lord Campbell, however, he misquoted the last line.

We seriously commend to the attention of the authors of the new Canadian Digest, the merits of a metrical abstract such as that of Lord Coke's. We do not doubt their competence to give to the profession a poetical digest of the legal principles decided in the cases in conjunction with the prosaic one now issuing from the press. When such a scheme is carried out, we see for the lawyer of the future a flowery, instead of a thorny, path to the bench, the possibility, without travelling beyond his professional studies, of gaining a reputation in social circles as a saver of good things and a ready quoter of poetry, and in the courts the pleasure of listening to and taking part in such a feast of reason and a flow of soul as we sad apprentices can only dream of.

One of the best known of the rhyming descriptions of courts of law and their denizens is Christopher Anstey's "Pleader's Guide." Though it contains many hard hits at the law and lawyers, it also contains much accurate information as to the cumbrous procedure and technical rules of pleading of the last century. It was Anstey's poem which first suggested to the mind of "Plinius Secundus" to compose the work the name of which heads this article, and which is the occasion of the foregoing remarks. Probably few of our readers are familiar with "Curiæ Canadenses." It is spoken of in that valuable curiosity shop, in which are stored so many interesting relics of the past—"Toronto of Old." Through this book we first became aware of the fact that a poetical description of the Canadian law courts, as they were thirty years ago, was in existence. We immediately instituted a quest for this rare work; but search for a long time proved unavailing. Many obliging booksellers offered us Morgan's "Biographies of Celebrated Canadians," as the nearest they could come to it, but we explained gently that "Curiæ Canadenses" did not mean "Curious Canadians," and went on our way. By the kindness of the author of "Toronto of Old," we have procured a copy, and propose briefly to notice its contents, as one of the few archæological records of early legal affairs we have.

Those who hope to find in "Curiæ Canadenses" a lively sketch of the lead-

*Empress of Russia.

ing lawyers of thirty years ago, with little bits of gossip and anecdote, which though slight and common-place to the men of the day to which they relate, are so wonderfully interesting to their successors, will be, as we were, disappointed. In truth the interest of the work does not flow from its literary merit. It bears no resemblance to the famous *Rolliad*, from which Lord Campbell draws so many illustrations in his "Lives." Instead of this we have a catalogue of law courts and law officers, as matter of fact as the list of ships in the Iliad. The book is strictly what it professes to be, a description of "the several Courts of Law which have been erected from time to time in the Canadas, with copious notes, explanatory and historical, and an appendix of much useful matter." The notes and appendix are copious, and bear about the same proportion to the text as the notes in "Walkem on Conveyancing," bear to the original work. They contain, as the title promises, much useful information as to the judicial districts into which the Canadas were divided in 1843 (they were much more numerous in Upper Canada then than now), the various courts, the Acts by which they were constituted, their jurisdiction, their judges, and so forth. The book was published when public indignation on account of the "Rebellion" had not subsided, and when the same feeling prevailed in Toronto as when Charles Dickens visited the city and found the people "red-hot Tories." We are of course treated to an account of the rebellion, enlivened with a great many expressions of pious horror at the fiendish conduct of the "conspirators." Our author, though an English barrister, and but a short time resident in the country, was strongly tinctured with Canadian conservatism. We are proud to find that the law did its duty nobly in the trying emergencies of the time. In one place our author tells us:

"Sir Francis Bond Head immediately (i. e. on being apprised of the approach of the rebels) repaired to the City Hall, at the Market Square, where four thousand stand of arms and accoutrements were deposited. One of the first persons he met there was the Chief Justice Robinson, with a musket on his shoulder. He immediately ordered the arms to be unpacked and the alarm bell rung. Speedily he was joined by a whole host of gallant fellows, who were soon armed and provided with ammunition. They manned the windows of the City Hall and those of the houses opposite. Then the Lieutenant-Governor, having stationed one of his *aides-de-camp*, the Hon. Mr. Justice Jones, with a picquet of thirty men near the rebel post on Yonge Street, tranquilly waited for the morning."

We have no doubt the members of the bar eagerly followed the example so gallantly set by their judges. Lawyers, we make bold to say, are not excelled in loyalty by any class, and are never slow in the country's need to exchange their briefs for fire-arms. Every lawyer must recall with pride the gallantry displayed by our English forefathers when Buonaparte was threatening the shores of England. It was then the corps of volunteers, to which the epithet "Devil's Own" was first flatteringly applied, was formed in the Inns of Court, and it included in its ranks some of the most illustrious advocates that ever lived. It did not always follow that the finest legal talents were accompanied by equal military genius, for Mr. Law (Lord Ellenborough) was looked upon by drill-instructors as an incorrigible blockhead.

It would be unfair to omit the thrilling description which Plinius Secundus gives of the uprising of '37; though perhaps it was more appreciated by his contemporaries than it will be to-day.

"Anon MACKENZIE'S maddening zeal,
With fires, such as false patriots feel,
Unsheathes the steel and gives the word
To raise the fratricidal sword.
Colleagued with him stern PAPINEAU
Contrives the simultaneous blow.
They shrink not, till with flame unblest,
Fiercely blaze out both east and west;

And fiery musquets' deafening roars
Are heard throughout our hapless shores."

In this dreadful state of affairs, we can fancy that the peaceful pursuit of the law was considerably disturbed. The "fiery musquets' deafening roar" would have been as effectual to clear an office of students as a circus band is in these piping times of peace. Happily the lawyers were soon enabled to lay down their arms, and resume their less dangerous, if equally keen, contentions. With what feelings of satisfaction, the reward of duty manfully discharged, they must have exclaimed, "*Cedant arma togæ*," when

"Peace restored and discord o'er,
The volleying thunder ceased to roar,
And Canada the near and far
Emergéd from the din of war."

In the year 1842, just before the union of the Canadas, the legislature was transferred to Kingston, and thither also went the newly-created Court of Chancery. Neither legislature nor court took kindly to that respectable city, and the migration of the court and its return to its present seat are thus chronicled by our author:

"From fair Toronto's spire-clad plain
The court vice-regal, and its train
Of Lawyers, Benchers, Pleaders, all
To Kingston drag their judgment hall.
Yet here, the law perplexed, distressed
And wandering, Justice knew no rest.

"Her practice cramped and out of place,
Poor Chancery felt but ill at ease.
Backward again the vagrant strays,
The stony roads and wooden ways
Of old Toronto to regain—
Ne'er may she quit that soil again!

"Dreary and sad was Frontenac!
Thy Duke ne'er made a cleaner sack
Than when the edict to be gone
Issued from the vice-regal throne.
Exeunt omnes, helter-skelter,
To Little York again for shelter:

"Little no longer, York the New,
Of imports such can boast but few:
A goodly freight without all brag,
When comes, 'mongst others, Master Spragge
And skilful Turner, versed in pleading,
The Kingston exiles gently leading."

If we are not carried away by admiration of the poetical talent of Plinius Secundus, we can at least admire the enthusiasm with which he always speaks of the present centre of laws, learning and light in this Province, and echo the hope that nothing will prompt the Court of Chancery, or any other Court, to "quit this soil again." The author's grounds for his sanguine belief in a great future for Toronto are touched upon in a note, where he says:

"When Bouchette, the Surveyor-General, under the orders of Governor Simcoe, then residing at Niagara, surveyed, in 1793, York Harbour, the site of Toronto was a covey for wild fowl. Two Mississauga families were the only inhabitants, and when the Governor paid a visit in the following summer to determine on the future capital of Upper Canada, his residence was a canvas-covered dwelling. Now, in 1843, the population is estimated at 17,000; the census of 1841 was 14,249. You here behold a Governor's palace (!) supreme and other law courts, public offices, a college and university, banking and other companies, handsome streets lighted with gas, wharves, and a capacious harbour."

If Plinius Secundus yet lives and were suddenly set down amongst us to-day, we wonder if he would be able to find his way to Osgoode Hall.

We are reminded of some curious facts in the appendix to the poem. For instance, in the debate on the Chancery Bill, 3d of February 1837, in the House of Assembly, Mr. Gibson, apparently in a severely sarcastic mood, moved, seconded by Mr. McIntosh, that the solicitors and counsel in any cause in the said court should not be allowed *more than one-half of the property in dispute for the costs.* Lost! Yeas 11: nays 31. Mr. Prince, seconded by Mr. Gowan, moved the adoption of a schedule of fees in a suit for specific performance, to be used as a precedent, in which the total of costs reached the munificent sum of thirteen

pounds seventeen shillings and six pence. Carried. Yeas 27; nays 27. We read that a statute was passed in 1803 which recited that great inconvenience was felt "in several parts of this Province from the want of a sufficient number of persons duly authorized to practice the profession of the law," and empowered the Governor to admit *six* additional practitioners. Modern legislation has a different tendency, and it can hardly be said that now, as Plinius Secundus puts it with gentle irony, "Upper Canada enjoys an inadequate supply of lawyers." In 1823 the first Reporter to the Courts was appointed, whose duty it was to submit, on the first day of each term, a fair report of the decisions of the preceding term; which report, after due examamination and correction by the whole Court, was to be signed by all the Judges in open court. The gentleman who held the office first was Thomas Taylor, Esq., who was followed by Mr. Draper and Mr. Sherwood, and in 1843 the Reporter was Mr. John Hillyard Cameron. A specimen of the reported cases is preserved, it being assumed perhaps that "Curiæ Canadenses" would outlive the original volumes, in which the unaccommodating Doe, greatest and most litigious of landowners, complains of the lawless intrusions of the irrepressible Roe. We have said enough to show that the little book before us is not without its value to Canadian lawyers.

We even wish our author had been more garrulously inclined. There were many notable incidents which he must have seen or heard described in his time, which a chronicler of legal events might well have woven into his narrative. For instance, the famous prosecution of Robert Randall at Niagara for perjury; the action against the editor of the *Colonial Advocate* for libel, when that indomitable Scotchman defended himself successfully, in a speech of four hours' duration; or, at a later date, the trial of the adventurer Von Schultz and his associates, whose forlorn defence was undertaken by a fearless young advocate whose name, familiarly abbreviated into "John A.," has since become a household word. There are many events of this sort which, as yet, live only in the conversation of a few grey-headed men.

THE NEW DIGEST.

We have received, as doubtless have most of our readers, the first part of the new Digest, by Mr. Christopher Robinson and Mr. F. J. Joseph. To say that it is most welcome, scarcely expresses the delight which the hard-worked members of the profession will feel at its appearance. It had come to this, that the English, Irish, and American Reports were practically more accessible than our own. Mr. Robinson and Mr. Joseph "have changed all that," (at least as far as the middle of the letter A.) Our crowded columns this month prevent our referring at any length to this new Digest, and at present we shall only request those gentlemen, to whom the long vacation must be as useless for recreative purposes it is to ourselves, to let us have the rest of the parts as fast as the printer can work them off.

SELECTIONS.

