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ON the 12th of June Sir Matthew Baillie Begbie, Chief Justice of British Columbia, died at Victoria. He was born in England in 1819, and was educated at Cambridge, where he was a wrangler in 1841. In 1844 he was called to the Bar, and was raised to the Bench in British Columbia in 1858. In 1870 he was made Chief Justice, and was knighted in 1875.

WE are requested to state that, by order of Convocation, an examination under the Law Society curriculum, for certificates of fitness and call to the Bar, will be held on the 4th and 5th days of September next, after which the old curriculum will be entirely discontinued. Students will remember that, over a year ago, it was decided to hold the last of these examinations last May, but it has been found necessary to extend the time as above mentioned.

THE case of *Morse* v. *Phinney*, recently decided in the Supreme Court, as to the form of an affidavit of *bona fides* in a chattel mortgage, and noted *ante* p. 359, seems rather to go back to the technicalities of a bygone day. We understand that, in Nova Scotia and New Brunswick, the judges are very tenacious of forms in such matters, and rightly so, within reasonable limits; but it seems difficult to understand why the words "as nearly as may be" should not be satisfied by all the information required appearing on the face of the affidavit, though not in the usual position.

NEWS has just been received of the death of Right Hon. John Duke Coleridge, Lord Chief Justice of England, on the 14th inst. He was born in 1821, and was educated at Eton and Balliol College, Oxford, where he graduated in 1842. In 1855 he was appointed recorder at Portsmouth, taking silk in 1861. On the appointment of Sir Robert Collier to the Judicial Committee of the Privy Council in November, 1871, Sir John Coleridge was appointed to succeed him as Attorney-General. Upon the death of Sir William Bovill he was appointed Chief Justice of the Court of Common Pleas in 1873, and soon afterwards was raised to the peerage by the title of Baron Coleridge of Ottery, St. Mary, in the County of Devon. On the death of Sir Alexander Cockburn, in November, 1880, Sir John Coleridge was appointed Lord Chief Justice of England. It is said that Lord Russell will succeed Lord Coleridge as Lord Chief Justice, a position for which he is eminently suited. Sir John Rigby would then become Lord Justice of Appeal in place of Lord Russell, and Mr. Robert T. Reid, the new Solicitor-General, would probably become Attorney-General, and Mr. Richard B. Haldane, M.P., Solicitor-General.

AN advertisement recently appeared in a Toronto newspaper which furnishes us with a delightful specimen of the peculiar technical jargon of Scotch law. It begins with the statement that "Information is given"; we presume the word "notice" is beneath the dignity of Scotch law, especially when the subject of the notice is nothing less than the fact that "an action of multiple-poinding and exoneration has been raised" by a "judicial factor," "conform to extract of appointment," and that the "judicial factor" is also "pursuer and real raiser" against a lady who shall be nameless, "concluding to have it proved that the pursuer is only liable in once and single conveyance and payment of the estate" of another lady who is deceased: and when, moreover, it is intimated that the Lord Ordinary has pronounced an "interlocutor," in which he "finds the pursuer liable only in once and single payment; holds the condescendence annexed to the summons as a condescendence of the fund *in medio*; appoints intimation of the dependence of the action to be made by advertisements; and appoints all parties claiming an interest in the fund to lodge their condescendences." When we read an

advertisement couched in these terms, we wonder how much sense the ordinary lay mind is able to pick out of it. It appears to us that it would be a "condescendence" to the common sense of the present age if our Scotch friends would be graciously pleased to revise their legal phraseology, so that the notice might, to the uninitiated, read a little more like the English language, and be something which they might be expected to understand.

IN an article in our last volume (p. 426) entitled "The Law's Delay," we commented at some length on the above case then before the New Brunswick courts, referring particularly to the conduct of Judge Palmer in connection with the case and other matters. Since then, as our readers will remember, this judge resigned, to avoid, it is said, impeachment for malfeasance in office. From his judgment, refusing to dismiss the Grants, the trustees, the *cestuis que trustent* appealed to the Supreme Court of New Brunswick, which at once reversed Judge Palmer's decision. An appeal was then taken by the Grants to the Supreme Court at Ottawa, which unanimously dismissed the appeal. Below we give the special report of the decision, as published in the daily papers of St. John, where it appears to have given universal satisfaction. We refer to the matter now to show that, as the event proved, our strictures last year were not unwarranted; besides which we have been assured our article was, by our brethren "down by the sea," most generally approved. The following is the report referred to:

"Ottawa, May 10.—The Supreme Court this afternoon dismissed the appeal of J. Macgregor Grant and R. C. Grant, executors of the Nicholson estate, from the judgment of the Supreme Court of New Brunswick. The case was argued by Messrs. McLeod, Q.C., and Palmer, Q.C., for the appellants, and by Mr. Hazen for the Nicholson heirs. Mr. Pugsley, Q.C., who was associate counsel with Mr. Hazen, was not called upon. In delivering judgment, the Chief Justice said the trustees had dealt most improperly with the estate, and made most improper charges against it. Judge Palmer committed a grievous error in not dismissing Major Grant when he learned he had written an improper letter to Mrs. MacLaren, threatening to destroy her father's estate from mere motives of vindictiveness. It was

incomprehensible that he had been longer allowed to remain a trustee. He thought one of the young ladies should have been appointed a trustee, when Ronald Grant was appointed, and Ronald was clearly liable to dismissal for drawing a salary of $1,500 a year as agent while he continued a trustee. He was really being paid twice over for performing the duty of trustee. Judge Taschereau said if he could find words stronger than those used by Judge Tuck in the court below to condemn Mr. Grant's action in writing the letter to Mrs. MacLaren he would use them. Mr. Grant should have been dismissed forthwith, and he hoped, for the good name of the administration of justice in New Brunswick, that he would not be allowed to continue a trustee much longer. Judge Sedgewick said, in view of the fact that the appellants had urged the reference to the referee against the protest of Mr. Hazen, they should have been the last people to attempt to avail themselves of the objections they raised. The judgment confirms the finding of the court below, that the trustees improperly charged $4,700 against the estate, and agrees in every respect with Judge Tuck's judgment."

We rejoice to know that such a slur upon the administration of justice has now been removed, and we would remind our readers that now, as in the time of Horace, *Raro deseruit pede pœna claudo.*

TAXATION OF GAS MAINS.

There are not two Acts on the statute book more fruitful of litigation and more difficult of construction than the Municipal and Assessment Acts. It may be prejudice, but it is at least worthy of remark that these two Acts are mainly the product of the lay mind. The lawyers in or out of the House have little or nothing to do with the framing of the provisions of these two chapters of legislation. But, on the other hand, there is nothing on the Ontario statute book which turns into the coffers of the legal profession so many fees as these two Acts. One of the latest illustrations of the uncertainty of municipal legislation has been afforded by the attempt by municipalities to tax the mains of gas companies. That two of the ablest County Judges in Ontario have delivered judgments diametrically opposite on this question is a sufficient justification for a reference to the subject.

The most convenient way of dealing with the subject will be to take up the judgment of the learned Senior Judge of the County of York, reported *ante* p. 157, and contrast this deliverance with the less elaborate judgment of the learned Judge of the County of Lincoln, reported *ante* 205.

