Canada Law Journal.

VOL. XIX. MAY 15, 1883. NO. 10.

DIARY FOR MAY.

16. Wed.... Examination for Call.
18. Fri..... D. A. Macdonald, Lieut.-Governor, Ontario, 1875.
20. Sun.... *Trinity Sunday*
21. Mon. .. Easter sitt. begin. Confederation of B. N. A. Provinces proclaimed, 1867.
22. Tues .. Earl Dufferin Gov.-Gen., 1872.
24. Thurs.. Queen's Birthday, 1819. Ferguson, V.C., appointed 1881.
25. Fri.... Princess Helena born, 1846.
27. Sun.... *First Sunday after Trinity.*
29. Tues. .. Battle of Sackett's Harbour, 1813.
30. Wed. .. Proudfoot, V.C., appointed 1874.

TORONTO, MAY 15, 1883.

WE copy from the *Philadelphia Legal Intelligencer*, a report of the judgment on the demurrer to the indictment in the Phipps' Extradition Case. In the judgment in the Court of Appeal, Mr. Justice Patterson expressed an opinion that the indictment did not charge the crime of forgery, but merely a misdemeanor under the statute, and this point was much relied on by defendant's counsel in the argument, though the case did not eventually turn on this view. The Philadelphia Court holds the offence was forgery in whatever form the indictment might be. We understand that though the offence was tried in the Court of Sessions, Judge Allison is really Judge of the higher Court, and would rank with the Judges of our Court of Queen's Bench or Common Pleas here.

LAWYERS, though they have sharp passages on behalf of clients, do not often come personally to such close quarters as have Mr. Marsh and Mr. Titus, whose correspondence in reference to the Wright case is given in full in another place.

It will be remembered that Miss Wright, some time ago, shot a young man named Ryan, whom she supposed was on her premises for no good purpose. She was found guilty, but afterwards pardoned. She was defended by a Mr. Titus, to whom, it is said, she gave, at his request, $200 to buy up the jury, as well as other money for her defence. How this was, or why the jury, if bought, did not "stay bought," we know not, but through Mr. Marsh an order was made for the taxation of Mr. Titus' bill, and overcharges to the extent of $173 were ordered to be refunded by the latter to Miss Wright. Mr. Titus, subsequently to his defending Miss Wright against the prosecution instituted by the Ryan family, accepted a retainer from the latter to sue Miss Wright in a civil action for the killing of the deceased. The action was brought in the name of the father, but the instructions came from a brother-in-law of the deceased, not from the father. The release spoken of in the letter of the 18th April referred to a proposed release of any cause of action accruing to the Ryans by reason of the killing above referred to. Based on these letters of Mr. Marsh, and under 32-33 Vict. cap. 21, sect. 43, Mr. Titus laid an information against him, and had him arrested and brought before a Bench of Magistrates at Brighton, when he was committed for trial. We judge from an expression in the letter of 24th April that Mr. Marsh believed that Mr. Titus was using knowledge acquired from Miss Wright in professional confidence as a means of stirring up litigation against a former client. If this were so the threat of striking Mr. Titus off the roll would not seem at all inappropriate, and if it is true that the same gentleman got money from his client to buy up the jury, a more severe

punishment would not be out of place. Certainly the person who would act for the Ryans against Miss Wright, having previously defended her on the charge in relation to which the civil suit was brought, might expect a suspicion to rest on his *bona fides* even though there may be no *lex scripta* forbidding him so to act. If it is incumbent upon Mr. Titus to see that the law is vindicated, as to this alleged demand, with menaces, it is quite as necessary that his conduct should be enquired into by the Law Society, and if he is found to come within the statute in such case made and provided, prompt action should be taken to purge the roll. As to the charge now pending we fail to see at present how the case can be said to come within the criminal law. Mr. Marsh's letters were evidently hastily written, and perhaps indiscreet, and, so far as one can see, beyond his instructions; but that is a very different matter from saying that there was a "demand with menaces of a valuable security, or other valuable thing." One could easily suggest a number of points, some technical and some substantial, which would upset the magisterial apple cart that carries this charge into the judicial presence, but as it is now on the road there we leave it for the present.

JUDICIAL SALARIES.

Sir John Macdonald has given notice of the following resolutions:—"That it is expedient to provide (1) That the salary of the additional judges of the Court of Appeal for Ontario for whose appointment provision is made by an Act of the Legislature of that Province (46 Vict. cap 6,) shall be $5,000 per annum; (2) That if the Chief Justice of the Queen's Bench, the Chancellor of Ontario, or the Chief Justice of the Common Pleas, is appointed to the Court of Appeal for Ontario, the Governor-in-Council may direct that he be paid a salary not less than that he previously enjoyed as such Chief Justice or Chancellor; (3) That the third section (respecting retiring allowances to judges) of the Act 31 Vict. cap. 33, shall extend and apply to the judges of the Supreme Court of Judicature of Ontario, and of the Supreme Court of Judicature of Prince Edward Island; (4) That the salaries of the judges of the Superior Court for the Province of Quebec shall be as follows:—The Chief Justice of the said Court, $6,000; eleven puisne judges of the said Court, whose residences are fixed at Montreal or Quebec, each $5,000; thirteen puisne judges of the said Court, whose residences are fixed within districts other than Bonaventure and Gaspe or Saguenay, each $4,000; and two puisne judges of the said Court, whose residences are fixed within the districts of Bonaventure and Gaspe or Saguenay, each $3,500; (5) That the salary of the County Court judge of the eastern judicial district of Manitoba shall be $2,000 per annum for his first three years of service, and $2,500 per annum after such three years' service; and that he shall be paid such traveling allowances as the Governor-in-Council may from time to time determine; (6) That the salaries and allowances mentioned in the preceding resolutions, 1, 3, 4, and 5, shall take effect on and after the next, and shall be computed and payable in the manner provided by the 2nd section of the said Act 31 Vict. cap. 33, without an annual vote of Parliament, as shall also the salary of the Chief Justice or Chancellor of Ontario mentioned in the 2nd resolution; (7) That from and after the 1st day of July in the present year (1883) no travelling or circuit allowances shall be paid to the judges of the Court of Appeal for Ontario."

The time has gone by when the Government can command, or expect to get the best talent at the Bar for the Bench. We do not say that good men are not appointed, but to those who are in the front rank, neither is the honour of the position sufficient inducement for them to leave the Bar, nor can they well

afford to give up their large incomes for the miserable salaries which would be payable to them as Judges. This is a great evil, and a growing one.