CARELESS TEXT BOOKS.

During the discussion in the Court of Queen's Bench, as to the power of the court to adjourn a criminal trial for the purpose of obtaining further evidence, one of the judges read the following passage from "Archbold's Criminal Pleading," (p. 145, 14th sect.) "*Adjournment of Trial.*—Where the witnesses for the prosecution have all been examined, the judge may order the court to be adjourned, and direct another trial to be proceeded with in order to give time for the production of a thing essential to the proof de-

posited at a distance: *R.* v. *Wenborn*, 6 Jurist, 267. And on a trial for murder before Maule, J., at York, 1848, after the opening address of the counsel, it was discovered that in consequence of the detention of the railway train, the witnesses for the prosecution had not arrived in the city, the trial was adjourned, the jury was locked up, a fresh jury was called into the box, and another case was proceeded with:" *R.* v. *Foster*, 3 C. & K., 201. Now, will it be believed that in neither of these cases was there any adjournment at all; but merely a temporary suspension of the trial for an hour or two; the prisoner being carefully kept in the dock in order to mark more clearly that there was no adjournment, but that the trial was still going on; all the judges being of opinion that there could be no adjournment for such purpose, and no adjournment having ever taken place in a criminal trial, except for necessary rest, and from actual physical necessity. In the one case the trial was suspended for an hour or two while a document, accidentally left behind in the assize town, was being fetched; and in the other case the same course was taken to allow time for the arrival of a witness accidentally delayed by the lateness of a railway train. In both cases there was a very "brief" suspension of the trial on account of *an accident*, and in no other case was there any at all. In a note to the report in the "Jurist" attention is called to this, and it is stated that the same course is frequently taken at the Old Bailey. So that even although there was no adjournment, the propriety of a suspension of a trial was doubted, and Mr. Justice Willes and Mr. Justice Wightman denied it. (*Re Tempest*, 1 Foster and Finlason; *Re Fitzgerald*, 3 Foster and Finlason); and it was even denied in civil cases, prior to the Common Law Procedure Act, 1854 (*vide* Finlason's Common Law Procedure Acts). Yet we have it stated, in "Archibald's Criminal Practice," edited by Welsby, that it was settled law that a criminal trial might be adjourned in order to obtain evidence, whereas all the authorities clearly show that a trial could not be adjourned, and could only be suspended for a portion of a day, on account of accident, and that even this was always doubted. This is the way in which text books are edited, even those which bear the names of eminent men. The truth is, however, that such men are often those who have no time to edit books, and have to leave the editing to pupils or young assistants. Thus it was with men like the late Mr. Welsby, whose practice was enormous, and could not afford time to edit books. The publishers got a great name, and that was enough to secure the book a good sale, but in truth the book was edited by some young man who did not know enough of law to know the distinction between a suspension of a trial and an adjournment, and so he abstracted the case according to his own erroneous ideas upon the subject. This is how an enormous quantity of loose or bad law gets into the minds of men, and when it is once in their minds it is difficult to get it out of them, and this bad law gets at last confirmed from the bench. —*The Law Magazine.*

CORPORATIONS AND SUBPŒNA DUCES TECUM.

It is an old saying that a corporation has neither soul nor conscience, and now it appears to have other advantages besides these over private persons. Apparently it enjoys the privilege of defying even a *subpœna duces tecum*, one of the most formidable processes with which the law of England has armed the courts of law and equity. In the celebrated case of *Amey* v. *Long*, 9 East. 472, Lord Ellenborough, in delivering the unanimous judgment of the Court of Queen's Bench, repudiated the argument advanced by Sir Vicary Gibbs and Garrow, that that which is commonly called a writ of *subpœna duces tecum* was not of compulsory obligation in the law. Lord Ellenborough then said:—"The right to resort to means competent to compel the production of written as well as oral testimony seems essential to the very existence and constitution of a Court of Common Law, which receives and acts upon both descriptions of evidence, and could not possibly proceed with due effect without them. And it is not possible to conceive that such courts should have immemorially continued to act upon both, without great and notorious impediments having occurred, if they had been furnished with no better means of obtaining

written evidence than what the immediate custody and possession of the party who was interested in the production of it, or the voluntary favour of those in whose custody the required instruments might happen to be, afforded." His Lordship then proceeded to say that a witness served with such a subpœna ought to attend with the documents, and the judge at Nisi Prius ought, upon the principles of reason and equity, to decide whether production should be required, and whether the party withholding it should be attached. Now, in *Crowther* v. *Appleby*, reported in the current number of our Reports (43 Law J. Rep. N. S .C. P. 7), the Court decided that it ought not to attach the secretary to a railway company, who attends in obedience to such a subpœna, but refuses to produce documents on the ground that the directors have ordered him as their servant not to do so. No doubt it is an absurd dilemma for a servant to be on the one hand sent to prison if he does not produce a document, and on the other to be turned out of his situation by his master if he does. But equally would it be unjust if a corporation could defeat a litigant by the simple device of withholding documents essential to the proof of a cause. A statute allowing service of such a subpœna on a company, in the same way as a writ of summons is now served, and visiting the company with fine for neglecting to send the documents by a proper agent, might be useful. Meanwhile the best device is to serve *subpœna duces tecum* on all the directors, and on all such officials as the manager and secretary, and leave it to them to satisfy the Court that they have prohibited each other all round from obeying the process.—*The Law Journal.*

An Injunction was granted in *Raggett* v. *Findlater*, L. R. 17 Eq. 29, to restrain the defendant from using upon their labels the words "nourishing stout," which had been used by the plaintiff on their labels as a trade-mark, refused, on the ground that "nourishing" was a mere English adjective denoting the quality of the stout.

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

[Before Hon. W. B. Richards, Chief Justice of Ontario; Hon. J. G. Spragge, Chancellor; and Hon. I. H Hagarty, Chief Justice of the Common Pleas.

(*Reported by* Henry O'Brien, *Esq., Barrister-at-Law.*)

North Victoria Election Petition.

Hector Cameron, *Petitioner*; v. James Mac-Lennan, *Respondent.*

Dominion Elections Act, 1874, *not retrospective—When candidate disqualified as a petitioner—Assessment roll—Qualification of voters—Preliminary objections to bribery, treating, undue influence and travelling expenses—Bribery—Mistakes in voters' lists, &c—Report of Judges, to Speaker.*

Held. 1. That by the Dominion Election Act of 1873, the qualification of voters to the House of Commons was regulated by the Ontario Act.

2. That the Dominion Election Act of 1874 does not affect the rights of parties in pending proceedings, which must be decided according to the law as it existed before the passing of that Act; sec. 20 of that Act referring to candidates at some future election.

3. That a candidate may be a petitioner, although his property qualification be defective, if it was not demanded of him at the time of his election. If he claims the seat, his want of qualification may be urged against his being seated, but he may still show that the respondent was not duly elected, if he so charge in his petition.

4. The assessment roll is conclusive as to the amount of the assessment; but the mere fact of the name of a person being on the roll is not conclusive as to his right to vote. The returning officer is bound to to record the vote if the person take the oath, but that is not conclusive.

5. The effect of sec. 20 of Controv. Election Act of 1873, as to the report of Election Judges to the Speaker considered.

6. On a petitioner claiming the seat on a scrutiny, the

Court declined on a preliminary objection to strike out a clause in the petition, which claimed that the votes of persons guilty of bribery, treating and undue influence should be struck off the poll. The giver of a bribe, as well as the receiver, may be indicted for bribery; but, *Quære* as to the effect on their votes respectively under the present state of the law.

7. A petitioner claiming the seat on a scrutiny may show, as to votes polled for his opponent: (1) That the voter was not 21 years of age, (2) That he was not a subject of Her Majesty by birth or naturalization. (3) That he was otherwise by law prevented from voting, and (4) That he was not actually and *bona fide* the owner, tenant, or occupant of the real property in respect of which he is assessed.

8. The Court declined, in the present state of the law, to exclude enquiry as to the payment of travelling expenses of persons going to and returning from the poll, inasmuch as the same might amount to bribery.

9. Mistakes in copying the voters' lists should not deprive a legally qualified voter of his vote, (though the returning officer might properly refuse to receive it,) any more than the name of an unqualified voter being on the list would give him a right to vote. But the mere fact that the lists were not correct alphabetical lists, or had not the correct number of the lot, or were not properly certified, or the omitting to do some act as to which the statute is directory, is no ground for setting aside an election, unless some injury resulted from the omission.

[Election Court—June 26, July 16, 1874.]

The petition filed in this case was as follows:

"The petition of Hector Cameron, of the City of Toronto, &c.

1. Your petitioner is a person who was duly qualified to vote at the above election, and who claims to have had a right to be returned or elected at the above election, and who was a candidate thereat.

2. And your petitioner states that the election was holden on the 22nd day of January, A. D. 1874, when the nomination took place, and on the 29th day of January, A. D. 1874, when the poll was held, and when James Maclennan and your petitioner were candidates, and the returning officer returned the said James Maclennan as being duly elected.

3. And your petitioner says that the said James Maclennan was by himself and other persons on his behalf guilty of bribery, treating and undue influence before, during and after the said election, whereby he was and is incapacitated from serving in Parliament for the said electoral district, and the said election and return of the said James Maclennan were and are wholly null and void.

4. And your petitioner further says that many persons voted at the said election, and were reckoned upon the poll for the said James Maclennan, who were guilty of bribery, treating or under influence, and who were bribed, treated or unduly influenced to vote thereat for the said James Maclennan, and that the votes of all such persons were null and void, and ought now to be struck off the poll.

5. And your petitioner further says that many persons were admitted to vote and did vote at the said election for the said James Maclennan, who were not entitled to vote thereat or to have their names retained or inserted on the voters' lists for the said electoral division, by reason of their not being qualified in respect of property, occupation or value, or whose qualification was for other causes insufficient, or who were respectively subject to legal incapacity or were prohibited by law from voting, or were not subjects of Her Majesty by birth or naturalization, and such votes ought now to be struck off the poll.

6. And your petitioner further says that certain persons whose names appear on the voters' lists voted twice at the said election in favor of the said James Maclennan, and that persons personated and voted as and for certain electors whose names appear on the voters' lists but who did not themselves vote, and certain other persons not named on the voters' lists were allowed to vote and did vote for the said James Maclennan; and that the votes so recorded ought now to be struck off the poll.

7. And your petitioner further says that the poll books at the said election were and are incorrectly made up and cast, and the votes recorded therein incorrectly entered according to the votes given to the poll clerks, and ought now to be revised and corrected.

8. And your petitioner further states that many persons who had hired their horses, sleighs and carriages to the said James Maclennan and to his agents for the purpose of carrying electors to and from the polling places at the said election, voted for the said James Maclennan at the said election, and were reckoned on the poll for him; and that the travelling and other expenses of many persons in going to and returning from the said election, and who

voted for the said James Maclennan, were paid by the said James Maclennan or by his agents, and that the votes of all such persons were and are void, and should be struck off the said poll.