Both judgments agree that, in order to subject a gas company to taxation, their mains must be held to be real estate or land, or they are not assessable at all; for, as Senkler, Co.J., points out, by s. 34, s-s. 2, of the Assessment Act the personal property of a gas company is exempt from taxation. McDougall, Co.J., decides they are real estate, either as being machinery forming an indivisible part of their plant, and appurtenant to their lands; or, if they are an easement, then, reading s-s. 7 of the Interpretation Act into the Assessment Act, an easement is expressly assessable; that the estate of the gas company is more than an easement, is in fact an hereditament, and, as such, taxable as land; and that the mains, though laid in the public highways, are property, and all property in the Province is liable to taxation: section 7, Consolidated Assessment Act. Senkler, Co.J., briefly holds that "these mains are chattels . . . or, at most, an easement, and, in either view, not assessable as land."

The interpretation clauses of the Assessment Act are somewhat peculiarly worded. Subsection 9 of s. 2 declares that "'Land,' 'real property,' and 'real estate' shall include all buildings and other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty." It may be a question as to whether this means that, in addition to the ordinary legal meaning of the words "land," "real property," and "real estate," the words "shall include" extend the meaning to the "buildings," etc., mentioned in the section. It may well be argued that the section defines the meaning of the words, "land," etc., and that the maxim *expressio unius*, etc., applies. Clearly, gas mains do not come within the definition of s-s. 9, for they are not "buildings and other things" (*ejusdem generis*). Another nice question might be suggested: Are not the "lands," etc., upon which the erections are contemplated by the statute lands owned by the company, and on which its buildings, gasometers, and "other things" are placed? Certainly, the mains are not "machinery or other things so fixed to any buildings as to form in law part of the realty."

In New York, under a statute which defined "land" to include "all buildings and other articles erected on or affixed to the same," the Court of Appeals held gas pipes not taxable as real estate, because not erected on or affixed to the company's land: *People* v. *Brooklyn Board of Assessors*, 39 N.Y. 81; *People* v. *Cassity*, 46 N.Y. 46. But the Supreme Court of the same state has recently held that the system of mains, tanks, and service pipes of a gas company, and the lot on which tanks stand, are real estate, and assessable as such. This is under statute of 1881, cap. 293, which makes them taxable.

Might not the mains be considered as trade fixtures and thus not "form in law part of the realty," and, being personal property, exempt under s. 34, s-s. 2?

At first sight, s. 7 would seem to be wide enough to cover the assessment. But the word "property" is by s-s. 8 of s. 2 confined to "real and personal property" as thereinafter defined, and thus is limited to the definition of "real property" contained in s-s. 9.

If s-s. 7 of s. 2 of the Municipal Act can be read into the Assessment Act, *cadit quæstio*. For by that subsection "land," etc., includes "lands, tenements, and hereditaments, and any interest or estate therein, or right or *easement* affecting the same." But can this clause be read into the Assessment Act? Section 10 of the General Interpretation Act, c. 1, R.S.O., enacts that "the interpretation section of the Municipal Act . . . shall extend to any Act which relates to municipalities." Broad enough, at first sight. But would it not be confined to such Acts, relating to municipalities, as contain no interpretation clause of their own, or, at all events, to supplement the interpretation clauses of such Acts which contain no provision relating to the matter in question? The Assessment Act is undoubtedly an "Act which relates to municipalities." But it has an interpretation clause of its own, which defines the very things which s-s. 7 of s. 2 of the Municipal Act also defines. Can the two interpretation clauses be read as one? Can the words in the interpretation clause of the Municipal Act which do not appear in the corresponding clause of the Assessment Act be added to the latter? This, is at least, problematical. Might it not be argued, with much force, that the words omitted from s-s. 9 of the Assessment Act were left out designedly?

In *Toronto Street Railway Company* v. *Fleming*, 37 U.C.R., at p. 123, Mr. Justice Burton holds that the company's rails, being fixed to realty, became part of realty, and, as the streets are exempt from taxation, so are the rails. It would, of course, follow from this that, as the pipes of gas and water companies are embedded, and so fixed in the realty of streets, they were part of the realty, and so exempt. But, as pointed out by the learned County Judge of York, there is much conflict between s-ss. 1 and 2 and 6 and 7 of s. 7 of the Assessment Act. This conflict is fully discussed by the learned judge (*ante* p. 163), and need not be repeated. It may be suggested, however, that the exemptions mentioned in s-ss. 1 and 2 refer to original surveys under Crown authority, and not private surveys by corporations or individuals. A great part of the city of Toronto is a Crown survey. The city of Guelph was laid out by the Canada Company. The city of Hamilton is composed of subdivisions of farm lots by private individuals, the grantees of the Crown. In the two last-mentioned cities the only highways and roads laid out originally by public authority would be the concession and side lines of the original township surveys. Would it be possible that gas mains are taxable when laid along a street which was originally laid out by the Crown, under s. 7, s-s. 2, of the Assessment Act, while similar mains would be exempt where laid on streets laid by private survey? But let it not be forgotten that, while s. 7 declares all property liable to taxation, "property" is limited by s-s. 8 of s. 2 to the definitions of s-ss. 9 and 10 of the same section of the same Act.

The question, easement or not, seems to be regarded by both the learned judges as being crucial, and Judge McDougall discusses it at great length, incidentally considering the supposed conflict between *Chelsea Waterworks* v. *Bowley*, 17 Q.B. 358, and a number of cases decided under the Poor Rates Act, 43 Eliz., c. 2. But, as Lord Campbell points out in his judgment in this case at page 361, and again in *Regina* v. *East London Waterworks*, 18 Q.B., at page 716, there was a marked distinction between the Chelsea Waterworks case, decided under 38 George III., c. 5, and cases decided under the statute of Elizabeth. The statute of George, as the Chief Justice is careful to point out, charges the tax against the land, while the statute of Elizabeth charges the person, and as the Chelsea company were not owners, and not tenants, under the provisions of their charter, they were not assessable.

This distinction is drawn with greater emphasis by Mr. Justice Burton in *Toronto Street Railway* v. *Fleming*, 37 U.C.R., at page 121. The distinction is there clearly and concisely stated. "The statute of Elizabeth was passed to throw a personal charge upon the occupiers of every description of real estate, but it was a personal charge only, not a charge upon the lands. Our Assessment Act, on the other hand, does not profess to rate the individual . . . but provides that all lands, etc., shall be liable to taxation, and at page 122 points out that 'a man is not assessed . . . but the land itself.'"

Regina v. *East London Waterworks*, 18 Q.B. 705, was decided under a statute worded very much as is the Act incorporating the Toronto Gas Co. The London company, by 47 George III., c. 72, s. 32, are empowered "to dig and break up the soil and pavement of any of the roads, highways, footings, streets, and public places," etc. The incorporating Act of the Consumers' Gas Co., 11 Vict., c, 14, s. 13, authorizes the company "to break up, dig, and trench so much or so many of the streets, squares, and public places of the city of Toronto," etc.