Taking the ground we do, we have no fault to find with the proposed increase to the salaries of the Judges in the Province of Quebec, but are bound to remark that this only makes more striking the inadequate remuneration given to the Judges in this Province. The position and responsibility of a Judge of the Superior Court of Quebec, residing outside of the Cities of Quebec and Montreal, are more nearly represented in Ontario by those of our County Judges than of the Judges of the High Court of Justice, except that these Quebec Judges have, as a rule, vastly less work to do than most of our County Judges; they are to receive, however, $4,000 per annum (with two exceptions), whilst the annual income of the County Judges in Ontario is only about $2,500 each. In fact, taking the relative expense of living into consideration, the former are paid sums which are practically much larger than those given to even the Judges of the High Court of Justice in Ontario, living in Toronto. If it is right to make the increase in one Province, it is right in the other. The increase, in truth, should, in all fairness, have begun in Ontario. The volume of judicial business is vastly greater in this Province, and the expense of conducting it, (to the general exchequer) is very much less in proportion to the amount of litigation.

As to the last resolution, which takes away travelling and circuit allowances from the Judges of the Court of Appeal, we presume it is thought that they have enough work to do in Toronto in their proper sphere, and this is probably the case. But the result is a very considerable reduction in their emoluments, as there is a surplus to them on each assize after paying expenses. This reduction is not only unfair, but in the face of the increased cost of living over what it was when Judges' salaries were originally fixed, is positively cruel. The Judges appointed since shortly after the elevation of Mr. Osler to the Bench, do not receive the $1,000 which was formerly added to the salaries of the Judges by the Ontario Government for work in connection with the Heir and Devisee Commission, and private bill legislation. There has been a reduction on all sides in this Province, instead of an increase, as there should have been. We believe that if this matter were properly brought before the intelligent public of Ontario, they would see the necessity of making the Bench a prize to the best men at the Bar. Once let the Bench fall in public estimation, and an enormous evil is done. If it is not constitutionally proper for the Provincial Government to supplement the salaries of the Judges, it surely could be done by some arrangement with the Dominion Government. In fact we have an impression that something of this sort was at one time suggested, but not carried out.

SELECTIONS.

BLASPHEMY AND BLASPHEMOUS LIBELS.

The case of *Reg.* v. *Bradlaugh*, for the publication of a blasphemous libel in the *Freethinker*, absolutely bristled with points of law. The Bankers' Books Evidence Act, 1879, the Evidence Further Amendment Act, 1869, and Lord Campbell's Act, and the law of blasphemous libel, all came under discussion in the course of the case, or of the Lord Chief Justice's summing-up. As to the first Lord Coleridge seemed to have been under some misapprehension. The Act complained of by Mr. Bradlaugh on the part of the prosecution in obtaining an order from the Lord Mayor for the inspection of his banker's books was not taken under the 6th section of the Act of 1869, but under the 7th. The order was not made to compel the banker to produce the books in court, which can only be done by a judge, but to allow the other side to inspect and take copies of any entry therein. The wording of the section allows

"a court or judge to order" such inspection "on the application of any party to a legal proceeding." Court is defined to be the "court, judge, arbitrator, persons or person before whom any legal proceeding is held or taken," and "legal proceeding means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitrator." In correction of our remarks last week, we say, therefore, that it obviously includes the Lord Mayor, sitting as a magistrate, and even the petty sessions' magistrates, against whose power to order an inspection of his banker's book the Chief Justice expressed so much horror.

The Evidence Further Amendment Act, 1869, sect. 4, was brought under notice by one of the witnesses for the defence claiming to affirm on the strength of his statement that he was an Atheist. Mr. Bradlaugh said that it had been so decided, but the decision was not reported. The Chief Justice refused to allow him to affirm until he had stated that he was "a person on whose conscience an oath had no binding effect;" but upon the witness saying that "the oath had no binding effect on his conscience *per se* as an invocation," he permitted him to make the "solemn promise and declaration" prescribed by the Act. It is probable that the mere assertion of entertaining atheistic opinions is sufficient to enable a witness to affirm under the Act instead of taking an oath, as the words are more general than those used in the previous Act of 1861, under which the witness had to assert as part of his affirmation that "the taking of any oath, according to his religious belief, was unlawful." Under the present Act he has only to "object to take oath, or be objected to as incompetent to take an oath." But an Atheist is incompetent to take an oath, because, as Lord Chief Justice Willes said, in *Omichund* v. *Barker*, "Such infidels, if any such there be, who do not believe in a God . . . cannot be witnesses in any case, or under any circumstances, for this plain reason, because an oath cannot possibly be any tie or obligation upon them;" and therefore, if he objects to take an oath, the judge ought upon that statement to be satisfied that an oath is not binding upon his conscience, and to admit him to promise under the Act. Lord Coleridge, in his summing-up to the jury, maintained the statement of the law of blasphemous libel as laid down in Starkie, and stated by his father, Mr. Justice Coleridge, against that contended for by Mr. Justice Stephen in his History of the Criminal Law—viz., that it was the manner in which an attack on Christianity was made, and not the matter, which made it libellous. The reasons adduced for this opinion, however, are hardly of much weight. The consequences of holding the reverse view, that to attack Christianity, however respectfully, was criminal, founded as it was on the doctrine that Christianity was part of the Constitution, would be that any political attacks on, say hereditary monarchy, or the law of primogeniture, would be criminal also. But the judges who laid down that attacks on Christianity were blasphemous libels did hold that attacks on the monarch were seditious libels. Because the consequences of the law being what it is said to be by Mr. Justice Stephen would be monstrous, that did not prove that the law is not so; it only proves that there is every reason why it should be changed. The Chief Justice's ruling may be upheld more surely on the ground that the law has been so stated for the last thirty years, and that it is expedient that the modern should overrule the ancient authorities, that on the mere inference that because the logical result of the ancient ruling would be absurd, therefore it is not the law. However, the case did not turn upon the issue of blasphemy or no blasphemy, but on that of publication of the alleged libel by the defendant. On this point the Lord Chief Justice in his summing-up dwelt exhaustively with the subject of the criminal liability of the proprietor or editor of a paper for the publication of a libel. This involves the construction of the 7th section of Lord Campbell's Act (6 & 7 Vict. c. 96). The section runs "that whensoever upon the trial of any indictment or information for the publication of a libel, evidence shall be given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent or knowledge." The much-discussed case of *Regina* v. *Holbrook* (37 L. T. Rep. N. S. 530) decided that in a trial for a defamatory libel evidence that the defendant, although proprietor or having the general control over a newspaper, had intrusted the sole charge of it to an editor, and had not authorized and had no knowledge of the particular libel incriminated, was within the section, and afforded a complete answer to the charge. Lord

Coleridge held that the section applied equally to an indictment for blasphemous libel, the words of the section being, unlike those of the other sections of the Act, not confined to defamatory libels, but perfectly general in its terms. The evidence against Mr. Bradlaugh consisted in his having, under the name of the Freethought Publishing Company, formerly been the publisher of the paper in which the libels appeared, and in the paper being sold in a shop of which he was proprietor. But, according to Mr. Justice Lush, in *Regina* v. *Holbrook*, "A proprietor whose agent sells over the counter libels without his knowledge would not be criminally liable if able to show that the sale was without his authority." As Lord Coleridge left the question to the jury, it was not "whether Mr. Bradlaugh had anything to do with the paper, but whether he had authorized the sale of the articles complained of; it was not enough that he might have stopped them, the question was whether he had authorized their sale or publication." The ruling adopted by the Lord Chief Justice may now therefore be taken to be settled law, that in an indictment for any kind of libel which appears in a newspaper, the question is not whether the defendant authorized the publication of the paper, but whether he authorized the publication of the libel.