9. And your petitioner further says that many persons whose names appeared upon the voters' lists, but who were not possessed of such property qualification as would enable them to vote at the said election, and who were fraudulently and colorably assessed upon the assessment rolls of the several municipalities of the said electoral division, voted for the said James Maclennan, and that the votes of all such persons were and are void, and should be struck off the poll.

10. And your petitioner further states that the voters' lists used by the several deputy returning officers at the said election were not correct alphabetical lists of all persons entitled to vote at the said election, within the several municipalities, or sub-divisions, or wards thereof, together with the number of the lot, or part of a lot, or other description of the real property in respect of which each of them was so qualified; nor were such voters' lists duly certified according to the statute in that behalf, but the names of divers persons not properly entitled to vote at the said election, and who voted for the said James Maclennan, were improperly inserted in such voters' lists, and ought to be struck off the poll, and the names of divers persons who were properly entitled to vote thereat, and who tendered their votes for your petitioner, were omitted from the said voters' lists, and ought to be added to the poll.

11. And your petitioner further states that the several deputy returning officers improperly rejected and refused to receive the votes of divers persons who were entitled to vote at the said election, and who tendered their votes thereat for your petitioner, and that such votes ought to be added to the poll.

12. And your petitioner further states that the polling sub-divisions or wards in the said electoral district were not the same as those used at the last preceding election of members of the Legislative Assembly, and that the polling places for each of the sub-divisions, or wards, were not provided in the most central and convenient place for the electors of such sub-divisions, or wards, nor was public and sufficient notice given, by proclamation or otherwise, of the said polling sub-divisions, and of the places appointed for holding the said poll, and that the polling sub-divisions at the said election were not established according to law.

13. And your petitioner further states that the said James Maclennan obtained an apparent and colorable majority over your petitioner, whereas, in truth and in fact, your petitioner had a majority of votes of the electors of said electoral district, who voted at the said election, and who were at the time thereof duly qualified by law to vote, and was duly elected as a member to serve in Parliament for the said electoral district.

Wherefore, your petitioner prays that it may be determined that the said James Maclennan was not duly elected or returned, and that his election and return were, and are, wholly null and void, and that your petitioner, the said Hector Cameron, was duly elected, and ought to have been returned."

The following were the preliminary objections presented by the respondent:

1. The respondent objects to the said petition on the ground that at the time of the said election the said Hector Cameron was not legally or equitably seized as of freehold for his own use and benefit of lands and tenements held in free and common soccage, within that part of the Dominion of Canada formerly known as the Province of Canada, and now constituting the Province of Ontario and Quebec, of the value of five hundred pounds sterling money of Great Britain, over and above all rents, charges, mortgages and incumbrances, charged upon, due and payable out of or affecting the same, nor was he seized or possessed for his own use and benefit of lands and tenements held in fief, or in *roture*, within that part of the Dominion of Canada formerly known as the Province of Canada, and now constituting the Province of Ontario and Quebec, of the value of five hundred pounds sterling money of Great Britain, over and above all rents, charges, mortgages and incumbrances, charged upon, due and payable out of or affecting the same, by reason whereof the said Hector Cameron had and has no status to be elected or serve as a member of the House of Commons for the said electorial division, and that the said Hector Cameron was not duly qualified to vote at the said election.

2. The respondent objects to the third paragraph of the said petition, on the ground that even if the fact were that the respondent was by himself or other persons, on his behalf, guilty of treating and undue influence, as alleged, such

acts would not incapacitate him from serving in Parliament for the said electoral district, nor render the said election and return of the respondent null and void.

3. The respondent objects to the fourth paragraph of the said petition, on the ground that even if the fact were as stated, such fact is not sufficient to render the said votes null and void, or to entitle the petitioner to have the same struck off the poll.

4. The respondent objects to the fifth paragraph of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to entitle the petitioner to have such votes struck off the poll, or in any event would not prevent such persons voting at the said election.

5. The respondent objects to the seventh paragraph of the said petition, on the ground that even if the fact were as stated, such facts are not sufficient to render the election or return of the respondent null and void, or to entitle the petitioner to be declared duly elected and returned. [This objection was abandoned].

6. The respondent objects to the latter part of the eighth paragraph of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to render the election or return of the respondent null and void, or to entitle the petitioner to have the said votes declared null and void.

7. The respondent objects to the tenth paragraph of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to render the election or return of the respondent null and void, or to entitle the petitioner to be declared duly elected and returned.

8. The respondent objects to the twelfth paragraph of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to render the election of return of the respondent null and void, or to entitle the petitioner to be declared duly elected and returned."

A summons being taken out to set aside the preliminary objections,

The Attorney General, (*Bethune* with him), for the respondent, supported them.

Osler, for the petitioner, *contra*.

Richards, C.J., delivered the judgment of the Court.

Section 41 of the British North America Act, 1867, enacts that, until the Parliament of Canada otherwise provides, all laws in force in the several Provinces of the Union, relative (amongst other matters) to the following: The qualifications and disqualifications of persons to be elected or to sit or vote as members of the House of Assembly, or Legislative Assembly in the several Provinces, the voters at elections of such members, the oaths to be taken by voters, the returning officers and their duties, the proceedings at elections, etc., shall respectively apply to elections of members to serve in the House of Commons for the same several provinces. Then, by a proviso, special provision is made that in Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject aged 21 years or upwards, being a householder, shall have a vote.

Under Imperial Statutes 3 & 4 Vict., cap. 35, sec. 28, it was provided that "No person shall be capable of being elected a member of the Legislative Assembly of the Province of Canada who shall not be legally or equitably seized as of freehold for his own use and benefit of lands or tenements held in free and common soccage, or seized or possessed for his own use and benefit of lands or tenements held in fief or in *roture*, within the said Province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, charges, mortgages, and incumbrances charged upon and due and payable out of or affecting the same; and every *candidate*, at such election, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration":

Sec. 36, Con. Stat. of Canada, cap. 6, recites that under the 28th section of the Union Act every candidate shall, if required, make the following declaration:

"I, A B, do declare and testify that I am duly seized at law or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage (or duly seized or possessed for my own use and benefit of lands or tenements held in *fief* or in *roture* as the case may be), in the Province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, mortgages, charges and incumbrances charged upon or due and payable out of or affecting the same, and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the Province of Canada."

The section then proceeds to enact that

every such candidate, when *personally* required as aforesaid to make the declaration, shall, before he shall be elected, give and insert at the foot of the declaration required of him a correct description of the lands or tenements on which he claims to be qualified according to law to be elected, and their local situation, by adding immediately after the word "Canada," which is the last word in the said declaration, the words "And I further declare the lands or tenements aforesaid consist of," &c.

Under both the Union Act and the consolidated statute, wilfully false statements in relation to the qualification make the party guilty of a misdemeanor, and liable to the pains and punishment incurred by persons guilty of wilful and corrupt perjury.

Sec. 37 of Con. Stat. enables a candidate to make the declaration voluntarily before as well as after the date of the writ of election.

Sub-sec. 2. "No such declaration, when any candidate is required to make the same by any other candidate, or by any elector, or by the returning officer, above provided, need be so made by such candidate unless the same has been personally required of him on or before the day of nomination of candidates at such election, *and before a poll has been granted*, and unless he has not already made the same voluntarily, as he is hereinabove allowed to do, *and not in any other* case; and when any such declaration has been so required according to law, the candidate called upon to make the same may do so at any time during such election; provided it be made before the proclamation to be made by the returning officer at the close of the election of the person or persons elected at such election."

Sub-sec. 3, allows the declaration to be made before the returning officer, or a J. P., who shall attest the same by writing at the foot the words "taken and acknowledged before me," etc., or words to the like effect, and by dating and signing the attestation.

Sub-sec. 4. When a candidate delivers or causes to be delivered such declaration so made and attested to the returning officer at any time before the proclamation made by him at the close of the election, he shall be deemed to have complied with the law to all intents and purposes.

The intention of the Imperial Legislature seems to have been to make the same qualification as to property necessary to qualify a candidate for the House of Commons, here in Ontario (Upper Canada,) as was necessary to qualify him to be elected a member of the House of Assembly of the then Province of Canada. Of course the latter part of the declaration, where it alleged that the qualification was not colorably obtained to qualify him to be returned a member of the "Legislative Assembly of the Province of Canada," could not apply in the same words; the intention being that he should declare that he had not obtained the qualification colorably to qualify him to be elected "a member of the House of Commons of the Dominion of Canada." The intention seems plain and undoubted. There is also another difficulty in literally complying with the terms of the Con. Stat. cap. 6, as to the declaration being delivered to the returning officer at any time *before the proclamation* made by him at the closing of the election, no such proclamation being required under the election law as it then stood. By 29 & 30 Vict. cap. 13, sec. 10, no day was to be fixed for the closing the election, nor any proclamation of the candidate elected. Nevertheless, if the candidate made the declaration and delivered it to the returning officer before the polling was closed, and probably before the returning officer had made his return to the Clerk of the Crown in Chancery, of the total number of votes taken for each candidate, it would have been in time. Though the terms of the Consolidated Act could not be literally complied with, it could in substance. We are not, therefore, prepared to say that by the alteration in the law referred to there has been such a change effected that no property qualification was required by a candidate to be elected for the House of Commons at the time the election was held.

If the candidate who now seeks the seat was not qualified under the statute to be elected, I take it for granted that the respondent will show that, under the 54th section of the Controverted Elections Act of 1873. It does not follow from this, however, that he may not be a good petitioner. Before the Grenville Act, 10 Geo. 3, cap. 16, there was a difficulty as to the person who could be a petitioner, and his qualification as an elector was often attacked, but that statute provided that any person claiming to vote, or who claimed to be returned, might present a petition complaining of an undue election, under the Imp. Statute, 31 & 32 Vict. cap. 125 (from which our Acts are copied). It is provided by sec. 5, that a petition complaining of an undue return, or undue election of a member to serve in Parliament, may be presented to the court by any one or more of the following persons:—

1. Some person who voted, or who had a right

to vote at the election to which the petition relates, or

2. Some person claiming to have a right to be returned or elected at such election, or

3. Some person alleging himself to have been a candidate at such election.

Under the Dominion Act of 1873, cap. 28, sec. 10, a petition complaining of an undue return, or undue election of a member, or of no return, or a double return, may be presented to the election court

1. By *some person* who was *duly qualified* to vote at the election to which the petition relates, or

2 & 3. Are in the very words of the Imperial Act.

Now, here the petitioner was a candidate, and claims to have a right to be elected and returned at the said election.