Lord Campbell held that, under the Imperial statute, the company had a direct interest in the land, and that the rate was properly laid. It is worthy of remark that the Paving Commissioners, who had power to make the rate, had also power to alter the position of the pipes belonging to any water or gas company underneath such street, etc. No such power has been reserved to the corporation of the city of Toronto, and the company have apparently the same rights as though they had expropriated the lands of a private individual.

It may be considered to be now well-settled law that exclusive possession or occupation of land is more than an easement; it is an interest in the land, and when an exclusive occupati n is confined to the grantee he becomes rateable: *Smith* v. *Lambeth Assessment Committee*, 10 Q.B.D., at page 330, per Baggalay, L.J. Exclusive or unrestricted use of land passes ownership, and is not an easement: *Reilly* v. *Booth*, 44 Ch.D. 26, per Lopes, L.J. This was reiterated by the same learned Lord Justice in *Metropolitan Railway Co* v. *Fowler*, (1892) 2 Q.B. 175, and was cited with approval by Lord Ashbourne in the same case in appeal, (1893) A.C., at page 428. The very latest case seems to be *Mayor, etc., of Southport* v. *Ormskirk*, (1893) 2 Q.B. 468, affirmed by the Court

of Appeal, 9 R., Jan., 172; Lord Esher, M.R,, holding, at page 173, that the Local Board, having the exclusive right of laying down mains and pipes, they have by virtue of the Act of Parliament a right to the possession of them, and it follows that they are the owners and occupiers of the land filled with those pipes. See also *Beaver* v. *London Portland Cement Co.*, 3 R. 47.

Legislation in the United States has been, as a rule, more comprehensive than with us. The Revised Statutes of Maine, c. 6, s. 9, defines that "'real estate,' for the purposes of taxation, includes all lands ... and all buildings erected on or affixed to same," and that "'lands' includes all tenements and hereditaments connected therewith, and all rights therein and interests therein." Under this statute the Supreme Court has held that water mains, pipes, etc., are to be considered real estate, and are taxable: *Inhabitants of Paris* v. *Norway*, 27 Atl. 143; 21 L.R.A. 525. Haskel, J., delivering the opinion of the court, says that his court gives very wide scope to the definition of real estate for the purposes of taxation, and cites *Hall* v. *Burton*, 69 Me. 346, which decides that a boom across the Kennebec river, fastened to permanent piers in the river, and to the shores by chains, was real estate for the purposes of taxation. Aqueducts, pipes, conduits, and hydrants have been held in Maine to be real estate: *Rockland* v. *Rockland Water Co.*, 82 Me. 188; *Kittery* v. *Portsmouth Bridge Co.*, 78 Me. 93.

Subdivision 8, s. 45 of Iowa Code, defines that "'lands' and the phrases 'real estate' and 'real property' include lands, tenements, and hereditaments, and all rights thereto and interest therein, equitable as well as legal." Under this statute, gas mains are held to be real estate, and taxable as such: *Capital City Gaslight Company* v. *Charter Oak Insurance Co.*, 51 Iowa 31; and as easements appurtenant to the lots owned by company, and to waterworks, they were held to be real estate: *Appeal of Des Moines Water Co.*, 48 Iowa 324; and buildings, machinery, and mains which constitute a system of waterworks are real estate for the purposes of taxation: *Oskaloosa Water Co.* v. *Board of Equalization of Oskaloosa City*, 84 Iowa 407. The last case was not one of mains under streets, but under land leased from a private owner. Nothing turned on this, however.

Section 1,035 of the Revised Statutes of Wisconsin declares that "real property," "real estate," and "land" "shall include

not only the land itself, but all buildings, fixtures, improvements, rights and privileges appertaining thereto."

The Supreme Court decides in *Fond du Lac Water Company* v. *Fond du Lac*, 82 Wis. 322, that the entire plant and works are an entirety within *Yellow River Improvement Co.* v. *Wood County*, 51 N.W. 1,004, 1,005.

Except in Kansas, it is held that improvements upon public lands of the United States, as well as the right to possess and occupy them, may be taxed by the State; and the possessory right to a mining claim may be made taxable without infringing on the rights of the United States: *Forbes* v. *Gracy*, 94 U.S. 762; and the Arizona Supreme Court held that the superstructure of a railway is taxable, although the right of way is expressly exempted from taxation by Act of Congress (14 U.S. Statutes at Large 292): *Atlantic and Pacific Railway* v. *Le Sueur*, 1 L.R.A. 244; 2 Interstate Com. Rep. 189.

A pipe line for oil is real estate: *State* v. *Berry*, 53 N.J.L. 212, affirming 32 N.J.L. 308. A street railway track is assessable as real estate in New York: *People* v. *Cassity*, 46 N.Y. 46; in California, *N. Beach and M.C. Co.'s Appeal*, 32 Cal. 499; in Maryland, *Appeal Tax Ct.* v. *W. Maryland*, 50 Md. 274; in Illinois, *Chicago* v. *Baer*, 41 Ill. 306; and in Connecticut, *New Haven* v. *Fair Haven and W.C. Co.*, 38 Conn. 422. A telegraph line is taxable as realty, *W.U. Tel. Co.* v. *State*, 9 Baxter (Tenn.) 509. Gas pipes are taxable as real estate, *Providence Gas Co.* v. *Thurber*, 2 R.I. 15. Pipes of natural gas company laid in city streets are not taxable as land: *Pittsburg's Appeal*, 123 Pa. 374. Pipes laid through the streets do not become property of the city or part of the realty. They are the personal property of the company: *Memphis Gaslight Company* v. *State*, 6 Coldwell (Tenn.) 310. Chapter 120 of the Revised Statutes of Illinois, s. 16, declares gas mains and pipes laid in roads, streets, etc., personal property. Although no similar provision is made in regard to water mains, and electric poles and wires, yet they were held to be personal property: *Shelbyville Water Co.* v. *People*, 140 Ill. 545.

A contract giving a party the exclusive right to dig ore in certain lands, no estate or interest in the land being granted, is a license, and not a grant or demise: *E. Jersey Iron Co.* v. *Wright*, 32 N.J. Eq. 248.

An easement of a reservoir company of flowing lands, without ownership of the lands or drain, is not taxable: *Fall River* v. *Bristol County Commissioners*, 125 Mass. 567. Water pipes are personal property: *Dudley* v. *Jamaica Pond Aqueduct Co.*, 100 Mass. 183. Gas pipes are machinery, and hence personal property: *Com.* v. *Lowell Gaslight Co.*, 94 Mass (12 Allen) 75.

The right to lay an aqueduct to a spring of water is a right in the realty, together with an easement from the spring through defendant's land to her own land: *Clark* v. *Gliddon*, 50 Vt. 702.

An easement is an interest in lands: *Huyck* v. *Andrews*, 113 N.Y. 81. It is real property: Washburn, "Easements," 5. It is an estate or interest in lands, within the Statute of Frauds, requiring contracts to be in writing: *North Beach & Mich. Co.'s Appeal*, 32 Cal. 506; *Foster* v. *Browning*, 4 R.I. 51; *Rice* v. *Roberts*, 24 Wis. 465; *Cayuga Ry. Co.* v. *Miles*, 13 Hunt. 173; *Day N.Y. Cent. Ry. Co.*, 31 Barb. 548. Easement is only an appurtenance when necessary to enjoyment of thing granted: *Mirthicum* v. *Ray*, 76 U.S. (9 Wall.) 243.