Much as we dislike the licentious Freethinkers, we say that, to the credit of the law, and to the credit of a Middlesex jury, the mischievous prosecution of Mr. Bradlaugh for blasphemy has failed. Lord Coleridge, who fortunately presided at the trial, declined to express any opinion as to the wisdom of the law or of the prosecution; but what his opinion of both was sufficiently appeared from the tone and manner of his summing-up. The learned judge pointed out that, if attacks upon the Christian religion are to be punished criminally because the Christian religion is part of the law of the country, it would be equally reasonable to punish criminally attacks upon monarchy, primogeniture, or the marriage laws—all equally a part of the fundamental laws of the Constitution.

It may surprise some persons that in Mr. Bradlaugh's case the summing-up of Lord Coleridge did not agree with the recent judgment of Mr. Justice North, or the well-considered opinion of Mr. Justice Stephen. There is a general opinion that law, as far as it depends on the judges, is a fixed science, and that the personal opinions of judges have no weight whatever. Yet even in that most exact of sciences, astronomy, there is a well-known element in observations called the "personal equation," which differs not only in different individuals, but in the same individual at different times. And to make the record of observations perfectly accurate, this "personal equation" has to be reckoned and allowed for. When, therefore, we assert that a similar "personal equation" exists in the judges, we must not be supposed to detract aught from the science of law or their own ability and integrity. There will be always the schools of Labeo and Capito, there will always be Liberals and Conservatives. And there is no doubt that, in the division of opinion to which we have alluded, some judges have laid down the law as it would have been laid down centuries ago, considering that the court has no power to alter law, and that it must remain unaltered except the Legislature interferes, while an equally eminent judge takes a view of the law more in harmony with general public opinion. It may be remembered that, in *Shaw* v. *Earl of Jersey* (4 C. P. Div. 120), Lord Coleridge, for the first time, granted an injunction to restrain a landlord from distraining.

It is not to be expected, in the present state of parliamentary business, that any amendment of the law of blasphemy will be carried; but, as the summing-up of Lord Coleridge in Mr. Bradlaugh's case has drawn attention to the fact that, in the opinion of certain high authorities, any denial, however respectful and decorous, of the truth of Christianity is indictable, attempts at least to amend the law may be expected before long. The peculiar severity of the Act for the Suppression of Blasphemy and Profaneness (9 & 10 Will. 3, c. 32; 9 Will. 3, s. 35, in the Revised Statutes) may perhaps be expected to form a strong argument for amending it. By this Act, "if any person having been educated in the Christian religion shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy Trinity to be God, or shall assert that there are more Gods than one [this much of the statute is repealed by 35 Geo. 3, c. 160], or shall deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine authority, and shall, upon indictment or information, be thereof convicted, such person shall for the first offence be adjudged incapable and disabled in law, to all

intents and purposes, to have or enjoy any office, employment, ecclesiastical, civil or military;" and it is further enacted that, "if such person shall be a second time lawfully convicted of the aforesaid crime, he shall from thenceforth be disabled to sue any action, or to be guardian of any child, or executor or administrator of any person, or capable of *(sic)* any legacy or deed of gift, or to bear any office for ever, and shall also suffer imprisonment for the space of three years." Any person whatever may, without even being under the necessity of complying with the requirements of the Vexatious Indictments Act, indict any person under the statute of William III., and it will be observed that the disabilities which are to follow upon a conviction are prescribed in such explicit terms that no court would have any power to remit them, or abate one month of the three years' imprisonment. If any great practical difficulty should arise out of an application of the Act to theological controversialists, it may possibly come to be provided, by way of compromise and to avoid the repealing of the Act, that no prosecution may be commenced under it without the sanction of the Attorney-General or other public officer, and perhaps even that the Crown may have the power to remit the disabilities. Precedents for such a course in the similarly thorny question of Lord's Day observance may be found in the Sunday Observance Prosecution Act, 1871 (34 & 35 Vict. c. 87), and the Remission of Penalties Act, 1875 (38 & 39 Vict. c. 80); the first of which Acts is a temporary Act, continued from time to time by Expiring Laws Continuance Acts.—*Law Times.*

On April 25 and 26, the case of *Regina* v. *Ramsay and Foote* was tried at the Royal Courts before the Lord Chief Justice of England (Lord Coleridge), and a special jury. In the course of his summing up, the Chief Justice said:—Now, you have heard with truth that these things are according to the old law, or the *dicta* of the old judges, undoubtedly blasphemous libels, because they asperse the truth of Christianity. But, as I said on the former trial, for reasons I will explain presently, I think that these expressions can no longer be taken to be a true statement of the present day. It is no longer true, in the sense in which it was so when these *dicta* were uttered. that Christianity is part of the law of the land. At the time those *dicta* were uttered, Jews and Nonconformists, and others under disabilities for religion, were regarded as hardly having civil rights. Everything almost, short of punishment by death, was enacted against them, not indeed, always by name; and thus the exclusion of Jews from Parliament was in a sense by accident (though, no doubt, if anybody had supposed that they were not excluded a law would have been passed to exclude them), but historically and as a matter of fact, such was the state of of the law. But now, so far as I know the law, a Jew might be Lord Chancellor—certainly a Jew might be Master of the Rolls—and but for the accident that he took the office before the Judicature Act came into operation, the great and illustrious lawyer, whose loss the whole profession is deploring, would have had to go circuit, and might have sat in a Criminal Court to try such a case as this; and he might have been called upon, if the law be really that "Christianity is part of the law of the land," to lay it down as the law to the jury, some of whom might have been Jews; and he might have been bound to tell them that it was an offence against the law, as blasphemy, to deny that Jesus Christ was the Messiah—a thing which he himself did deny, and which Parliament had allowed him to deny, and which it is just as much a part of the law that any one may deny as it is your right and mine, if we believe it, to assert. Therefore, to base the prosecution of an aspersion on the truth of Christianity, *per se*, on the ground that Christianity is—in the sense in which it was said by Lord Hale, or Lord Raymond, or Lord Tenterden—part of the law of the land is, in my judgment, a mistake. It is to forget that law grows; and that though the principles of law remain, yet (and it is one of the advantages of the common law), they are to be applied to the changing circumstances of the times. Some may say that this is retrogression; but I should rather say that it is the progression of human opinion. And, therefore, merely to discover that the truth of Christianity is denied, without more, and to say that thereupon a man may be indicted now for blasphemous libel, is, as I venture to think, absolutely untrue; and I, for one, will not, until it is authoritively declared to be the law, lay it down as law; for, historically, I cannot think that I should be justified in so doing, since Parliament has enacted laws which make that old view of the law no longer applicable; and it is no disrespect to the older judges to think that what they said in one state of things is no longer applicable now that it is altered. It is clear to my mind