We have been referred to the *Honiton Case*, 3 Lud. 163, 165, (1782,) where it was decided that M's. election, having been declared void, by a committee, on the ground of bribery, and he stood on the vacancy, and being unsuccessful, petitioned against the return of his opponent, it was objected that as he could not legally be a candidate, he could not petition. The committee resolved that the said M. was not eligible to fill the vacancy occasioned by the said resolution. He was, therefore, not permitted to proceed. It is not very clear if a new election was prayed for, or that the return of the sitting member might be declared void. There were electors who were petitioners, and their petition was tried as to the charges of bribery, which were decided in favor of the sitting member.

In the *Taunton Case*, Feb., 1831, (referred to in Wolferstan's Law of Elections, at p. 8, and Perry and Knapp's Election Cases, 169, note), the objection that petitioner could not proceed, because the sitting member was prepared to prove bribery against him, was over-ruled.

In the *Penryn Case*, P. & K., 169 n, the petitioner had refused to take the qualification oath, when called upon. The committee held that, not having complied with the necessary provisions to give him the character of a candidate, he had no title to petition: *Sandwich* v *Great Grimsby*, ib.; Roe on Elections 2 ed., 2 vol., 123; Rogers on Elections, 10 ed., 410.

But a person alleging himself to be a candidate is entitled *prima facie* to petition, unless his disqualification is obvious and incontestable: *Londonderry Case*, W. & B., 214, (1860.)

It is no objection to the petition of electors being proceeded with, that their candidate is disqualified: *Colchester*, 3 Lud., 166, unless, *semble*, the petition *only* claims the seat for the candidate on the ground that he had the majority of legal votes.

In Wolferstan's book at p. 5, referring to the petitioner under the English Act, as to a person who voted, or had a right to vote at the election to which the petition relates, the author says, that this means those who rightfully voted, or whose qualification on the register, whether they voted or not, was unimpeachable *at the time of the election: Lisburn Case*, W. & Br., 222, decided under secs. 11 & 12 Vict., cap. 98. The words of 31, 32 Vict., cap. 125, are identical: *Cheltenham Case*, W. & B., 63.

Under the statutes previous to 11 & 12 Vict. cap. 98, any one claiming in his petition to have had a right to vote at the election might petition. But under that state of the law committees allowed the sitting members to show that the petitioners had not the right they claimed: *North Cheshire Case*, 1 P. R. & D., 214; *Berwick Case*, 30th June, 1820; *Contra*, *Harwich Case* 1 P. R. & D., 73, and *Aylesbury Case*, ibid. 81.

In the second edition of the Law of Elections, by Leigh & LeMarchant, at p. 108, it is stated, "Although the words of the Act say one or more, it is prudent, provided the petition be presented by electors, to include some larger number as petitioners, in case an objection should be taken that though they had voted they had no right to vote at the election. Care should also be taken that all the petitioners should as far as possible be voters whose votes could not be impeached. If the petition is presented by a candidate, it means by any person elected to serve in Parliament at an election, or any person who has been nominated as, or declared himself a candidate at an election."

These proceedings on election petitions are not now considered as matters in which the parties to them are alone interested. To use the language of Bovill, C. J., in *Waygood* v. *James*, (*Taunton Case*) L. R. 4 C. P. 365: "The enquiry is one not as between party and party, but one affecting the rights of the electors, the persons who are or may be members or candidates, and the House of Commons itself." And in the *Brecon Case*, 2 O'M. & H. 34, Mr. Justice Byles said, "the petitioner being a trustee for the whole body of the voters for the borough, and for the public generally, cannot withdraw unless he complies with the provision of the statute." Under the statute, the proceedings are not simply served on the sitting

members, but a copy of the petition is sent to the returning officer, and he is required to publish the same, so that when a petition is presented it is known who the petitioner is, and if he is a candidate that is known throughout the electoral district. If he represents himself as a voter duly qualified to vote at the said election, on looking at the rolls and voters' lists, it there appears, if he was duly qualified to vote as he claims. On turning to the statute, any person interested in the election sees it plainly stated that a candidate or voter, duly qualified to vote at the election, may petition. Under such circumstances, all persons interested in the matter would assume that the petition would go on. The special provisions in the Act to guard against a collusive withdrawal of the petition would all induce an interested elector to suppose when a petition was presented by a candidate, or a voter duly qualified to vote at the election, that nothing could be urged against the enquiry being proceeded with.

It is objected against the petition that the petitioner did not possess the necessary qualification to be a candidate. He was a candidate, in fact. His right to be such is only now questioned; and, unless there is some case (binding on us) which expressly holds that if the preliminary enquiry establishes the fact that the candidate was not qualified, therefore he has no *locus standi* to show that the sitting member is not duly elected, we think we ought not to stay the enquiry as to the respondent's right to hold the seat.

The decision of committees to which we have referred are not uniform, or we might be bound by them under section 33 of the Dominion Act. There has been no case cited on this point that has been decided since the new Act came in force in England, that holds that if the petitioner is disqualified as a candidate, that the enquiry cannot be pursued. In the last edition of Leigh & LeMarchant's Law of Elections, at page 76, referring to the practice, it is stated, "The general charges would usually be gone into first by the petitioner, and, at the close of his case, the respondent's counsel proceeds not only to answer the charges against the respondent. but to open counter charges against the petitioner, (that must be when he is a candidate). If the petitioner is disqualified, a scrutiny of votes may still take place for the purpose of showing that the respondent has not really a majority of legal votes, even though the respondent is declared not to have been guilty of corrupt practices; and the following language of Baron Martin is quoted: The question in the scrutiny would be which of these gentlemen had the majority of legal votes, and assuming the petitioner to have been personally incapacitated, that would not have affected the votes of the persons who gave their votes for him, they being ignorant of it. They would be perfectly good votes, and the persons who were the supporters of the petitioner would have a right to have it determined whether or not the respondent was sent to Parliament by a legal majority:" *York, West Riding, Southern Division*, 1 O'M. & H., 214

The language of Willes, J., as follows, is also cited, "Against any member, therefore, who is elected in the first instance, any one directly interested may petition. If the petitioner does not claim the seat, there is no recrimination allowed; but if the petitioner does claim it, the respondent is entitled to protect himself, and, before the scrutiny, prove a recriminatory case, and show that the election of the other candidate could not stand. It is true that even if he proves it *the petitioner may still go into the scrutiny to turn out the sitting member.*" *Waygood* v. *James, (Taunton Case)*, L. R. 4 C. P. 368.

In the *Norwich case*, as reported in 19 L. T. Rep. N. S. 620, it was urged that as the sitting member had been unseated for bribery by his agents, he had no further interest, and had no *locus standi*. Martin, B. said, "Is not the sitting member a respondent in respect of every matter that you charge in your petition and in respect of every claim you make in your petition, and has he not a right as *having been a candidate*, though he may be unable to protect his own seat, to show that you are not entitled to it?"

We think the weight of reason and authority is in favour of allowing a candidate to be a petitioner under the statute, though his property qualification may be defective, if it was not demanded of him at the time of his election. If he claims the seat, his want of qualification may be urged against his being seated; but he may still show that the respondent was not duly elected if he so charges in his petition.

By section 20 of the Dominion Act of the last session of Parliament, respecting the election of members of the House of Commons, it is provided that from and after the passing of this Act, no qualification in real estate shall be required of any candidate for a seat in the House of Commons of Canada, any statute or law to the contrary notwithstanding; but such

candidate shall be either a natural born subject of the Queen, or a subject of the Queen, naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, New Brunswick, Manitoba, British Columbia, or Prince Edward Island, or of this Parliament.

By section 134, it is enacted that the Act passed by the Parliament of Canada in the 36th year of Her Majesty's reign, intituled, "*An Act to make temporary provision for the election of members to serve in the House of Commons,*" is hereby repealed, except only as to elections held, rights acquired, or liabilities incurred before the coming into force of this Act; and no enactment or provision contained in any Act, of the Legislature of the late Province of Canada, or of any of the Provinces now composing the Dominion of Canada, respecting the election of members of the Elective House of the Legislature of any such Province shall apply to any election of a member or members of the House of Commons held *after the passing of this* Act, except only such enactments and provisions as may be in force in such Province at the time of such last mentioned election, relating to the qualification of electors and the formation of voters' lists, which will apply for like purposes to elections of members of the House of Commons as provided by this Act. By section 135, it is provided that this Act shall come into force on the first day of July next after the passing thereof.

Where proceedings have been taken before the passing of the Act referred to, to set aside the election of a member for want of the property qualification required by law at the time the election took place, can the 20th section of the Act above quoted be successfully invoked to aid the unqualified candidate, and destroy the rights of the petitioners?

If proceedings in the Election Court are to be analogous to suits in other Courts, then the rights of the parties ought to be decided according to the law as it stood before it was repealed. No doubt there may be cases where persons may be deprived of rights and remedies which they had when the actions were commenced, by the effect of some Act of Parliament. But then it ought to appear that such was the intention of the Legislature in passing the Act, or that such result was the natural and proper one to flow from the Act itself. The intention seems to be, by the 134th section, that the Act in force at the time the elections took place should not be repealed as to elections held, rights acquired, or liabilities incurred before the coming into force of that Act. It also refers to certain enactments which should not apply to any election of a member of the House of Commons *held after the passing of the Act.* The obvious intention of the Legislature seems to have been that which would be considered reasonable, viz., that as to the elections held before the passage of the Act, the law then in force should prevail, whilst as to elections after the passing of the Act the new law should be acted on, and govern the rights of the parties.

Under the Dominion Stat., 31 Vict. cap. 1, the Interpretation Act, in relation to the construction of Acts of the Parliament of Canada, it is provided by sec. 7, sub-sec. 35, that "When any Act is repealed, wholly or in part, and other provisions substituted, all officers, persons, bodies politic or corporate acting under the old law shall continue to act as if appointed to act under the new law, until others are appointed in their stead; and all proceedings taken under the old law shall be taken up and continued under the new law, when not inconsistent therewith; and all penalties and forfeitures may be recovered, and *all proceedings had in relation to matters which have happened before the repeal, in the same manner as if the law were still* in force, pursuing the new provisions so far as they can be adapted to the old law."

Sub-sec. 36. "The repeal of an Act at any time shall not affect any act done, or any right or right of action existing, accruing, accrued or established, or any proceedings commenced in a civil cause before the time when such repeal shall take effect, but the proceedings in such case shall be conformable, when necessary, to the repealing Act."

Sub-sec. 37. 'No offence committed, and no penalty or forfeiture incurred, and no proceedings pending under any Act at any time repealed, shall be affected by the repeal, except that the proceedings shall be conformable, when necessary, to the repealing Act; and that when any penalty, forfeiture or punishment shall have been mitigated by any of the provisions of the repealing Act, such provisions shall be extended and applied to any judgment to be pronounced after such repeal."

The section as to the property qualification does not come into force by repeal of the Act of 1873, under which this election was held, but by its own affirmative power, declaring *that after the passing* of the Act no qualification should

be required of a *candidate* for a seat in the House of Commons of Canada. The petitioner here became a candidate before the Act in question was passed, and the election which he is contesting was held, and the respondent was returned as a member, before the Act in question was introduced. The fair and reasonable interpretation of the meaning of the Legislature is, that the 20th section refers to candidates for a seat at some future election, not to candidates when the election had taken place, and when what is to be done in relation to them is to correct the errors and mistakes then made.