From all of which it may be inferred that the question of taxing gas and water mains, poles and wires of telegraph, telephone, and electric railway companies, and the tracks of street and other railways, is somewhat perplexing.

EDWARD FURLONG.

CURRENT ENGLISH CASES.

WILL—CONSTRUCTION—ILLEGITIMATE CHILDREN—GIFT TO "CHILDREN" OF PERSON DESCRIBED AS "WIFE."

In re Harrison, Harrison v. *Higson*, (1894) 1 Ch. 561, a testator whose daughter had gone through a form of marriage with a man named Higson, who had been previously married to her aunt, who had died in the testator's lifetime, made his will, bequeathing certain property in trust for his four children, including the daughter in question, who was described as "the wife of John Higson," for life, and, as to her share, after her death in trust "for the child or children of the said A. J. Higson." At the time of the will she had a child by Higson, and after the death of the testator she had two other children by him. The question Kekewich, J., had to decide was whether any of these children could take, under the will, as children of A. J. Higson,

her marriage to Higson being void; and it was held that, the testator having recognized her as the wife of Higson, he must be deemed to have intended to benefit the child born in the testator's lifetime, notwithstanding its illegitimacy, and that, therefore, this child was entitled to the whole of the fund. The children born subsequently to the death of the testator, he held, could not take, because the lady might, at some future time, have married and had legitimate children, and illegitimate children who are not strictly within the description given by the testator could not be admitted to share.

GOOD WILL—TRADE NAME, ASSIGNMENT IN GROSS—INJUNCTION.

Thorneloe v. *Hill*, (1894) 1 Ch. 569, was an action to restrain the defendant from marking watches made by him with the name of "John Forrest." It appeared that one John Forrest, a watchmaker, used to mark "John Forrest, London," on watches made by him. After his death, in 1871, his business and good will was sold by his administratrix to Carley & Co., watchmakers, in London. In 1874, Carley & Co. granted to a firm of Stuart & Co., watchmakers, of Liverpool, the sole right, for seven years, to put the words "John Forrest, London," on watches made by them. After the expiration of the seven years Carley & Co. rarely, if ever, inscribed watches made by them with the words "John Forrest, London." In 1890 they made an assignment for the benefit of their creditors, and the assignee sold their business to one Clemence, who still carried it on, and the same day he assigned to the plaintiff, who carried on business in Coventry, the right to use the name, title, and good will of the business of John Forrest, trading under the style or title of "John Forrest, Chronometer-Maker to the Admiralty, London, E.C." As a matter of fact, John Forrest had never been chronometer-maker to the Admiralty. The defendant, who was also a watchmaker in Coventry, was making and selling watches with the name of John Forrest inscribed thereon, and it was to restrain him from so doing that the action was brought. Romer, J., refused the injunction on several grounds—among others because, if the name "John Forrest, London," was originally justifiably used by Carley & Co., as indicating themselves as successors in business to John Forrest, yet, by their granting a license to use the name to persons who lived in Liverpool and were in no way successors

of John Forrest, they estopped themselves from so treating it, and, after assigning the right to Stuart & Co., they never afterwards, by user, regained any right to the name. Furthermore, he considered that the right to use a name cannot be assigned in gross, but only as appurtenant to some particular trade or business, and therefore the assignment to the plaintiff was ineffectual to transfer any right as against the public; and, further, that the name of "John Forrest, London," was not a trade mark, not having been registered, and being incapable of registration as such. Though dismissing the action, the judge considered the defendant's conduct reprehensible, and refused him his costs.

DEBENTURE-HOLDERS — COMPROMISE — DISSENTIENT MINORITY—ESTOPPEL BY RECORD—ASSISTING IN DEFENCE OF ACTION—PRIVIES IN ESTATE.

Mercantile Investment Co. v. *River Plate Co.*, (1894) 1 Ch. 578, was an action brought by the plaintiffs, as debenture-holders of an American land company, to enforce a charge against the lands of the company which had been transferred to the defendant company. The trust deed whereby the debentures in question were secured contained a provision enabling a majority of the debenture-holders to enter into a compromise of their claims so as to bind the minority. In pursuance of this provision a resolution had been passed by a majority of the debenture-holders (in which, however, the plaintiffs did not concur), agreeing to accept shares in the defendant company, to which the American company transferred its undertaking and assets in lieu of the debentures. At the time of this compromise the debentures were not actually a charge on the land, which was situate in Southern California, for want of registration. Notwithstanding the compromise, the plaintiffs sued the American company for arrears of interest due on their debentures, and recovered judgment on the ground that there were no circumstances of difficulty which brought the power of compromise into play, so as to enable the majority of debenture-holders to bind the dissentient minority. The defendant company assisted the American company in defending that action, and, pursuant to an agreement of indemnity it had given the American company, it paid the costs of the action. In the present action the plaintiffs contended that the defendants were estopped by the judgment in the previous action from disputing their right as debenture-holders, or from again

setting up the compromise as binding upon them. But Romer, J., was of opinion that the defendants, as purchasers from the American company, were not bound as privies in estate by a judgment recovered against their vendors in an action commenced after the defendants had acquired their title; and that neither was the fact of their having assisted in the defence of the action, or paid the costs, any ground for holding them estopped by the judgment in the previous action; and as he found, as a matter of fact, that there were circumstances existing which justified the compromise, and that it was binding on the defendants, he dismissed the action.

The Law Reports for May comprise, (1894) 1 Q.B., pp. 669-847; (1894) P., pp. 149-190; (1894) 1 Ch., pp. 597-744; and (1894) A.C., pp. 69-201.

LIBEL—INJUNCTION—INTERLOCUTORY INJUNCTION PENDING TRIAL—EXHIBITION OF EFFIGY—QUESTION FOR JURY WHETHER PLAINTIFF CONSENTED TO EXHIBITION—DISCRETION—JUDICATURE ACT, 1873 (36 & 37 VICT., c. 66), s. 25, s-s. 8—(ONT. JUD. ACT, s. 53, s-s. 8).

Monson v. *Tussaud*, (1894) 1 Q.B. 671, is a case which arose out of the celebrated "Ardlamont mystery." The plaintiff having been tried for murder, and a verdict of "not proven" having been returned, the defendants, who had an exhibition of wax figures, forthwith added to their collection a portrait model of the plaintiff, which they placed in a room leading to the "Chamber of Horrors." This room also contained figures of Napoleon, and three other persons, of whom one was convicted of murder, another committed suicide to avoid arrest, and another was a person charged with having been concerned in the alleged Ardlamont murder, but who could not be found. In the "Chamber of Horrors" were exhibited figures representing, for the most part, notorious murderers and relics of murders, and also a model of the spot where the supposed Ardlamont murder took place. The plaintiff applied for an interim injunction to restrain the exhibition of the figure of himself pending the trial of the action. The defendants resisted the motion on the ground that the exhibition was not libellous. The Divisional Court (Mathew and and Collins, JJ.) granted the order, holding the exhibition to be libellous. On appeal, it appearing by further affidavits filed that

there would be a question at the trial whether the plaintiff had not consented to the exhibition complained of, the Court of Appeal (Lord Halsbury, and Lopes and Davey, L.JJ.) were of opinion that an interlocutory injunction ought not to be granted. The Court of Appeal was not, however, agreed as to whether the court below was justified in granting the injunction on the evidence there used. Lord Halsbury was of opinion that it was, and Davey, L.J., said he would have much hesitation in differing from it; but Lopes, L.J., thought that it was not warranted in granting the injunction, as the case was not brought within the rule laid down in *Bonnard* v. *Perryman*, (1891) 2 Ch. 269, which both he and Davey, L.J., regarded as an absolute rule of practice with regard to the circumstances under which an interlocutory injunction may be granted, whereas Lord Halsbury thought the case did not in any way limit the judicial discretion.