that the mere denial of the truth of the Christian religion is not enough to constitute the offence of blasphemy. But no doubt, whether we like it or not, we must not be guilty of anything like taking the law into our own hands, and converting it from what it really is to what we may think it ought to be. I must lay the law down to you as I understand it, and as I read it in the books of authority. Mr. Foote, in his very able speech, spoke with something like contempt of "the late Mr. Starkie." He did not know Mr. Starkie; he did not know how able and good a man he was He died when I was young; but I knew him, and everybody who knew him knew that he was a man, not only of remarkable power of mind, but a man of very liberal opinions; and if ever the task of law-making could safely be left in the hands of any man, it might have been left in his. But what is more material, the statement of the law by Mr. Starkie has again and again been assented to by judges as a correct statement of the existing law, and I will read it as containing in my view a correct statement of it:—"There are no questions of more intense and awful interest than those which concern the relations between the Creator and the beings of His creation; and though, as a matter of discretion and prudence, it might be better to leave the discussion of such matters to those who, from their education and habits are most likely to form correct conclusions; yet it cannot be doubted that any man has a right, not merely to judge for himself on such subjects, but also, legally speaking, to publish his opinions for the benefit of others. When learned and acute men enter upon those discussions with such laudable motives, their very controversies, even where one of the antagonists must necessarily be mistaken, so far from producing a mischief, must in general tend to the advancement of truth and the establishment of religion on the firmest and most stable foundations. The very absurdity and folly of an ignorant man, who professes to teach and enlighten the rest of mankind, are usually so gross as to render his errors harmless; but, be this as it may, the law interferes not with his blunders so long as they are honest ones, justly considering that society are more than compensated for the partial and limited mischief which may arise from the mistaken endeavours of honest ignorance, by the splendid advantages which result to religion and truth from the exertion of free and unfettered minds. It is the mischievous abuse of this state of intellectual liberty which calls for penal censure. The law visits not the honest errors, but the malice of mankind. A wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentations, or artful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention, or what is equivalent to such an intention, in law as well as morals—a state of apathy and indifference to the interests of society—is the broad boundary between right and wrong":—(Starkie on Slander and Libel, 4th edition, p. 599). And there is a passage in the book which appears to have been taken from Michaelis, in which it is pointed out with some truth that in one view the law against blasphemous libel may be for the benefit of the libeller himself, who otherwise may encounter popular vengeance. The Chief Justice quoted the passage, and stated that the principle of the law was as laid down by Starkie; and that he was not satisfied that the law was laid down differently by a study of the cases. He proceeded to refer to *Rex* v. *Taylor*, Venty, 293, before Lord Hale; *Rex* v. *Woolston*, Str. 834, better reported, as the Chief Justice said, in Fitzgibbon 64, before Lord Raymond; and *Rex* v. *Waddington*, 1 B. & C, 26, before Lord Tenterden, Mr. Justice Bayley, Mr. Justice Holroyd, and Mr. Justice Best. After referring to the passages cited by one of the defendants from various writers, the Chief Justice concluded:—What he has to show is, not that other persons were as bad, but that he is not bad—not that others are guilty, but that he is not so. It is no defence for him to bring forward cases some of which I confess I cannot distinguish from his own. It is not enough to say that these persons have published blasphemy, if they are not brought before us. I not only admit, but feel that, if laxity in the administration of the law is bad, the most odious form of laxity is a discriminating laxity, which lays hold of particular persons, and does not lay hold of others liable to the same censures. But that has nothing to do with this case. The case is here; and whether or not other persons ought to be where the defendants stand, the question is, What judgment should be passed upon them? We have to administer the law, whether we like it or not. It is undoubtedly a disagreeable law to administer; but I have given you reasons for thinking it is not so bad

as has been supposed. It is just that persons should be obliged to show some respect for those who differ from them. You will see these publications; and if you think they are permissible attacks on the Christian belief, you will find the defendants not guilty; but if you think that they do not come within the largest and most liberal view of the law as it exists, then, whatever may be the consequences, and however little you may like them, it is your duty to find them guilty It is your duty to administer the law as you find it, and not to strain it on one side or the other —certainly not to strain it in the defendants' favour, however you may think that they ought not to be prosecuted, still less to strain it against them because you may not agree with the sentiments they avow. Take the publications in your own hands, and say whether the defendants are guilty. As to the cartoons, the excuse is that they are not attacks upon, or caricatures of Almighty God. Mr. Foote declares that if there be such a Being, He is the proper object of reverence and awe; but that these are only his mode of holding up to contempt and ridicule what he considers the caricature of God exhibited in the Hebrew Scriptures. You will look at them, and judge for yourselves whether or not they come within the law, and whether or not the defendants are guilty of publishing blasphemous libels."

In the result the jury were unable to agree, and were discharged.—*Law Journal.*

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

CHANCERY DIVISION.

TRUST AND LOAN COMPANY v. MCCARTHY.

Mortgage suit—Dispute note—Judgment on præcipe.

Where a statement of defence is filed in a mortgage action for foreclosure or sale, which amounts simply in substance to a notice disputing the amount of the plaintiffs' claim, judgment may be entered on *præcipe.*

[April 30.—PROUDFOOT, J.

A. H. Marsh, for plaintiff, moved for a direction to the Registrar to enter judgment on *præcipe.* The action was brought by the plaintiffs for foreclosure, and the plaintiffs prayed also for an order for delivery of possession. The defendant had filed a statement of defence in which he alleged (1) that the plaintiffs were in possession; (2) that they had or might have received rents which they had not credited; and (3) asking for an account.

He stated that the Registrar of the Chancery Division had expressed a doubt whether judgment under the circumstances could be signed under either Rule 78 or 520, as he thought from the judicial construction which had been placed on the Rules, that the former Rule was limited to cases of non-appearance, and the latter to cases where no defence is put in. It was submitted that under the former Chancery practice, a decree on *præcipe* might have been granted on such an answer being put in.

PROUDFOOT, J., after taking time to consider the matter, held that the statement of defence amounted to a mere dispute note, and that the former practice was impliedly kept in force by Rule 3, which provides that Orders 638 to 650 shall apply to all the Divisions of the High Court. Order 646 expressly refers to Orders 434 and 435, under which, according to the former practice, a decree on *præcipe* could have been obtained in a similar case to the present. As regarded the claim for possession, he thought the judgment should contain an order for the delivery of possession by the defendant to the plaintiffs, but that the Registrar might properly insert in the judgment a clause declaring the judgment to be without prejudice to any question that might be raised by the defendant on the taking of the accounts as to the liability of the plaintiffs to account as mortgagees in possession.