The proper view to take, we think, looking at the statute itself the Interpretation Act, and the general rules applicable to the construction of statutes, is that the Legislature did not intend to affect the rights of parties in pending proceedings, but that they should be decided as the law existed before the passage of the Act referred to.

We have already stated what we think the law was on the subject of the property qualification necessary to be possessed by candidates to qualify them to be elected, when the election in question took place.

As to the objection to the charge of treating and undue influence alleged in the third paragraph of the petition in connection with bribery, if the treating were to such an extent as to amount to bribery, and the undue influence was of a character to affect the whole election without referring to any statutory provisions, it would by the law of Parliament, I apprehend, influence the result.

The first principle of Parliamentary law, as applicable to elections, is that they must be *free*, and if treating and undue influence were carried to an extent to render the election *not free*, then the election would be void. The following observations apply generally to votes that may be influenced by treating, etc. A vote influenced by treating was bad before the statute, and is bad now. Under the statute it would seem necessary to show not only that the entertainment was corruptly received by the voter, but that it was corruptly given by the candidate ; but as proof of the former would invalidate the vote at common law, it is unnecessary to add proof of the latter.

The 23d section of the Corrupt Practices Act of 1854, (Imp.) which declares the giving of entertainments to voters on the polling and nomination days to be illegal, says nothing as to the effect upon the votes given. For this, therefore, resort must be again had to the common law of Parliament; and the question will be as heretofore, whether the vote was influenced by the result of the entertainment or not.

A vote unduly influenced, is, as will be seen, a bad vote by the Common Law of Parliament. Rogers on Elections, 10 Ed., p. 536.

It is very embarassing to carry out the Dominion Controverted Election Act of 1873, owing to the fact that we have no Corrupt Practices Prevention Act applicable to Dominion elections, which contains all of the provisions of the Imperial Act of 17 & 18 Vict. cap. 102, and that the Dominion Act of 1873 omits the 43d and 44th sections, which are contained in the Parliamentary Elections Act of 1868, Imp. Stat. 31 & 32 Vict., cap. 125, from which the Dominion Act was undoubtedly framed. These sections, with some in the Corrupt Practices Act, have a very important bearing on the questions which may come before the election judges.

Under the 43d section, when it is found by the report of the Judge upon an election petition under the Act that bribery has been committed by, or with the knowledge and consent of, any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to, and of sitting in, the House of Commons during the seven years next after the date of his being found guilty, and he shall be further incapable, during the said seven years, of holding office, etc.

The 44th section makes his election void if he employs any person as his agent who has been found guilty of any corrupt practice, or reported guilty of any corrupt practice by a Committee of the House of Commons, or the report of a Judge on an election petition under the Act, or a report of Commissioners appointed under cap. 57, 15 & 16 Vict.

Under the 45th section, any person other than a candidate found guilty of bribery in any proceeding in which, after notice of the charge, he has had an opportunity of being heard, shall, during the next seven years after the time he has so been found guilty, be incapable of being elected or sitting in Parliament.

By the 36th section of the Corrupt Practices Prevention Act of 1354, Imperial Statute, it is enacted: If any candidate, at any election for any county, city or borough, shall be declared by any Election Committee, guilty, by himself or agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city or borough, during the Parliament then in existence.

The law being in this state in England, the Parliamentary Elections Act, sec. 3, declares that corrupt practices shall mean bribery, *treating* and *undue influence*, or any of such offences as defined by Act of Parliament, or recognized by the Common Law of Parliament. By the same section of the Dominion Controverted Elections Act of 1873, it is declared that corrupt practices shall mean bribery and undue influence, treating, personation and other illegal and prohibited acts, in reference to elections, or any of such offences as defined by Act of the Parliament of Canada.

Under section 20 of the Dominion Act of 1873, cap. 28, when any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Judge shall, in addition to the certificate (required by the 19th sec.), and at the same time report in writing to the Speaker as follows:

(*a*) Whether any corrupt practice has or has not been proved to have been committed by, or with the knowledge and consent of, any candidate at such elections, stating the name of such candidate and the nature of such corrupt practice.

(*b*) The names of any persons who have been proved at the trial to have been guilty of any corrupt practice.

(*c*) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.

These provisions are similar to those contained in the Imperial Act.

Taking the whole of that Act, it is very apparent that the report as to corrupt practices is consistent with it, and by it certain results are to follow the report. The want of these omitted clauses, and of the 36th section of the Corrupt Practices Act, renders it difficult to say how far the report, as to sections (*b*) and (*c*,) required of the Judge, will be of use when returned to the House of Commons. The Legislature still requires the report to be made, and we do not see how we can strike out the clause of the petition complaining of the practices referred to.

The 18th section of Dominion Act, 36 Vict., cap. 27, forbids any candidate, directly or indirectly, to employ any means of corruption by giving any sum of money, office, place or employment, gratuity or reward, or any bond, bill or note, or conveyance of land, or any promise of the same, nor shall he, either by himself or his authorized agent for that purpose, threaten any elector with losing any office, salary, income or advantage, with intent to corrupt or bribe any elector to vote for such candidate, or to keep back any elector from voting for any other candidate; nor shall he open and support, or cause to be opened and supported at his costs and charges, any house of public entertainment for the accommodation of the electors; and if any representative returned to the House of Commons is proved guilty, before the proper tribunal, of using any of the above means to procure his election, his election shall be thereby declared void, and he shall be incapable of being a candidate, or being elected or returned during that Parliament."

The Corrupt Practices Act of 1860, passed by the Province of Canada, defines bribery in the same way as the English Act of 1854, and in the same way declares the offence a misdemeanor, for which the parties may be punished, both the giver and receiver of the bribe. Under the 6th section of the English Act, it is provided that if a person wishes to be placed on the list of voters who has been convicted of bribery or undue influence at an election, or a judgment recovered against him for any penal sum recoverable in respect of any of the offences of bribery, treating or undue influence, then the Revising Barrister shall erase the name of such person from the list of voters; or if he claims to have his name inserted on the list, he shall disallow such claim; and the names of such persons so expunged from the list of voters, or refused to be placed thereon, shall be inserted in a list of persons disqualified for bribery, treating or undue influence, which shall be appended to and published with the list of voters.

The 36th section, already referred to, applies to the candidate, and declares him incapable of being elected or sitting in Parliament, when he shall be declared guilty by an Election Committee.

The 3rd section of the Provincial Statute of 1860 makes the hiring of vehicles to convey electors to the polls, or paying the expenses of electors in coming to the polls, illegal acts, and makes the person offending liable to a penalty of $30 for each offence, and costs of suit; and any elector who shall hire his horse to any candidate, or the agent of such candidate, for the purpose of conveying electors to or from the polls, shall, *ipso facto*, be disqualified from voting at such election, and shall also forfeit $30 to any person who shall sue for the same.

This section, and the 17th section of the Dominion Act, cap. 277, of 1873, seem to be the only ones which declare the effect on the voter

and the candidate of the illegal and prohibited acts.

In the Act of 1860, the bribery is declared to be a misdemeanor, and the mode of recovering the penalty pointed out, but its effect on the status of the member and the voter is not declared.

Whilst the Controverted Election Act of 1873 defines what corrupt practices shall mean, and makes it necessary for the Judge, under certain circumstances, to report whether such practices have been proved to have been committed, and by whom committed, yet the statute does not declare the effect of such report. We are then left in these unprovided cases to the common law of Parliament.

The bribing of an elector was always punishable at common law, independent of the statute: Rogers on Elections, 10 Ed. 308, and Lord Mansfield's opinion expressed in *Rex* v. *Pitt*, 3 Burr. 1338.

In *Rex* v. *Vaughan*, 4 Burr. 500, Lord Mansfield said, "Wherever it is a crime to *take* it is a crime to give; they are reciprocal. And in many cases, especially in bribery at elections to Parliament, the *attempt* is a crime; it is complete on his side who *offers* it."

It therefore appears to be a crime in the giver as well as the receiver of the bribe, and both may be indicted.

In Bushby's Election Law, 4 Ed. 111, it is stated: "Now one consequence in Parliament of common law bribery, when committed by a duly qualified and successful candidate at an election, was to enable the House, and it exclusively, to annul his return, and that though only a single bribe was proved. All the votes so procured were void, and even after deducting them had he still a majority in his favor, the result was the same. See May's Parl. Prac. 7 Ed. 56."

This was intended not so much as a penalty, as to secure to constituents a free and incorrupt choice, seeing that a single purchased vote, brought home to the candidate, might well throw doubt on his whole majority.

It is said an elector who has administered es is not disqualified at common law from voting afterwards at that or any other election: Bushby 114, and cases there cited.

The unauthorized bribes of third persons, who are not agents of the candidate, do not affect his return, though given in his interest, unless the majority depends on votes so obtained, or unless such bribes occasion general corruption: Bushby, 121.

It seems a strange state of the law that the person who bribes may be indicted for a crime and punished in that way, yet his vote may stand good, whilst the person bribed loses his vote and the candidate may lose his seat. It may be that this will be the result, because of the omissions in our statute law; but when the evidence in such a case is brought before me, and I am compelled to decide, I would give the question more consideration than I have been able as yet to bestow on it, before holding that the vote of the person giving the bribe would be held good.

In being called on as we now are, without any evidence before us, to decide certain questions which may affect the qualification of voters or the standing of candidates, and which in truth can only apply to a limited number of cases, (the law, both in the Dominion and the Province of Ontario, differing now from the statute under which we are acting), the language of Willes, J., in *Stevens* v. *Tillett*, L. R. 6 C. P. 166, seems to me peculiarly applicable. He says: "The order in this case to strike out the clauses in the petition which were objected to must therefore be sustained, if it be sustained, upon showing that leaving those clauses in the petition could not have any effectual end in the disposal of the prayer thereof, whatever might be the character of the evidence which was produced before the Judge at the trial. The true question, as it appears to me, upon this occasion, is whether in any reasonably conceivable state of the evidence a case might be made out, upon the trial of this petition before the Judge in the regular and ordinary way, which would make it the duty of the Judge to grant the prayer of the petition."

We do not feel warranted, in this stage of the proceedings, in striking out that portion of the fourth paragraph of the petition which relates to the votes of persons who were guilty of bribery, treating or undue influence.

Under the Dominion stat., 36 Vict., cap. 27, sec. 2, the laws in force in the several Provinces of Canada, Nova Scotia, and New Brunswick, on 1st July, 1867, relative to the qualifications &c. of members, the voters at elections of such members, the oaths to be taken by voters * * * and generally the proceedings at and incident to such elections, shall, as provided by the British North America Act of 1867, continue to apply respectively to elections of members to serve in the House of Commons for the Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, subject to exceptions and provisions thereafter made.