SOLICITOR—UNDERTAKING OF SOLICITOR, ENFORCEMENT OF—SOLICITOR'S UNDERTAKING TO REFUND COSTS.

Swyny v. *Harland*, (1894) 1 Q.B. 707, was an application to enforce an undertaking given by a solicitor to refund certain costs, in the event of an appeal from the judgment under which they were payable being successful. The appeal having proved successful, the appellant applied for an order against the solicitor to refund the costs in question, which was granted. In connection with this case, it will be useful to refer to a somewhat similar application to enforce an undertaking given by a solicitor out of court to deliver up a deed, recently noted in the English *Law Times* newspaper, vol. 97, p. 41, where the Court (Chitty, J.) made a summary order against the solicitor.

MORTGAGE—TRADE FIXTURES—HIRE AND PURCHASE AGREEMENT—REMOVAL OF FIXTURES.

Gough v. *Wood*, (1894) 1 Q.B. 713, was an action by a mortgagee to restrain the removal of a boiler from the mortgaged premises under the following circumstances. Prior to the mortgage the mortgagor had entered into an agreement with the defendants, whereby they agreed to supply him with a boiler, to be paid for by instalments, and, until paid for, the property in the boiler was to remain in the defendants; and, in case of default in payment of any of the instalments, the defendants were

to be at liberty to enter and remove the boiler. After this agreement the mortgage to the plaintiff was made. The plaintiff, having no notice of the agreement, suffered the mortgagor to continue in possession, and the agreement for supplying the boiler, which was for the purpose of his trade, was carried out. One of the instalments of purchase money not having been paid, the defendants entered and removed the boiler. The action was brought to recover damages for the removal: but the Court of Appeal (Lindley, Kay, and Smith, L.JJ.) affirmed the decision of Wright, J., dismissing the action. The fact that the mortgagor was allowed by the mortgagee to continue in possession was held to be an answer to the contention that the defendants had fixed the boiler to the plaintiff's land without his consent, and constituted an implied authority to the mortgagor to use the premises as might be necessary for carrying on his business, so long as he remained in possession. The result, however, might have been different if the mortgagee had taken possession before the removal of the boiler, but on this point the court did not give any opinion.

SOLICITOR AND CLIENT—CHAMPERTY AND MAINTENANCE—TAXATION BETWEEN SOLICITOR AND CLIENT—RIGHT OF CLIENT TO ACCOUNT OF MONEYS PAID TO SOLICITOR FOR ILLEGAL PURPOSES.

In re Thomas, Jaquess v. *Thomas*, (1894) 1 Q.B. 747, was an application by a client to compel his solicitor to deliver his bill of costs and an account of moneys received. The solicitor set up that the moneys were received in pursuance of an illegal and champertous agreement entered into between him and his client, and that, therefore, he should not be ordered to deliver any bill or render any account. The litigation in which the solicitor had been employed was in reference to some supposed claim to the Townley estates. The claimant, a man named Lawrance, was an impecunious individual, and several persons in America contributed between them $55,000 in order to enable him to prosecute his claim, on the understanding that they were to be repaid when the estates were recovered. Colonel Jaquess was appointed agent of the claimant, and went to England and employed a solicitor named Thomas. The suit was brought by Thomas in the name of Lawrance, and was dismissed as frivolous and vexatious. Jaquess now applied for the delivery of a

bill for the purpose of taxation, and an account of cash received, which application Thomas resisted on the grounds above mentioned, but the Court of Appeal (Lindley, Kay, and Smith, L.JJ.) indignantly scouted the idea that a solicitor could shield himself under any such defence, and asked, very pertinently: "Is every rascally solicitor to invoke his own rascality as a ground of immunity from the jurisdiction of the court? Or is the court to listen to a solicitor who, after acting for and advising his client, and taking his money, is mean enough to denounce him and set up the illegality of the client's conduct as a reason why the court should not call its own officer to account?"

MEDICAL PRACTITIONER—REMOVAL OF NAME FROM REGISTER—"INFAMOUS CONDUCT IN A PROFESSIONAL RESPECT"—DOMESTIC FORUM—PERSONAL INTEREST OF MEMBER OF TRIBUNAL—MEDICAL ACT (21 & 22 VICT., C. 90), SS. 28, 29 (R.S.O., C. 15, SS. 34, 35).

In *Allison* v. *General Council of Medical Education*, (1894) 1 Q.B. 750, the plaintiff sought an injunction to restrain the defendants from removing his name from the register of medical practitioners, pursuant to the finding of the General Council that he had been guilty of "infamous conduct in a professional respect," and directing, in consequence, the removal of his name from the register. The court was asked to review the finding of the domestic tribunal on the facts. It was proved that the plaintiff had published advertisements in newspapers containing reflections on medical men generally and their method of treatment, and advising the public to have nothing to do with them or their drugs, but to apply to the plaintiff for advice, giving his address and the fee which he charged. The Court of Appeal (Lord Esher, M.R., Lopes and Davey, L.JJ.) agreed with Collins, J., that on that evidence the General Council might reasonably find that the plaintiff had been guilty of "infamous conduct in a professional respect," and that, being so, a court of law could not review its decision; and that the Council would be justified in finding any act done by a practitioner which would be reasonably regarded as disgraceful and dishonourable by his professional brethren of good repute and competency to come within the category of "infamous conduct in a professional respect." One other point in the case arose out of the fact that the proceedings against the plaintiff were instituted and carried on by a society known as the Medical Defence Union. One of the members of the General

Council which tried the plaintiff had been also a member of the Medical Defence Union, but was not actually a party to or aware of the proceedings taken by the Union against the plaintiff. He was elected a member of the Council on May 3rd, and on the same day sent in his resignation as a member of the Defence Union. The articles of association provided that any member of the Union might resign on giving two months' notice of his intention so to do, "and upon the expiration of such notice he shall cease to be a member." The inquiry was held on May 28th, but the court was of opinion that the member objected to was not disqualified under the above circumstances from taking part in the inquiry.

PRACTICE—WRIT OF SUMMONS—SERVICE—PARTNERSHIP FIRM, ACTION AGAINST—ORD. XLVIII. A., RR. 1, 3, 8—(ONT RULES 265, 266).