UNITED STATES.

COURT OF QUARTER SESSIONS OF PHILADELPHIA COUNTY.

COMMONWEALTH v. PHIPPS.

Forgery—Fraud.

1. An indictment charging the fraudulent making and signing of a receipt for a warrant, which was in words and figures as follows:—"Guardians of the Poor, 3, 27, 1882, $389, No. 969, item, Walter S.

Murphy. Received above warrant.—W. S. Murphy," is a good indictment under the 169th Section of the Act of March 31st, 1860 Purdon, 364, pl. 253, which provides that "if any person shall fraudulently make, sign, alter, utter or publish, or be concerned in the fraudulently making signing altering, uttering or publishing any written instrument, other than notes, bills, checks or drafts, already mentioned, to the prejudice of another's right, with intent to defraud any person or body corporate, or shall fraudulently cause or procure the same to be done, he shall be guilty of a misdemeanor."

2. *Commonwealth* v. *Mulholland*, 12 Phil. Rep 608, distinguished.

Demurrer to bill of indictment.

Opinion by ALLISON, P. J. April 26th, 1883.

The indictments to which the defendant has demurred, and which he also moves to quash, charge the fraudulent making and signing of written instruments with intent to defraud the several persons whose names are set forth, and to the prejudice of their rights. There are also counts for uttering and publishing the same unlawfully and fraudulently.

In each count the copy of the written instrument is set out fully in words and figures, which is thus made to speak for itself. by which it appears that it is a receipt for a warrant issued by the Guardians of the Poor for the payment of money. In the bill before me, as of September Term, 1882, No. 327, it is in form, words and figures as follows:—"Guardians of the Poor, 3, 27, 1882, $389, No. 969. Item, ——. Walter S. Murphy. Received above warrant. W. S. Murphy."

In each of the remaining indictments, like copies of the receipts, charged as having been fraudulently made and signed, are set forth, with the variation, in each instance, of the insertion of the name of the individual payee whose name, it is claimed, was fraudulently signed by the defendant to the several receipts. Each of these indictments contain four counts; the third charges the defendant with fraudulently making and signing, and the fourth with uttering and publishing said written instruments, and contains the statement as follows:—"Being a receipt for a certain warrant so drawn as aforesaid."

This refers to a preceding averment, that the person or firm whose name is said to be falsely signed to the receipt had furnished to an institution for the care of paupers in the City of Philadelphia, under the control of a body of persons called the Board of Guardians of the Poor, and known and called the Blockley Almshouse, certain goods and merchandise, and that the warrant for the payment of the same had been duly drawn in favor of said person (setting forth the name) by the said Board of Guardians of the Poor upon the Treasurer of the said city.

These indictments are framed under the 169th section of the Act of March 31, 1860, (Purdon, 364, plac. 253), which makes it a misdemeanor to fraudulently make, sign, alter, utter, or publish any written instrument to the prejudice of another's right, with intent to defraud. The punishment for this offence is imprisonment by separate and solitary confinement at labour not exceeding ten years. The section is classified by the compiler of Purdon under the head of "forgery." In the order of arrangement it is followed by the 170th and the 171st sections of same Act, which refer to forging the seal of the Commonwealth or of courts, or forging of records, registries, etc., for which the punishment is limited to seven years. To this classification is added the 172nd section of the same Act, which relates to counterfeiting any number or mark of any public inspector, etc., for which offence not more than one year's imprisonment may be imposed. It is contended that an indictment under the 169th section of this Act is not forgery. The words "forge" or "forging" are not inserted or used to describe the offence defined or created by this section of the law, as they are used in the two following sections, and it is therefore contended that the Legislature intended to distinguish this offence from the other offences in which the words forge or forging are employed.

It will be seen, however, by a reference to the four consecutive sections of the Act of 1880, placed in the Digest under the head of forgery, that the offences are all declared to be misdemeanors, and that the punishment under the 169th section may be much more severe than under the sections in which the words forge or forging are inserted. It may, therefore, be asserted that the offence was not regarded by the Legislature as in its degree of criminality falling below those which, in the same connection, are characterized, directly or by implication, as constituting the crime of forgery. But

is the offence less forgery because it is not, *eo nomine*, so designated? In common understanding, to forge is to counterfeit, to falsify, to feign, to fabricate. As illustrated by Worcester, it is "to forge a note or signature." The common law definition of forgery is a fraudulent making or alteration of writing, to the prejudice of another man's right, or the false making of an instrument, which purports on its face to be good and valid for the purpose for which it was created, with a design to defraud any person or persons. In 3 Greenleaf's Evidence, sec. 103, to the former definitions is added the remark, "that forgery may be committed of any writing, which, if genuine, would operate as the foundation of another man's liability, or the evidence of his right." Now, tested by this standard, what element of the common law definition of forgery is wanting in the 169th section of the Act of March 31st, 1860, when it makes it an indictable offence to fraudulently make, sign, alter, utter, or publish any written instrument other than those which are recited in this section to the prejudice of another's right, with intent to defraud any person or body corporate? This, in fact, it will be seen to be, very slightly, more or less, than reciting the text of Blackstone's definition of forgery, as he lays it down in his Commentaries, 4 Black. 347. What difference, therefore, can it make that the law making power of the Commonwealth when legislating on this description of crimes, holds the language, if any one with fraudulent purpose shall *make* any false instrument, instead of saying if any one shall *forge* such an instrument, connecting as they do with such making, every essential element of the common law crime of forgery? In the four sections of the Act of 1880 before cited, in two of which the word forge is found, and in two of which it is omitted, the words to make and to forge are convertible terms, having the same meaning. They all relate to making false writings or stamps. It is not possible to forge in the sense in which the word is here used without a fraudulent making of a written instrument, and to fraudulently make an instrument such as is described in the 169th section of the Act, implies the necessity of forging such a paper. It is not the name alone which determines the character of the offence, to what class of crime it belongs, or what in substance and in fact it is. We look rather to the framework or structure of the crime as the Legislature has constituted it, and to its essential characteristics, in order to ascertain what it is. Subjected to the most critical examination, it will be found that the offence set forth in the 169th section is forgery, pure and simple, as the common law has defined it. It follows from this that the offence contemplated by the 169th section of the Criminal Procedure Act may be laid in an indictment as a fraudulent making of a written instrument, with fraudulent purpose under the statute, or it may take the form of an indictment for forgery, as at common law, and whatever be the form of the indictment the crime is as much forgery in one case as in the other. This has practically been decided by our Supreme Court, in the case of the *Commonwealth* v. *Luberg*, 13 Norris, 85. The indictment was under the Act now before us for consideration for making fraudulent entries in the books, reports and statements of a National bank, with intent to defraud the bank; Judge Paxson, delivering the opinion of the court, says, the indictment charges an offence which was a crime at common law. It is plain the plaintiff in error could have been indicted for forgery. The indictment here is laid under the statute, and does not charge the offence of forgery in the technical manner required by the strict rules of the common law. That the Act of Assembly does not call it forgery makes no difference. It is the same offence. In the case of the *Commonwealth* v. *Beamish*, 31 P. F. S. 389, the same principle was recognized. The indictment was held to be good under the statute, though not sustainable, as it was framed at common law, because neither copy nor purport of the whole, nor the part of the instrument of writing altered, was set forth or described.