By sec. 4, subject to the provisions thereinafter made, the qualification of *voters* at elections in the Province of Ontario, for members of the House of Commons *shall be that established* by the laws in force in that Province on 23rd January, 1869, *as the qualification of voters* at elections of *members of the Legislative Assembly;* and the voters' lists to be used at the election of members of the House of Commons shall be the same as if such elections were of members of the Legislative Assembly, on the basis of the qualification aforesaid; and the polling sub-divisions or wards shall be the same as if such elections were for members of the Legislative Assembly; and the returning officer shall provide a polling-place for each sub-division or ward in the most central or convenient place for such elections.

By sec. 5, the oath or affirmation to be required of voters in the said Province shall be that prescribed by the 54th section of cap. 6 of the Consolidated Statutes of Canada, and no other, except in Algoma and Muskoka, as hereafter provided.

Under sec. 41 of the British North America Act, all laws in force in the several Provinces at the time of the Union relative to the voters at elections of members of the Legislative Assembly, the oaths to be taken by voters, the proceedings at elections, &c., respectively, apply to elections of members to serve in the House of Commons. The qualification of voters in Ontario referred to by section 4, above cited, is regulated by Provincial statute, 32 Vict., cap. 21. By sec. 5, of that Act, the following persons, and no other persons, being of the full age of twenty-one years, and subjects of Her Majesty by birth or naturalization, and not being disqualified under the preceding sections (2, 3, 4,) or otherwise by law prevented from voting, if duly registered or entered on the last revised and certified list of voters according to the provisions of that Act, shall be entitled to vote at the elections of members to serve in the Legislative Assembly, viz:—

(1.) Every male person *being actually and bona fide the owner*, tenant, or occupant of real property of the value hereinafter next mentioned, and being entered on the then last revised assessment roll for any city, town, village or township, as the owner, tenant or occupant of such real property of the actual value in cities of $400, in towns of $300, in incorporated villages of $200, and in townships of $200, shall be entitled to vote at elections of members of the Legislative Assembly.

As to the fifth paragraph, we think the petitioner may show:—

1. That the voter was not twenty-one years of age.

2. That he was not a subject of Her Majesty by birth or naturalization.

3. That he was otherwise by law prevented from voting.

4. That he was not actually and *bona fide* the owner, tenant or occupant of the real property in respect of which he is assessed.

We think the roll conclusive as to the amount of the assessment. The fact that the name of a person is on the assessment roll or list of voters is not conclusive as to his right to vote. If his name is on the list and he takes the oath required by the statute, the returning officer may be bound to record his vote, but that does not seem conclusive under the words of the Ontario Act. It is not being registered that gives the qualification; but though he has the qualification in other respects he cannot vote unless his name is entered on the proper list. At one time, in England, though the name was on the register and the returning officer was bound to admit the vote, yet it might be attacked on a scrutiny, and even now for some causes may still be attacked.

Under the view we take of the qualification being regulated by the Ontario Act, we do not think we can properly pass over or disallow the part of the 5th paragraph of the petition objected to.

The objection to the 7th paragraph of the petition is, I think, abandoned. If not, I see no objection to the paragraph standing as it is.

Then, as to the objection to the latter part of the 8th paragraph, paying the travelling expenses of persons coming and returning from the election. By the Corrupt Practices Act of Canada of 1860, sec. 3, paying the expenses of voters is an illegal act, and any elector who shall hire his horse to any candidate or agent for the purpose of conveying electors to and from the polling places, shall be disqualified from voting at such election. Section 71 of the Ontario Act, 32 Vict., cap. 21, is similar in effect, and a penalty of $100 is imposed, but the latter part provides that any elector who shall hire a horse, &c., *for* any candidate or *for* any agent of any candidate for the purpose of conveying any electors to and from the polling place, shall be disqualified from voting at such election, and under a penalty of $100. *Cooper* v. *Slade*, 5 H. L. 772, seems to be to the effect that merely paying the expenses of an elector, as

the law stood in England, was not a violation of the statute, but promising to pay might be held to be bribery. In the present state of the law we do not think we can properly exclude inquiring into these matters.

As to the objection to the 10th paragraph. If the names of persons, whose votes would not be legal in the view already expressed in the objection to the 5th paragraph of the petition, were inserted on the lists handed to the deputy returning officer, their votes for respondent would be bad, though the names were on the lists handed to the deputy returning officer, for the reasons already given. And if persons who were in other respects properly entitled to vote, and whose names were on the last revised and certified list of voters according to the provision of the statute, tendered their votes for petitioner, it may be contended with great force that they are entitled to have their votes now recorded for the petitioner. The mistake in copying their names on the list for the particular subdivision or ward should not deprive a legally qualified voter of his vote, though it might justify the deputy returning officer in refusing to receive it. But the mere fact that the lists were not correct alphabetical lists, or had not the correct number of the lot, or their not being duly certified according to the statute, would be no ground for setting aside the election, unless some injury resulted from the omission, as if some electors were deprived of their votes, or the result of the election in some way was influenced by the mistake.

As to the 12th paragraph, the observation just made will apply to it. These objections to what may really be considered as omitting the doing of matters as to which the statute is considered as directory, have never been held of sufficient importance to avoid an election, unless it can be shown that some injustice has been done by the omission—that voters who were entitled to vote have been deprived of their rights, and that if what the statute required had really been done a different result would have followed. In the absence of this being shown, these objections would not have any weight; and this paragraph was given up on the argument.

The result is that all the paragraphs in the petition stand except the 12th: that all the preliminary objections are over-ruled except the 1st and the 8th, and if it is shown at the trial that the petitioner had not the necessary property qualification, he cannot be seated, but he may still show that respondent was not duly elected.

Spragge, C.—I have entertained some doubt whether the voters' lists under the Provincial statute, 32 Vict., cap. 21, are not conclusive, so far as the property qualification of voters is concerned, though I confess I feel the force of the reasoning by which an opposite conclusion is arrived at. Section 5 of the Act defines the property qualification entitling a person to vote. Then follow other sections, making provision for the registration of voters and the making out by municipal officers of lists of persons entitled to vote. Then follows sec. 10, as follows:—"No person shall be admitted to vote unless his name appears on the last list of voters made, certified, and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election; and no question of qualification shall be raised at any such election, except to ascertain whether the party tendering his vote is the same party intended to be designated in the alphabetical list as aforesaid." Sec. 41 provides for an oath being administered to a voter by the deputy returning officer. This oath is in proof (*inter alia*) of property qualification in the real estate in respect of which the voter's name appears on the voters' list; also as to his being a British subject; as to his being of age; that he has not voted before at the election, and has not received or been promised anything to induce him to vote.

An oath being required as to the property qualification of the voter, is raising a question of qualification other than the question of identity, so that even at the election itself the voters' list is not conclusive as to the right of a person whose name is upon it, to vote: and if not conclusive there, it is, *a fortiori*, that it would not be conclusive upon a scrutiny upon the trial of an election petition.

Upon sec. 10 alone I should have felt some doubt, for the defining of the qualification in sec. 5 was necessary to the registration of voters, and preparing the lists for election; and the provision in sec. 5 might well be introduced in the Act for that purpose only; but sec. 41 and the voters' oath show that the voters' lists were not intended to be conclusive. The voter is required to swear that at the final revision and correction of the assessment roll he was actually, truly, and in good faith possessed, to his own use and benefit as owner or tenant, of the real estate in respect of which his name is on the voters' list; and I agree in thinking that the fact whether he was so possessed is a fact necessarily open to question upon a scrutiny.

Hagarty, C.J., C.P., concurred.

CARDWELL ELECTION PETITION.

HEWITT ET AL., *Petitioners*, v. HON. J. H. CAMERON, *Respondent.*

Property qualification of Candidate—Declaration of qualification—Non-compliance with demand for.

Held, (1). As in the *North Victoria Case*, that the Dominion Election Act of 1874 not being retrospective, the question of property qualification of candidates, at elections for members of the House of Commons, held before the passing of the Dominion Election Act of last session, can still be raised in pending cases.

2. That it is not necessary for an elector, demanding the property qualification of a candidate, to tender the necessary declaration for the candidate to make. The intention of the statutes being that the candidate must himself prepare the declaration.

3. That if the property qualification of a candidate be properly demanded at the right time, the demand must be complied with; and it is not sufficient after the return of a candidate is contested, for him to show that, at the time of his election or return, he was duly qualified.

[Election Court—June 26, July 16, 1874.]

The petition, in this case, stated:

3. That at the time of the said election, the said the Hon. John Hillyard Cameron was not legally or equitably seized as of freehold, for his own use and benefit, of lands and tenements held in free and common soccage, within that part of the Dominion of Canada formerly known as the Province of Canada, and now constituting the provinces of Ontario and Quebec, of the value of £500 sterling money of Great Britain, over and above all rents, charges, mortgages, and incumbrances charged upon, due and payable out of, or affecting the same, nor was he seized or possessed for his own use and benefit of lands and tenements held in fief or in *roture*, within that part of the Dominion of Canada formerly known as the Province of Canada, and now constituting the Provinces of Ontario and Quebec, of the value of £500 sterling money of Great Britain, over and above all rents, charges, mortgages and incumbrances charged upon, due and payable out of, or affecting the same; by reason whereof the said the Honourable John Hillyard Cameron was incapable of being elected or returned as a member of the House of Commons for the said electoral division, and his election and return were and are void.

4. And your petitioners further say that at the nomination held on the said twenty-second of January, in the said electoral division, and before a poll was granted at the said election, it was personally demanded of the said the Hon. John Hillyard Cameron by an elector entitled to vote at the said election, to wit, Robert Clarkson, of the township of Albion, in the said electoral division, farmer, that he, the said Hon. John Hillyard Cameron, should make, in the manner and to the effect mentioned in and required by the 28th section of the statutes of the Imperial Parliament of Great Britain and Ireland, passed in the third and fourth years of the reign of Her Majesty, Queen Victoria, chaptered 35, entitled "An act to reunite the Provinces of Upper and Lower Canada, and for the government of Canada," and by the 36th section of chapter 6, of the Consolidated Statutes of Canada, a declaration of his qualification to be a member of the House of Commons, as required by the said statutes; but the said the Hon. John Hillyard Cameron did not then, nor did he up to the time of the making of the return aforesaid, by the returning officer, make the said declaration, nor did he at any time deliver the same to the said returning officer, by reason whereof the election of the said the Hon. John Hillyard Cameron, and his return, were and are void.

5. Wherefore your petitioners pray that it may be determined that the said the Hon. John Hillyard Cameron was not duly elected or returned, and that the said election was void.

The respondent presented the following preliminary objections to the petition:

1. That the said petition was not filed nor any application made to the Election Court, or any judge thereof, to postpone the service thereof, until more than five days had elapsed after the recognizance had been entered into and security given by the petitioners for the payment of all costs, charges and expenses in the matter of the said petition.