Worcester City and County Banking Co. v. *Firbank*, (1894) 1 Q.B. 784, may be usefully noted as marking an important variation in the practice in England and Ontario in relation to actions against partners sued in the firm name. Under the later English Rules. Ord. xlviii. A., rr. 1, 3, 8, it is now held by the Court of Appeal (Lord Esher, M.R., Lopes and Davey, L.JJ.) that a firm carrying on business in England may now be sued in their firm name, notwithstanding that all the partners may be resident abroad; whereas under the former English Rules, which were similar to Ont. Rules 265, 266, it was held that a firm could only be sued in the firm name where the partners were all resident within the jurisdiction, which, we take it, must still be the construction to be placed on the Ontario Rules. But even under the present English Rules, it was held in this case that service of the writ could not be effected substitutionally on a member of a firm residing out of the jurisdiction so as to make it good service on the firm, because personal service on such partner could not have been validly effected without first obtaining leave, which had not been obtained, and service could not be validly made substitutionally on a party where there was no power to serve him personally. In order to bind a member of such a firm personally by the judgment according to the present English practice, it is necessary to make him a party, and obtain leave to serve him with the writ, as in the case of any other foreign defendant, or else to serve him with the writ within the jurisdiction; but a judgment may be

recovered which will be binding against the firm by serving the writ as mentioned in Ont. Rules 265, 266; whereas in Ontario such service would be invalid even to bind the firm, where all or any of the members were resident abroad.

PRACTICE—PARTNERS SUED IN FIRM NAME—DISSOLUTION OF PARTNERSHIP BEFORE ACTION—SERVICE OF PARTNERS.

Wigram v. *Cox*, (1894) 1 Q.B. 792 is another case which serves to illustrate another variation between the English and Ontario practice on the subject of suing partners in the firm name. The new English Rule, Ord. xlviii. A., r. 3, provides that where it is known to the plaintiff that the firm has been dissolved before action, the writ must be served upon every person within the jurisdiction sought to be made liable. In the present case the plaintiff, having recovered judgment against the firm, applied for leave to issue execution against an alleged partner, but the application was refused because he had not complied with the Rule, and the court (Cave and Wright, JJ.) rescinded an order of Grantham, J., directing an issue to try the question of liability.

PRACTICE—ACTION FOR RECOVERY OF LAND—SPECIALLY INDORSED WRIT—TERMINATION OF TENANCY BY FORFEITURE—ORD. III., R.6—(ONT. RULE 245).

Arden v. *Boyce*, (1894) 1 Q.B. 796, was an action to recover land. The writ was specially indorsed, and the plaintiff having applied for leave to sign judgment, notwithstanding an appearance under Ord. xiv. (Ont. Rule 739), a Divisional Court (Mathew and Collins, JJ.) refused the application. It appeared that the defendant was a tenant of the plaintiff for a term of seven years, but that the lease contained a proviso that if any rent were in arrear for a certain time the landlord might forthwith determine the lease by notice to quit in writing, or immediately re-enter. Rent being in arrear for the specified time, the plaintiff had given notice to quit. Under these circumstances, the court held that the plaintiff's right to recover possession was based on an alleged forfeiture, and was not, therefore, properly the subject of a special indorsement, and this view was unanimously confirmed by the Court of Appeal (Lord Esher, M.R., Lopes and Davey, L.JJ.).

PRACTICE—"EQUITABLE EXECUTION"—RECEIVER, APPOINTMENT OF—JUDICATURE ACT, 1873 (36 & 37 VICT., C. 66), S. 25, S-S. 8—(ONT. JUD. ACT, S. 53, S-S. 8).

Harris v. *Beauchamp*, (1894) 1 Q.B. 801, is another phase of a case which has already been referred to in other stages of the

litigation. The plaintiff, having recovered judgment against a firm, now sought the appointment of a receiver by way of equitable execution to receive certain debts and other assets of the firm. The order appointing the receiver had been granted by Wright, J., and his order had been affirmed by a Divisional Court (Lord Coleridge, C.J., and Collins, J.). The Court of Appeal (Lord Esher, M.R., Lopes and Davey, L.JJ.), however, took a different view of the matter, and in the judgment of the court, delivered by Davey, L.J., we find a careful exposition of the law on the subject of equitable execution, the conclusion reached being that it is only a taking out of the way of a hindrance which prevents execution at common law, and that, where there is no such hindrance, it ought not to be granted. Strictly speaking, the appointment of a receiver is not execution, but equitable relief granted on the ground that there is no remedy by execution at law. It is, therefore, not an appropriate remedy for reaching debts that can be garnished, or assets that may be seized by the sheriff. The words of the Judicature Act, s. 25, s-s. 8 (Ont. Jud. Act, s. 53, s-s. 8), authorizing the court to grant an order for a receiver where it is "just as convenient," do not, in the opinion of the Court of Appeal, "confer an arbitrary or unregulated discretion on the court, and do not authorize the court to invent new modes of enforcing judgments in substitution for the ordinary modes."

PRACTICE—NEW TRIAL—INDICTMENT FOR OBSTRUCTING HIGHWAY.

In *The Queen* v. *Berger*, (1894) 1 Q.B. 823, the defendant had been indicted and found guilty of obstructing a highway. He applied for a new trial on the ground of misdirection and improper reception of evidence. It was contended that the indictment was for a criminal offence, and that, therefore, there was no jurisdiction to grant a new trial; but the court (Cave and Wright, JJ.) held that there was jurisdiction to grant a new trial in such cases where the defendant had been found guilty, though not where he had been acquitted, and, being of opinion that the evidence objected to had been improperly received, they granted the application.

BAILOR AND BAILEE—LIEN OF BAILEE FOR CHARGES—RIGHT OF BAILEE AS AGAINST TRUE OWNER.

Singer Manufacturing Co. v. *London & S.W. Cy. Co.*, (1894) 1 Q.B. 833, is a suit to settle the question of a right to recover a

sum of four shillings, and probably the solution of the interesting legal question involved was not arrived at without an expenditure of at least 250 times the amount in question. A couple of wealthy corporations, no doubt, could well afford this luxury. The point in dispute was not very intricate. The plaintiffs had let to one Woodman a sewing machine under a hire and purchase agreement. Woodman, while in possession of the machine under this agreement, deposited it in the cloak room at one of the defendants' railway stations, and subsequently decided not to take it away, and notified the plaintiffs where it was; and they demanded it from the defendants, who refused to deliver it up until paid their charges for keeping it, amounting to four shillings; hence the action. A Divisional Court (Mathew and Collins, JJ.) affirmed the judgment of a County Court judge, holding that the defendants had a valid lien on the machine for their charges, which was good as against all the world; because Woodman, while in possession under the agreement, had a right to take the machine with him if he travelled, and to deposit it in the cloak room, and that in the course of such reasonable user he could give rights to the defendant company which were valid as against the owners of the machine; and also on the ground that the defendants were, as common carriers, bound to give reasonable facilities for the storage of the goods of travellers, and that it was in the performance of that obligation they had received the machine, and, therefore, acquired a valid lien thereon for their charges in taking care of it.

DEFAMATION—LIBEL—PRIVILEGED COMMUNICATION—LETTER WRITTEN BY SOLICITOR IN ORDINARY COURSE OF DUTY TO CLIENT.