The averment in the indictment was the fraudulent alteration of a book and writing commonly known as the duplicate of taxes levied for the use of the school district. Here the entire instrument of writing is copied into the indictment, which is thus shown to be a receipt perfectly intelligible on inspection, which requires no averment of extrinsic facts to make it appear that it is of a character calculated to work an injury to the person whose rights it is charged have been prejudiced by the defendant's alleged fraudulent signing of their names. It cannot, we think, be successfully maintained that each count of the indictment does not give to the de-

fendant full information of the nature and cause of the accusation against him, to which he is entitled under Section 9 of Article 1 of the Constitution of the State. This is a radical distinction between the present case and that of the *Commonwealth* v. *Mulholland*, 35 *Legal Intelligencer*, 112, 12 Philadelphia Reports, 608, upon which defendant, to some extent, relied as an authority in support of the present application. The instrument in that case, alleged to have been fraudulently altered, had no writing of any kind upon it; it was made up of figures and marks, with nothing to explain their meaning. The indictment was very properly quashed, because the copy of the forged instrument was insensible upon its face, and no extrinsic circumstances were shown by which the court could judicially ascertain its tendency or effect.

This was a fatal defect: (Archbold's Criminal Pleas and Practice, p. 808). But if there is any force in the objection that the first and second counts are defective for want of the averment of extrinsic facts, to explain the copy of the written instrument and connect the defendant with it, which we think there is not, no such objection can be supported, whatever view may be taken of the question, as to the third and fourth counts. Demurrers and motions to quash, under our system of criminal pleading, are not favored if they relate to matters of form only, and not to matters of substance. That indictments might have been framed, which would have stated the charge of the Commonwealth against the defendant with greater fulness and precision, may well be conceded; but an objection on this ground cannot prevail, if the substantial requirements of the law have been complied with, and this we think has been done in these indictments. Each count is sustainable as meeting the substantial demands of a common law indictment for forgery.

Here we have the charge of the intent to defraud. The instrument (a receipt) shows that it is of a character to work prejudice and do injury. It is an instrument of writing of no doubtful significance. It is free from the objection which prevailed in the *Commonwealth* v. *Frey*, 14 Wright, 245, because the copy of the receipt is accurately set out. And there is no obscurity or ambiguity about it which requires the averment of extrinsic facts, certainly none other than such as are laid in each of the third and fourth counts.

We have been unable to discover in the several grounds of demurrer assigned, or in the reasons presented in support of the motion to quash, the force which the counsel representing the defendant attached to them. That a receipt is a written instrument, in the legal as well as common understanding of that word, we think, cannot be well questioned. Its meaning is as well known and its use quite as common as that of a deed or will. It falls within the designation of a private document, whereby another person may be injured. The definition of the word as given in Bouvier, to which we have been referred, has no application to the point before us. Bouvier defines the word in its application to contracts or agreements only, and does not attempt to express its meaning when used in relation to other matters.

The false signing by initial of the first name may be forgery, where the intent is to deceive and defraud, especially where such intent is shown by signing almost directly under the full name of the payee of the order. W. S. Murphy in such case is the equivalent of Walter S. Murphy, if it was so intended by the person who wrote it.

It certainly cannot be necessary, as seems to be supposed, to explain the meaning of the words "making and signing," or the word "warrant." Some things must be taken for granted, even in technical pleading. An indictment is not intended to be a lexicon.

The reasons in support of the motion to quash are substantially the same as those which have been assigned as grounds of demurrer, except the sixteenth assignment, which states that, after the indictment had been returned as and for a true bill for fraudulently making and signing a written instrument, and publishing the same, it was by erasure, alteration, substitution or mutilation, by some third person without authority of law, entitled as and for a bill for forgery and for uttering and publishing a forged instrument. This reason is not supported by anything which appears on the face of the indictment. The designation of the character or contents of the indictment which appears on the back of it may have been changed in the manner stated before the bill was sent to the Grand Jury. Nothing to the contrary appears on the

indictment itself, but if the matter set up in this reason is true in point of fact, it would not be sufficient to require us to quash the indictment. The finding of the Grand Jury must stand or fall, not by the designation on the back of it, which is no part of the finding, but by what is contained in the body of the instrument. It is the charge which the Commonwealth prefers against a defendant to which the finding of the Grand Jury refers, and not to the merely clerical endorsements of the District Attorney or the Clerk of the Court on the back of the bill. The only material portion of such endorsements is that made by the Grand Jury of their finding.

Demurrers overruled, and motion to quash dismissed.

George S. Graham, District Attorney, for the Commonwealth.

James H. Heverin and *Furman Sheppard*, Esqs., for the defendant.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

The Chancellor.] [March 7, 1883.

RE BATT, WRIGHT V. WHITE.

Administration suit—Executor—Costs.

In an administration suit instituted by an executrix and residuary legatee against her co-executors, on the taking of the accounts, $330.84 more was found in the hands of the defendants than they had admitted in their statement of defence, caused (*a*) by their compensation being fixed by the Master at a less sum than they had claimed; and (*b*) by a mistake in omitting to give credit for an item of receipts which they at once admitted on its being discovered; and (*c*) by their being charged with $80 for witnesses. But it appeared that the litigation had really been caused by the fact that the defendant, having received a sum of money to which the plaintiff's infant daughter was entitled, had paid it to the plaintiff on the agreement that she should procure herself to be appointed guardian to her daughter, and obtain authority to receive the money; and the plaintiff having neglected to procure herself to be appointed guardian, the defendants had claimed to hold a sum out of the residuary share of the plaintiff, as an indemnity against the moneys so paid to her.

Held, notwithstanding that a larger sum had been found against the defendants than they had admitted, they were entitled to be paid their costs out of the estate.

Held, also, that the claim of the defendants to administer was reasonable, and that out of the residue in their hands to which the plaintiff was found entitled, they might properly pay into Court, to the credit of the daughter, a sum equal to that paid to the plaintiff on her daughter's account; and that upon such payment being made, the plaintiff should be at liberty to retain the moneys so paid to her on account of her residuary legacy.

PRACTICE CASES.

Osler. J.] [July 11, 1882.

BANK OF BRITISH NORTH AMERICA V. EDDY.

Examination—Defendant out of jurisdiction—G. O. Chy. 138-144.

An appointment was made *ex parte* by the Master at Ottawa for the examination of the defendant at his office in Ottawa, at 10 o'clock, on 28th June. A copy of the appointment, and of a subpœna, were served on the defendant, who resided in Hull, P. Q., and a copy of the appointment on the defendant's solicitor.