2. That the statement in the third clause of the petition of the want of property qualification by the said respondent, at the time of the said election, is insufficient, and that he is not, and was not required by any law or statute to have such a property qualification as is stated in the said third clause, at the time of the said election, and that the said petition is insufficient in that respect, and there is no ground therein to avoid the election of the said respondent.

3. That the statement in the said fourth clause of the said petition is insufficient, and there is no ground therein to avoid the election of the said respondent, for the following reasons: that it is not stated therein that he had not already voluntarily made the declaration required by the said statutes in the 4th clause mentioned.

before any demand made upon him by the said elector in the said clause mentioned; that he is not required by any law or statute to make any declaration of qualification to be a member of the House of Commons, as stated in the said 4th clause of the said petition; that it is not stated in the said 4th clause that any declaration was tendered or offered to him to make, by the said elector, at the time he made such demand, or at any other time; that there is no time required by law within which such declaration, if demanded, shall be made, and that it is sufficient if, when the return of a member to the House of Commons is contested for want of a declaration being made by him of his property qualification, he can show that he had the property qualification required by law at the time of the election, or of his return as a member of the House of Commons.

Application being made to strike out the preliminary objections,

J. H. Cameron, Q.C., the respondent in question, showed cause. Property qualification is now abolished. There is a distinction in the Acts between qualification and property qualification, and the Confederation Act as to qualification does not refer to property qualification. The Confederation Act is silent as to the "declaration by the candidate." The Acts of 1871, 1872, and 1873 are likewise silent. The petition states that the respondent was not seized of lands *and* tenements; it should have followed the statute and said lands *or* tenements. See Smith's Real and Personal Property. Burton's Real Property, shows that tenements may be different from land, and that a qualification of £500 in incorporeal tenements would be sufficient. It is not necessary a candidate should be seizedof property.

Bethune, contra, for the petitioner. The objection to the use of the word "and" for "or" should not be regarded. The statute contemplated a property qualification at the time of the election. The new enactment did not affect that, and could not have been intended to do so.

RICHARDS, C. J., delivered the judgment of the Court.

In disposing of the matters brought before us in relation to the *North Victoria Case*, we expressed our opinion that the question of want of property qualification in a candidate at the elections for members of the House of Commons held before the passing of the Act of the last session of the Dominion Parliament, can still be raised in pending cases, and therefore the question of the property qualification of the respondent is now a matter which is to be be decided under the petition.

As to the objection taken that the petitioners allege that the respondent was not seized of lands *and* tenements instead of lands *or* tenements, we do not think the respondent was in any way misled or prejudiced thereby, and in this respect the third clause of the petition may be amended, if the petitioners or their counsel wish it, though it hardly seems necessary.

Then as to the objection to the fourth paragraph of the petition, that it is not stated that any declaration was tendered to the respondent by the elector to make at the time he made the demand, or at any other time. The statute does not seem to require any *tender* of a declaration. What it says is, that before he shall be capable of being elected, the candidate shall, if required, make the declaration; and the Consolidated Statutes of Canada, cap. 6, sec. 36, enacts that such candidate, when personally required to make the said declaration, shall give and insert at the foot of the declaration required of him a correct description of the lands or tenements on which he claims to be qualified according to law to be elected, by adding after the word Canada; "And I further declare that the lands or tenements aforesaid consist of" &c. This latter part of the declaration must undoubtedly be in writing, and must in the very nature of things be prepared by the candidate himself.

The fact that the declaration may be in the alternative, that he holds lands *or* tenements held in free and common soccage, or lands or tenements held in fief or in *roture, as the case may be*, shows that the candidate must make his own declaration. It cannot be tendered to him filled up in the proper form to be made, unless the party knows *how* the qualification he claims to possess is held, whether in free and common soccage or in fief or in *roture*.

Taking the enactments together, the reasonable view is that the candidate must prepare his own declaration; it cannot, with any certainty of its being correctly done, be tendered to and demanded from him.

We think we have substantially disposed of the other substantial objection to this fourth paragraph in the *North Victoria Case*.

We are of opinion that the preliminary objections in this case must be over-ruled, and that the petitioners may proceed to prove the allegations in their petition if they can do so.

North Simcoe Election Petition.

Hezekiah Edwards, *Petitioner*, v. Herman H. Cook, *Respondent*.

Whether petitioner disqualified by bribery, &c.—When disqualification arises.—Champerty.

A duly qualified voter is not debarred from being a petitioner on the ground that he has been guilty of bribery, treating or undue influence, during the election.

Disqualifications from such acts on the part of a voter or candidate arise after he has been found guilty, and there is no relation back.

It is not a champertous transaction that an association of persons with whom the petitioner was politically allied, agreed to pay the costs of the petition. Even if the agreement were champertous, that would not be a sufficient reason to stay the proceedings on the petition.

[Election Court—June 26, July 16, 1874.]

The petition in this case stated,

2. That the election was holden on January 22, A.D. 1874, and continued until January 29, when Herman Henry Cook and Dalton McCarthy were candidates, and said Cook was returned as duly elected.

3. That the said Cook, by himself and his agents, was guilty of corrupt practices within the meaning of the term "Corrupt Practices" in the Controv. Elections Act, 1873, during the election.

4. That the said Cook did by himself and his agents at the said election, both directly and indirectly, employ means of corruption by giving or promising sums of money, offices, places, employment, gratuities, rewards, bonds, bills or notes, and conveyances of land to various electors entitled to vote at the said election with intent to corrupor bribe such electors to vote for the said Cook.

5. That the said Cook did by himself and his agents at the said election, both directly and indirectly, employ means of corruption by giving or promising sums of money, offices, places, employment, gratuity, reward, bonds, bills or notes, and conveyances of land to various electors entitled to vote at the said election, with intent to corrupt or bribe said electors to keep back from voting for the said McCarthy.

6. That the said Cook did by himself and his authorized agents for that purpose, threaten divers electors entitled to vote at the said election with losing offices, salary, income, and other advantages with intent to corrupt or bribe such electors to vote for the said Cook.

7. That the said Cook did by himself and his authorized agents for that purpose, threaten divers electors entitled to vote at the said election with losing office, salary, income, and other advantages, with intent to corrupt or bribe such electors to keep back from voting for the said McCarthy.

8. That the said Cook, at the said election, opened and supported, and caused to be opened and supported at his costs and charges, various houses of public entertainment in the said electoral division of the North Riding of the County of Simcoe, for the accommodation of the electors entitled to vote at the said election.

9. That the said Cook and his agents were guilty of corrupt practices at the said election by hiring teams, carriages, and other vehicles and means of conveyance from said electors, and paying, or promising payment for the same, with the view of nducing said electors to vote for the said Cook.

10. That the said Cook and his agents were guilty of corrupt practices at the said election by hiring teams, carriages, and other vehicles and means of conveyance from the said electors, and paying, or promising payment for the same, with the view of keeping back such electors from voting for the said McCarthy.

11. That the said Cook and his agents were guilty of corrupt practices at the said election, by treating the said electors thereat in order to induce them to vote for him, the said Cook.

12. That the said Cook and his agents were guilty of corrupt practices at the said election by treating the said electors in order to keep them back from voting thereat for the said McCarthy.

Wherefore, your petitioner prays that it may be determined that the said Cook was not duly elected or returned, and that the election was void.

The respondent filed preliminary objections, submitting:

1. That the petition should not be further proceeded with, on the ground that the petitioner was not duly qualified to vote at the said election, whereby he was incapable of being a petitioner.

2. That the petition should not be further proceeded with, on the ground that the petitioner was not actually and *bona fide* the owner, tenant or occupant of the real property of the value of $400, in respect of which his name was entered on the list of voters used at the said election, and was not legally entered on the last revised assessment roll, upon which the said voters' lists was founded

as such owner, tenant or occupant, because, as the fact was, one Faraghar was assessed in respect of the said real property as tenant, and one Arnall as owner of the same, at the value of $200, which was the full value thereof, and the said Faraghar, at the time of the making of the said assessment, was in actual possession of the said property as such tenant, and no appeal was had against the said assessment of the said Faraghar, and after the delivery of the assessment roll to the clerk of the municipality by the assessor, the said Faraghar ceased to be, and the petitioner became, tenant of the said property at a monthly rent of five dollars and fifty cents, and thereupon the said petitioner appeared before the Court of Revision for the said municipality, and fraudulently procured the name of the said Faraghar to be erased from the said roll and the name of the petitioner to be substituted therefor, and fraudulently procured the value of the said property to be inserted in the said roll at $600, in order to give the petitioner an apparent qualification to vote, and no notice of the said application of the petitioner was given either to the said Arnall or Faraghar, or any other person, or by public notice of any kind, but the said Court of Revision, well knowing the object of the said petitioner in procuring the said alterations in the roll to be made, and fraudulently intending to carry out the said object, made the said alterations, without which the petitioner would not have been entitled to vote; and the respondent submits that by reason of the matters aforesaid the said alterations were and are void, and the said Court of Revision had no jurisdiction, under the circumstances aforesaid, to make the said alterations, and the petitioner was not entitled to vote at the said election, and was therefore incapable of being a petitioner.

3. That the petition should not be further proceeded with, on the ground that the petitioner was before, during, and after the said election, guilty of bribery, treating and undue influence, whereby his status as a voter and a petitioner was annihilated.

4. That the petition should not be further proceeded with, on the ground that before the filing of the petition a champertous bargain was made between the petitioner and certain other persons known as the Liberal-Conservative Association, whereby it was agreed that the costs of the said petition should be paid by the persons known as the Liberal-Conservative Association aforesaid, and whereby the name of the petitioner should be used.

5. That the petition should not be further proceeded with, on the ground that the petition was not signed by the petitioner *bona fide* with intent on the part of the petitioner to prosecute it, but that his name was being used *mala fide* by other persons, who were the real petitioners.

A summons having been obtained to strike out the preliminary objections,

McCarthy, Q.C., for the petitioner, moved the same absolute, whereupon the Court called upon

Bethune in support of the preliminary objection. The petitioner was not a good petitioner, because the Court of Revision fraudulently inserted his name on the assessment roll, in order to give him an apparent qualification to vote. This was done without notice to any person affected by it, and therefore the Court had no jurisdiction to insert his name; *Regina* v. *Court of Revision of Cornwall*, 25 U. C. Q. B. 286. The petitioner was guilty of bribery, and therefore cannot vote; and if so, cannot petition. Roe on Elections states that an elector who was on the list, but disqualified, could not petition. Here it is charged that the voter was guilty of bribery before and at the time of the election, by reason thereof he is not qualified to vote. The words of the Act are that the petition must be signed by a person duly qualified to vote. Here he was not duly qualified to vote. The petition was signed by the petitioner at the instance of the Conservative Association, who agreed to pay the expenses of it. This is champerty: *Wallis* v. *Duke of Portland*, 3 Ves. 494. Champerty and maintenance is still a good defence to an action at law: *Carr et al.* v. *Tannahill et al.* 30 U. C. Q. B. 217. The same reason applies to petitions. This proceeding resembles a suit by a shareholder on behalf of himself and all other shareholders. If so, they must sue by some person who is not disqualified: *In re National &c. Association* 4 De G. F. & J., 78.