Baker v. *Carrick*, (1894) 1 Q.B. 838, was an action for libel. The libel complained of was contained in a letter written by the defendant as a solicitor in the ordinary course of his duty to his client, a creditor of the plaintiff, directed to a third party, notifying him not to part with the proceeds of certain goods intrusted to him for sale, on the ground that the plaintiff, the owner of the goods, had committed an act of bankruptcy, upon which an order in bankruptcy might be made against him. The jury having found a verdict for the plaintiff, the defendant appealed, and moved to enter judgment dismissing the action. The Court of Appeal (Lord Esher, M.R., and Lopes and Davey, L.JJ.) allowed

the appeal and dismissed the action, holding the occasion privileged, and there being no evidence of malice.

DEFAMATION — LIBEL — PRIVILEGED COMMUNICATION — SOLICITOR ACTING IN DISCHARGE OF HIS DUTIES TO HIS CLIENT—PUBLICATION OF LIBEL—DICTATING OF LETTER TO CLERK—CLERK COPYING LETTER.

Boxsins v. *Goblet*, (1894) 1 Q.B. 842, was also an action for libel, in which a similar point to that in the last case is discussed. The action was brought against a firm of wine merchants, and their solicitors. A Mrs. Buduns was indebted to the wine merchants, and they put the claim in the hands of their solicitors for collection. From information they received, they were led to believe that the plaintiff and Mrs. Buduns were identical, and on that supposition wrote to the plaintiff a letter demanding payment of the debt, and making the defamatory statements complained of. The letter was dictated to one clerk and copied by another clerk of the solicitors. The jury found a verdict for the plaintiff, but negatived malice. It was attempted to distinguish the case from the preceding one on the ground of there having been a publication to the clerks who had written and copied the letter, and *Pullman* v. *Hill* (1891) 1 Q.B. 524 (see *ante* vol. 27, p. 236) was relied on; but the Court of Appeal (Lord Esher, M.R., and Lopes and Davey, L.JJ.) were agreed that the case was distinguishable, on the ground that it is not part of the ordinary course of business of a merchant to write defamatory letters; whereas in the case of a solicitor he was privileged to write and send in the ordinary course of business letters respecting his client's affairs, and that the publication of such letters to his clerks in the ordinary course of business was privileged. The action was therefore dismissed.

WILL—EVIDENCE—ONUS PROBANDI.

Tyrrell v. *Painton*, (1894) P. 151, is the only case in the Probate Division to which it is necessary to refer. This was an action to establish a will, and the question was whether the party who propounded a will which had been prepared and executed under suspicious circumstances by a person whose father was made sole devisee thereby had sufficiently satisfied the *onus* of showing that the testatrix knew and approved of the contents of the will. The Court of Appeal (Lindley, Smith, and Davey, L.JJ.)

held that the rule which imposes this *onus* on a party propounding a will applies not only where the will is prepared by the person who takes a benefit thereunder, but in all cases where a will is prepared and executed under circumstances which raise suspicion. In the present case the testatrix had, in 1880 and in 1884, made a will in favour of the defendant; afterwards, from 1884 to 1892, she became dissatisfied with him, and wrote repeatedly to her solicitors, making complaints against him. On the 7th of November, 1892, she made a will leaving her property to the plaintiff. On the 9th of November, 1892, a son of the defendant brought to her a will, prepared by himself, leaving the property to the defendant. This will was executed by her in the presence of the defendant's son and a young friend of his, no one else being present, and no one else being informed of its existence until after the testatrix's death. The testatrix subsequently complained of the defendant's son having been admitted to her presence, and asked her medical attendant to prevent her being disturbed again. She died on the 23rd of November, 1892. The President held that the burthen of proving the will of the 7th of November to have been obtained by fraud was on the plaintiff; but the Court of Appeal decided that the *onus* was on the defendant of proving its *bona fides*, and that he had not satisfied it. They, therefore, decided in favour of the will propounded by the plaintiff.

Notes and Selections.

TELEGRAPH COMPANY — MENTAL SUFFERING — DAMAGES.— It has been held by the Missouri Supreme Court, in *Connell* v. *The Western Union Telegraph Co.*, that damages will not lie for delay in delivering a telegram informing a parent of his child's dying condition. A similar conclusion has been arrived at by the Supreme Court of Florida in *International Ocean Telegraph Co.* v. *Saunders*, 14 South. Rep. 148, and by the Supreme Court of Wisconsin in *Summerfield* v. *Western Union Telegraph Co.*, 57 N.W. 57 Rep. 973.

JUDGES' WILLS.—It is related of Serjeant Maynard, who flourished as a "black-letter lawyer" in the days of William III., that he deliberately worded his will in ambiguous terms, so that several legal questions which had vexed him in his lifetime might be settled in court after he was dead. It is abundantly clear that this disinterested notion was not entertained by Sir James Stephen in the disposition of his wealth. "This is my last will. I give all my property to my wife, whom I appoint sole executrix." No testamentary disposition could be much simpler. The will is the shortest a judge has ever been known to make. The occupant of the Bench who most closely approached Sir James Stephen in his testamentary conciseness was Lord Mansfield, who wrote his will on half a sheet of note paper. This economy of labour and space was all the more remarkable because the testator disposed of property of the value of half a million pounds. Having provided for a few specific legacies to friends, he gave the residue of his possessions to his nephew in these unusual terms: "Those who are dearest and nearest to me best know how to manage and improve, and ultimately, in their turn, to divide and subdivide the good things of this world, which I commit to their care, according to events and contingencies which it is impossible for me to foresee or trace through all the mazy labyrinths of time and chance."

Judges rarely draw their own wills. They know too well the truth of Lord St. Leonards' words: "It is quite shocking to reflect upon the litigation which has been occasioned by men making their own wills." It is a remarkable fact that the very man who wrote these words committed the error he condemned. Lord St. Leonards is the only Lord Chancellor whose will has been the immediate subject of litigation. It was not, however, on account of the obscurity of its phraseology, but because of its disappearance, that the will acquired the notoriety it possesses. It was understood that the distinguished jurist, who died in 1875, at the advanced age of ninety-four, had spent not a small part of his latter years in making an equitable disposition of his wealth, and it was known that he kept the precious document in a box. At his death the carefully-prepared will was missing, and the most diligent search failed to discover it. His daughter, who had often perused it in his presence, was fully acquainted with its provisions, and Sir James Hannen, with the subsequent

approval of the Court of Appeal, allowed her to give evidence as to its contents. It was decided that the contents of a lost will may be proved by the evidence of a single witness, though interested, whose veracity and competence are unimpeachable, and that, when the contents of a lost will are not completely proved, probate will be granted to the extent to which they are proved.—*The Law Journal.*