Held, that the proceedings were regular and warranted by G. O. Chy. 138: (*Moffatt* v. *Prentice*); and that consequently relief might be had against the defendant who failed to attend on the examination under G. O. Chy. 144.

Held, also, that such an appointment might be made *ex parte*.

Semble, that this mode of examination, and that provided for by R. S. O. ch. 50., were not interfered with by sec. 52 O. J. A.

W. Fitzgerald, for the plaintiffs.

H. Cassels, for the defendant.

GUNTHER V. COOKE.

Disobedience of court order—Attachment—Discharge—Practice in moving.

A deputy sheriff was arrested under a writ of attachment for default in obeying an order upon

his sheriff to deliver up to the claimant, who succeeded on an interpleader issue, the goods, etc., seized.

Upon a motion by the deputy sheriff to be discharged from custody, it was shown that this non-compliance with the order arose from a difficulty in which he found himself by the claim of another person, who had succeeded in an issue about the same goods, and not from any deliberate intention to disregard the order.

It was ordered that the deputy sheriff be discharged from custody.

Semble, that the motion should have been for leave to administer interrogatories to, or for the examination of the person committed, and for a *habeas corpus*

Judge of Co. of Lambton. Cameron, J. } March 13, 1883.

BRADLEY V. CLARK.

Third party—Examination—Rule 224 O. J. A.

Held, that though on the face of the pleadings there was no direct issue between the plaintiff and third party, yet as the latter had all the rights of the defendant, and virtually took his place, the case was within the spirit, at all events, of Rule 224 O. J. A., and that the plaintiff should be allowed to examine the third party after issue.

Holman, for the defendant.
Aylesworth, for the third party.
Rae, for the plaintiff.

Master in Ordinary.] [March 31.

HUTTON ET AL V. FEDERAL BANK ET AL.

Surety—Payment by—Interest.

Sureties who had paid the debt of a principal, claimed interest on moneys paid to the creditor under a special agreement, and also a return of interest in excess of seven per cent. paid by them to the Federal Bank on successive renewals of the notes given as collateral security for the debt of the principal.

C. R. W. Biggar, for the plaintiff.
H. J. Scott, for the Insurance Company.
Cattanach, for the Bank.
H. W. M. Murray and *Hoyles*, for other defendants.

Boyd, C.] [April 21.

OLD V. OLD.

Interim alimony—Conduct of Plaintiff—Condition of payment.

Hoyles appealed from the order of the Master at Goderich, allowing the plaintiff $6 a week for interim alimony, and showed that when plaintiff left defendant's house she took with her his books of account, notes and securities, and did not leave him with the means of paying interim alimony. He cited Browne on Divorce, p. 195 ; *Bremner* v. *Bremner*, 3 Sw. Tr. 219.

Order made staying the payment of alimony to the wife until she has produced on oath, in the office of the Master, all books, securities and notes, taken from defendant, which are to be delivered up to him ; the plaintiff to give the usual undertaking to go to trial. No costs of appeal.

H. Cassels, for plaintiff.

Boyd, C.] [May 2.

RE YOUNG.

Conveyance—Operative words in—Mistake—Intention.

This was an application under the Vendors and Purchasers Act, to obtain the opinion of the Court as to whether any, and if any, what estate passed and to whom under a deed dated 15th February, 1865, and made between Edward Musson, of the first part, Ann Musson, his wife, of the second part, and Alexander Gemmell and Jane Isabella Gemmell, wife of the said Alexander Gemmell, of the third part, whereby, "in consideration of the love and affection which he hath and beareth to the said parties of the third part, and also in further consideration of the sum of $5, now paid by the said party of the third part, the receipt, etc., he, the said party of the first part, doth grant unto the said party of the third part, his heirs and assigns forever, all and singular, etc., to have and to hold unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use forever."

Held, that the conveyance effectually vested an estate in fee simple in the husband by the operation of the Statute of Uses ; also, that another construction equally effective if adopt-

ed to carry the fee, would be to regard the limitation as an estate for life by entireties to husband and wife as being the joint party of the third part, with remainder in fee to the heirs of the husband.

Kent, for the vendor.

McCaul, for the purchaser.

LATEST ADDITIONS TO OSGOODE HALL LIBRARY.

CONTRACTS :—

Principles of the English Law of Contracts, and of Agency in its relation to Contract. By Sir Wm. R. Anson, Bart., D. C. L. Second edition. Clarendon Press, Oxford, 1882.

DOWER :—

A Treatise on the Law of Dower. By M. G. Cameron. Carswell & Co.

ELECTION CASES, 1883 :—

Reports of the decisions of the Judges for the trial of Election petitions in Ontario, relating to elections to the Legislative Assembly of Ontario, 1871-75-79, and to the House of Commons of Canada, 1874-78. By T. Hodgins, Q.C. Carswell & Co.

CRIMINAL LAW :—

Principles of the Criminal Law. A concise exposition of the nature of crime, the various offences punishable by the English Law, the Law of Criminal Procedure, and the Law of Summary Convictions, with the table of offences, their punishments and sta utes, tables of cases, statutes, etc. By S. F. Harris, B.C.L., M.A., &c. Revised by the author and F. P. Tomlinson. Stevens & Haynes.

TITLES :—

The Investigation of Titles to Estates in fee simple. By T. W. Taylor, Q.C. Second edition. Willing & Williamson.

CONTRACT :—

The Law of Contracts, by J. W. Smith. Seventh edit on. By Mr. Thompson. Stevens & Haynes.

JUDICATURE ACT :—

A manual of practice of the High Court of Justice for Ontario, under the Ontario Judicature Act, 1881, with the additional rules of the Supreme Court of Judicature for Ontario, passed 21st May, 1881. By G. S. Holmested Rowsell.

WILLS :—

A concise treatise on the Law of Wills. By H. S. Theobald. Second edition. Stevens & Haynes.

EQUITY :—

The Principles of Equity, intended for the use of students and the profession. By E. H. T. Snell. Sixth edition; to which is added an epitome of the Equity practice. Third edition. By A. Brown. Stevens & Haynes.

EQUITY :—

A Manual of Equity Jurisprudence, for practitioners and students. By J. W. Smith. Thirteenth edition. Stevens & Sons.

COMMON LAW :—

Commentaries on the Common Law, designed as introductory to its study. By H. Broom. Sixth edition. Maxwell & Son, London.

COMMON LAW :—

A manual of Common Law, for Practitioners and Students, comprising the fundamental principles, and the points most usually occurring in daily life and practice. By J. W. Smith. Ninth edition. Stevens & Sons.

EVIDENCE :—

The principles of the Law of Evidence, with elementary rules for conducting the examination and cross-examination of witnesses. By W. M. Best. Sixth edition. By J. A. Russell. Sweet.