McCarthy, Q. C., in reply. Admitting that, technically, the Court of Revision were wrong in putting petitioner's name on the assessment roll, nevertheless, as it appeared from the statement in the preliminary objection that the petitioner would have been entitled to have his name on the roll, the jurisdiction of the Court of Revision had been properly invoked for the amount for which it was inserted, and as the levy for the year was based on the roll as altered (however irregularly), and no

complaint had been made, the petitioner's name would not even now be struck off on a scrutiny, and therefore he was a good petitioner.

As to the allegation of bribery by the petitioner, as a ground of objection to his status, that is not a valid objection. The Dominion Controverted Elections Act 1873 only allows recriminatory charges to be made against a candidate who petitions, or when the seat is claimed for him. The section referred to by Mr. Bethune (Con. Stat. Can., cap. 6, sec. 84) only disqualifies a voter who *has been* bribed, not one who has bribed another.

As to the fourth objection, it is not maintenance to agree to the prosecution of a suit in which they have a common interest: *Topham* v. *Duke of Portland*, 32 L. J. Chy. 606; and this point was expressly decided in *Lyme-Regis Case*, 1 P. R. & D. 25, and by the Chancellor in *Re North York* (not reported) where an application was made by a petitioner to have his name struck out of the petition on the ground that his signature was obtained by misrepresentation.

Richards, C. J., delivered the judgment of the Court.

As to the first preliminary objection, it is a matter of fact, whether the petitioner was duly qualified or not, and that of course may be tried.

As to the second preliminary objection, we fail to see how the facts show any actual fraud in relation to placing the petitioner's name on the list of voters. The facts themselves seem to show that what was done was what really ought to have been done, and the complaint just amounts to this, that it was not done in the formal manner in which it ought to have been done. Apparently the only fraudulent thing about the matter is the word "fraudulent." At the time this petitioner had his assessment raised on the assessment roll from two to six hundred dollars, he was paying a rent which would indicate a larger value of the property than $600; and there is nothing to show, at the time it was done, that any election was likely to occur for which a fraudulent change would be made. We think we should not go behind the voters' list to imagine fraud from the facts stated in this preliminary objection.

In the *North Victoria Case*, reference is made to the present state of our law on the subject. Some authorities seem to show that a party bribing, who is not a candidate, is not disqualified from voting in consequence of violating the law in that respect. But if the petitioner was a duly qualified voter before and at the time of the election, and the only ground of disqualification is that he was guilty of treating, bribery and undue influence during the election, we hardly think that would destroy his right to be a petitioner.

The subject is referred to and discussed in the *North Victoria Case*, and we are not now prepared to decide against this petitioner on this preliminary objection.

We are inclined to think if the petitioner is a person who was duly qualified to vote at the election to which the petition refers, that is sufficient—that the fact that he may have done something at the election which would justify the Judge in striking out his vote, would not create such a disqualification as to destroy his status as a petitioner. It could not by relation be held to make him a person not duly qualified to vote at the election. Even in England, with the important clauses in the Corrupt Practices Act of 1854, and the Parliamentary Election Act of 1868, referring to this subject, which are omitted in our Acts, it is held that disqualifications do not arise until after the time the parties have been *found guilty* of the bribery.

In the late *Launceston Case* (reported in the *Times* newspaper), the Court of Common Pleas held that Col. Deakin's disqualification to be elected or sit in the House of Commons existed for the *next* seven years after he was found guilty. His election was declared void because the statute declares it shall be void, but the opposing candidate was not held to be elected, as would have been the case had the disqualification then begun which existed after he was found guilty.

The same penalty, under the English Act, attaches to any person other than the candidate *found* guilty of bribery in any proceedings in which, after notice of the charge, he has had an opportunity of being heard. The incapacity exists during the seven years next after the time at which he is found guilty.

And the sixth section of the English Act as to corrupt practices, directs the Revising Barrister, when it is proved before him that any person who claims to be placed on the list of voters has been *convicted* of bribery, etc., at an election, or that judgment has been obtained for a penal sum recoverable in respect of bribery, etc., against any per-

son who claims to be placed on the list of voters for any county, he shall expunge his name from the list, if it be on the list, or disallow his claim to be put on the list. These statutes contemplate the party being found guilty before the penalties attach. The decision of Mr. Justice Blackburn in the *Bewdly Case*, in 1 O'M. & H. 176, is to the same effect as the latest case referred to in the Common Pleas.

As to the alleged champerty, if the petitioner could not enforce the alleged bargain that the persons known as the Liberal-Conservative Association made with him as to paying costs, that does not establish the fact that this petitioner has not a right to present a petition. His right arises from his being an elector, duly qualified to vote at the election, not from any interest acquired by virtue of a champertous bargain. It may be doubted whether a proceeding of this kind is one to which the ordinary rules relating to champerty can apply.

One of the latest cases I have seen on the subject is *Hilton* v. *Woods*, L. R. 4 Equity 432. There the plaintiff was not aware that he was the owner of certain coal mines until a Mr. Wright informed him of it. An engagement was finally made between him and Wright, that in consideration that he would guarantee the plaintiff against any costs, Wright should have a portion of the value of the property It was contended on the argument that the bill must be dismissed on the ground that the agreement entered into between the plaintiff and Mr. Wright amounted to champerty and maintenance, and was an illegal contract. Sir R. Malins, V.C., in giving judgment, said:—"I have carefully examined all the authorities which were referred to in support of the argument (as to dismissing the bill,) and they clearly establish that wherever the right of the plaintiff in respect of which he sues is derived under a title founded on champerty or maintenance his suit will on that account necessarily fail. But no authority was cited, nor have I met with any, which goes the length of deciding that when a plaintiff has an original and good title to property, he becomes disqualified to sue for it by having entered into an improper bargain with his solicitor as to the mode of remunerating him for his professional services or otherwise. * * * If Mr. Wright had been suing by virtue of a title derived under that contract, it would have been my duty to dismiss the bill. * * In this case the plaintiff comes forward to assert his title to property which was vested in him long before he entered into the improper bargain with Mr. Wright, and I cannot therefore hold him disqualified to sustain the suit." He refused to dismiss the bill.

Here the petitioner's right is not acquired by virtue of any bargain with the Liberal-Conservative Association, and by analogy to the above case, even even if the alleged bargain were champertous, which I am by no means inclined to think it was, that would be no reason for staying the proceedings on this petition. See also *Carr* v. *Tannahill et al.* 31 U. C. Q. B. 210.

We do not consider that the objection, as stated, to the petitioner's right to vote at the election, and his consequent inability to petition, arises under the 71st section of the Ontario Act, 32 Vic., cap. 21, or a similar provision, section 3 in the Corrupt Practices Act of Canada, passed in 1860.

It is said that the fact that a third person was to pay the expenses of the petition, and had in fact paid for the last petition, was not considered to be any impediment to the hearing: *Lyme-Regis Case* P. R, D. 37; Wolferstan 44, 14.

As to the last preliminary objection, that the petition was not signed by the petitioner *bona fide*, it is stated in Wolferstan on Elections, 44, that where fraud was proven against the petitioner the petition was not heard: *Canterbury Case*, Cliff. 361. Such, it is presumed, would also be the decision in the case of a petition proved to have been signed *mala fide* by some person on behalf of the real petitioners: See *Sligo Case*, F. & F. 546. But the fact that a third person was to pay the expenses was not considered an objection to the hearing: *Lyme-Regis Case*, 1 P. R. & D. 37. At page 14 of the same work it is stated that if fraud or other improper influence has been used in obtaining the subscription of names to a petition, such a petition doubtless would not be proceeded with.

The result is, that as to the first preliminary objection, that is triable before the Election Judge as a matter of fact. The second preliminary objection is disallowed, as also the fourth, with regard to champerty. As to the fifth, it is a matter of fact whether he is the petitioner or whether any fraud has been practised on him. The mere fact that it has been agreed between him and others that he shall proceed with the petition in his name, and that they will contribute towards paying the expenses, can be no objection to the petition as we understand the law.

Law Society—Easter Term, 1874.

LAW SOCIETY OF UPPER CANADA

Osgoode Hall, Easter Term, 37th Victoria.

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law:

Joseph Egbert Teriune.
Peter McGill Barker.
Charles Egerton Ryerson.
Alfred Servos Ball.
Charles Edgar Barber.
Frank D. Moore.
Harruel Madden Deroche.
Clarence Widmer Ball.
E. George Patterson.
George Levack B. Fraser.

These gentlemen are called in the order in which the entered the Society and not in the order of merit.

Joseph James Gormully, Esq., of the Middle Temple, England, Barrister-at-Law, was admitted into the Society and called to the degree of Barrister-at-Law.

The following gentlemen obtained Certificates of Fitness as Attorneys, namely:

Joseph James Gormully.
E. George Patterson.
Thomas Horace McGuire.
Charles Egerton Ryerson.
David Robertson.
George Levack B. Fraser
A. Basil Klein.
Alfred Trevos Ball.
Josiah R. Metcalf.
Arthur Lyndhurst Colville.
Clarence Widmer Ball.
D. Ellis McMillan.

And on Tuesday, the 19th of May, 1874, the following gentlemen were admitted into the Society as Students-at-Law and Articled Clerks:

Graduates.

George Robert Grasett.
John Maxwell.
William Seton Gordon.
James Craig.

Junior Class.

Frank Fitzgerald.
Duncan Dennis Riordan.
David Haldane Fleicher.
Isaac Campbell.
Jas. W. Holmes.
Nicholas DuBois Beck.
Arthur Beatty.
John Sandfield McDonald.
John Arthur Patrick McMahon.
William James Lavery.
John Lewis.
Andrew Halley Hunter.
John Jacob Wheeler Stone.
John Gibson Curell.
Maxfield Sheppard.
George Albert Fletcher Andrews.
Walter James Read.
Thomas William Phillips.
Nathaniel Mills.
John Malcolm Munro.
John Joseph Blake.
Wm. Edgar Stevens.
Charles Egerton Macdonald.
Colin Scott Rankin.
Charles Michael Foley.
John Greeley Kelly.
John Ross McColl, and
Ernest Joseph Beaumont as an articled clerk.

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

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

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

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

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

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

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

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

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

That the subjects for the final examination of Articled Clerks shall be as follows:—Leith's Blackstone, Watkins on Conveyancing (9th ed.), Smith's Mercantile Law, Story's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

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

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

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

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

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

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

J. HILLYARD CAMERON,
Treasurer.