CONVEYANCING :—

Shewing the present practice relating to the daily routine of conveyancing in solicitor's offices, to which are added concise common forms and precedents in conveyancing. Sixth edition. By H. Greenwood. Stevens & Sons.

BLACKSTONE :—

Commentaries on the Laws of England applicable to real property. By Sir Wm. Blackstone, Knight, adapted to the Laws of Ontario, by A. Leith, Q.C., and J. F. Smith. Second edition. Rowsell.

THE TITUS CASE.

The following is the correspondence between Mr. Marsh and Mr. Titus, which resulted in the charge made by the latter :—

BRIGHTON, 13th April, 1883.

Re Wright.

DEAR SIR,—I wrote you last week, but have just learned that you have not received my letter. Have yon any objection to allowing this matter to stand for ten days or a fortnight, until I can see what I can undertake to procure for your satisfaction.

Yours,

L. U. C. TITUS.

A. H. Marsh, Esq.

TORONTO, 16th April, 1883.

Re L. U. C. Titus.

DEAR SIR,—I am in receipt of your favour of the 13th inst. The matter may stand for the fortnight mentioned by you, and unless it is satisfactorily arranged by that time, or such evidence of *bona fides* has been furnished as may convince me that proper efforts are being made

in that direction, and that a satisfactory settlement is then imminent, I shall proceed without further notice.

Yours truly,
A. H. MARSH.

L. U. C. Titus, Esq.

BRIGHTON, 17th April, 1883.

Re Wright.

DEAR SIR,—Yours of yesterday to hand. Will you kindly inform me what will be a satisfactory settlement as required by your letter, so that I may know exactly what you may require of me, and may not unnecessarily delay matters.

Yours,
L. U. C. TITUS.

A. H. Marsh, Esq.

TORONTO April 18, 1883.

Re L. U. C. Titus.

DEAR SIR,—There are two things that require to be done in order to arrive at a settlement herein. One is the payment of the money found due by the Master's certificate. The other is that a release shall be procured from all the relations of young Ryan who would be entitled to have an action brought on their behalf under the Civil Damage Act, and the release must cover all damages that might be recovered by virtue of that Act. If you will instruct me as to the names of the parties, and the name of young Ryan's administrator, I will prepare such a release and forward it to you. It must be executed in the presence of some independent witness, who hears it read over to the parties signing the same.

Yours truly,
A. H. MARSH.

L. U. C. Titus, Esq.

BRIGHTON, 23rd April, 1883.

Re Wright.

DEAR SIR,—Yours of the 18th inst. at hand. I think that possibly you underrate the value that Ryan's relatives place upon their claims against Miss Wright. I do not think I could nduce them to compromise for the amount of he costs of the reference ($98.81), as your letter would indicate. Not being in a position to procure a release from them for that amount, I shall endeavour to be ready to pay over the amount found due, together with costs, in the time you indicate, which, I presume, will equally meet your views. Kindly advise Miss Wright to execute release upon payment by me, and oblige,

Yours,
L. U. C. TITUS.

A. H. Marsh, Esq.

24th April, 1883.

Re L. U. C. Titus.

DEAR SIR,—I am in receipt of your favour of the 23rd inst., and beg to point out that you have apparently succeeded in drawing a meaning from my letter of the 18th inst., which its wording will not bear Allow me to remind you that the amount found due by the Master's certificate is $172.98, and that is the amount that must be paid. Upon payment of that amount to Miss Wright, she will give you a receipt in full of all moneys owing from you to her. With regard to the Ryans and the amount of blackmail which they may hope to levy, I have not the same means of knowledge which you have, nor is there necessity that I should, as the ways and means by which a settlement may be effected with them is wholly a matter between you and them. Either you can effect such a settlement or you cannot. If you can it will be all the better for you. If you cannot, then you will have to take the consequence of using knowledge acquired in professional confidence as a means of stirring up litigation against a former client. You are losing time in preliminary fencing that you may afterwards need for the purpose of effecting the settlement in question. The evidences of good faith referred to in my former letter have not yet been forthcoming.

Yours truly,
A. H. MARSH.

L. U. C. Titus, Esq.

BRIGHTON, 25th April, 1883.

Re Wright.

DEAR SIR,—Yours of the 24th inst. received. I would suggest that you put your thoughts in plain English next time, and then you will be understood. A man with your ability should be able to express himself in an intelligible manner. I took the only meaning possible from your letter, and as I am not aware of any right you have to call upon me for a release of the Ryan claims, or means of compelling me to secure it, I would very much like to know in what way you propose to accomplish your object, then I may consider what inducement there is for me to buy off the Ryan family, as you suggest. Each letter you have written, conveys a different meaning; sometimes you want the money paid over, and again you want the Ryan claims settled. Let us understand each other fairly, and then no fault can be found at mistakes.

Yours,
L. U. C. TITUS.

A. H. Marsh, Esq.

26th April, 1883.

Re L. U. C. Titus.

DEAR SIR,—You have expressed a desire that I should put my thoughts in plain English, and express myself in an intelligible manner. I shall endeavour to do so. It is my present intention to have your name removed from the roll of solicitors for unprofessional conduct. Is that sufficiently explicit?

Very truly yours,
A. H. MARSH.

L. U. C. Titus, Esq.

Law Society of Upper Canada.

OSGOODE HALL.

HILARY TERM, 1883.

During this term the following gentlemen were called to the Bar, namely:—

William Renwick Riddel, Gold Medalist, with honours; Louis Franklin Heyd, William Burgess (the younger), John Joseph O'Meara, Charles Coursolles McCaul, James Henry, Frederick William Gearing, James Albert Keyes, James Gamble Wallace, Harry Dallas Helmcken, Albert John Wedd McMichael, Hugh D. Sinclair, Christopher William Thompson, Walter Allan Geddes, James Thompson, John William Binkley, Richard Scougall Cassels.

The following gentlemen were admitted into the Society as Students-at-Law, namely:—

Graduates—Joseph Nason, Henry Wissler, Robert Kimball Orr, Henry James Wright.

Matriculant—William H. Wallbridge.

Juniors—Joseph Turndale Kirkland, William James Sinclair, Francis P. Henry, Michael Francis Harrington, Thomas Browne, Charles Albert Blanchet, John Hood, Jaffery Ellery Hansford, Albert Edward Trow, Ralph Robb Bruce, Edwin Henry Jackes, William Herbert Bentley, Arthur Edward Watts.

Articled Clerk—William Sutherland Turnbull passed his examination as an articled clerk.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his Diploma, or a proper certificate of his having received his Degree. All other candidates for admission as Articled Clerks or Students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects:—

Articled Clerks.

From 1882 to 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

In 1883, 1884, and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil at their option, which are appointed for Students-at-law in the same year.

Students-at-Law.

CLASSICS.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles, V. XIII.

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

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

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical Analysis of a selected Poem:—

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

1884—Elegy in a Country Churchyard.
The Traveller.