LORD BOWEN.—The same journal gives an interesting sketch of the life of this "Chevalier Bayard of the Bar and the 'Admirable Crichton' of the Bench," who passed away on the 10th of April last. His style of speech was too academic to make him an effective advocate in jury cases, but he was recognized as a lawyer of deep and versatile learning, and when he was appointed a judge of the Queen's Bench Division in 1879, passing straight from the junior Bar to the Bench at the early age of forty-three, his qualifications for the honour were universally acknowledged. His success at Nisi Prius, however, was not great. The trivial facts of ordinary disputes were not worthy of his intellectual strength, and his summings-up were frequently above the heads of the jury. But whenever he allowed free play to his powers of irony, his addresses to the jury were most entertaining. While on circuit, he tried a burglar who had entered the house from the roof and left his boots on the tiles, and who alleged, by way of defence, that he was accustomed to take midnight strolls on the roofs of dwellings, and that he had simply been led by a feeling of curiosity to descend into one of the houses. "If, gentlemen," said Lord Bowen to the jury, "you think it probable that the prisoner considered the roofs of houses a salubrious place for an evening walk—if you suppose that the temptation to inspect the interior of the houses beneath him was the outcome of a natural and pardonable curiosity—in that case, of course, you will acquit him, and regard him as a thoughtful and considerate man, who would naturally remove his boots before entering the house, and take every precaution not to disturb his neighbours." He found his true sphere in 1882, when he was promoted to the Court of Appeal, in succession to Lord Justice Holker. During the eleven years he sat as a Lord Justice, he delivered a series of

judgments remarkable for the accuracy of their law and the elegance of their diction. No judge has delivered so many brilliant judgments at so early an age. To read them is to learn how closely it is possible to join legal erudition and literary grace. He was equally at ease in hearing common law appeals with Lord Esher, and determining Chancery appeals with Lord Justice Lindley; in whichever branch of the Court of Appeal he sat, his judgments were marked by the same depth of learning, the same knowledge of the evolution of the law, the same lucidity and felicity of phrase.

ELECTRIC CARS — DUTY OF MOTORMEN — FRIGHTENING HORSES.—In *Ellis* v. *Boston & L. R. Co.*, 35 N.E. Rep. 1127, decided by the Supreme Judicial Court of Massachusetts, it was held that where a motorman, while operating a street car and sounding the gong, sees that the car and noise are frightening a horse, and thereby endangering the driver, it is his duty to do what he reasonably can to diminish the fright of the horse, and that the failure of the motorman to notice the frightened condition of the horse, if he might have perceived it by the exercise of reasonable care, is negligence. The court said in part:

Although there was some conflict of evidence in this case, the jury may have found that the plaintiff, having no reason to think it unsafe so to do, drove down a street in the city of Lynn on which was an electric railway, and there met one of the defendant's open electric cars, filled with passengers, on which the motorman was continually sounding the gong; that the horse was frightened at the car, and at the noise of the motor, and of the gong, and manifested his fear in such a way as to show the motorman that the plaintiff and his daughter, who was riding with him, were in great peril, and that the motorman, instead of stopping the car, or ceasing to sound the gong, kept on with the car, and continued to make a loud clangor with the gong, so that the horse became unmanageable, broke the carriage, threw the plaintiff out, and thereby inflicted serious injuries upon him.

The defendant's requests for rulings go upon the theory that the manager of an electric railway car upon a street is never called upon to stop the car, or to change his method of managing it, to avoid any danger from the fright of horses other than the

danger of collision with the car. These requests were founded on an erroneous view of the law. It is a well-known fact that most horses are frightened at their first view of a moving electric car, especially if they encounter it in a quiet place, away from the distracting noises of a busy city street. It is only by careful training and a frequent repetition of the experience that they acquire courage to meet and pass such a car on a narrow street without excitement. The rights of a driver of a horse and the manager of an electric car, under such circumstances, are equal. Each may use the street, and each must use it with a reasonable regard for the safety and convenience of the other. The motorman is supposed to know that his car is likely to frighten horses that are unaccustomed to the sight of such vehicles, while most horses are easily taught, after a time, to pass it without fear. It is his duty, if he sees a horse in the street before him that is greatly frightened at the car, so as to endanger his driver or other persons in the street, to do what he reasonably can in the management of his car to diminish the fright of the horse; and it is also his duty in running the car to look out, and see whether, by frightening horses or otherwise, he is putting in peril other persons lawfully using the street, on foot or with teams. In this way the convenience and safety of everybody can be promoted without serious detriment to anybody. Of course the owners and drivers of horses are required, at the same time, to use care in proportion to the danger to which they are exposed: *Benjamin* v. *Railway Co.*, Mass. 35 N.E. Rep. 95.—*Central Law Journal.*

DIARY FOR JUNE.

1. Friday.....Convocation meets. First Parliament in Toronto, 1797.
3. Sunday.....*2nd Sunday after Trinity.*
4. Monday.....Lord Eldon born, 1751.
5. Tuesday.....Battle of Stoney Creek, 1813.
6. Wednesday..Sir John A. Macdonald died, 1891.
8. Friday.....First Parliament at Ottawa, 1866.
10. Sunday.....*3rd Sunday after Trinity.*
11. Monday.....County Court sits for motions in York. Lord Stanley (Earl Derby), Gov.-Gen., 1888.
15. Friday.....Magna Charta signed, 1215.
16. Saturday....Battle of Quatre Bras, 1815.
17. Sunday.....*4th Sunday after Trinity.*
18. Monday.....Battle of Waterloo, 1815.
20. Wednesday...Ascension of Queen Victoria, 1837.
21. Thursday.....Proclamation of Queen Victoria. Longest day.
24. Sunday.....*5th Sunday after Trinity.* St. John Baptist.
25. Monday.....Sir M. C. Cameron died, 1887.
26. Tuesday.....Convocation meets.
28. Thursday.....Coronation of Queen Victoria, 1838.
29. Friday.....St. Peter.
30. Saturday.....Jesuits expelled from France, 1880.

Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

TORONTO ADMIRALTY DISTRICT.

(Reported for THE CANADA LAW JOURNAL.)

McDOUGALL, Local J.] [April 6.

"THE HOME RULE" (No. 26).

Maritime lien—Actual Notice—Remedy in rem.

By s. 14, s-s. 5, of the Admiralty Act (R.S.C., c. 137), it is enacted that "no right or remedy *in rem*, given by this Act only, shall be enforced as against any subsequent *bonâ fide* purchaser or mortgagee of a ship unless the proceedings for the enforcement thereof are begun within ninety days from the time when the same accrued."

In this case the defendants purchased a vessel after the expiry of ninety days from the time when an alleged maritime lien had attached, but with knowledge of the alleged lien. No proceedings for the enforcement of the remedy given by the Act were brought within the ninety days. In an action to enforce the lien in priority to the claim of the purchasers as having bought with actual notice of the lien, it was

Held, that actual notice is not sufficient under s. 14, s-s. 5, to give a lien-holder any rights *in rem* after the time has expired for taken proceedings.

J. C. Rykert, Q.C., for the plaintiff.

R. G. Cox for the defendant.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [June 8.

JOURNAL PRINTING COMPANY OF OTTAWA *v.* MCLEAN.

Libel—Incorporated company—Publisher of newspapers—Charge of corruption—Injury to business—Special damage.

The plaintiffs were a company incorporated for the purpose of publishing a newspaper. The defendant wrote and published statements that the plaintiffs' newspaper reported favourably or adversely at ten cents a line, and that it was corrupt and prostitute.

Held, that a jury might well find that these statements imported the charge that the plaintiffs were in the habit of selling the advocacy of their newspaper, and that such a charge tended to bring them into contempt and to injure their business, and was therefore a libel.

A corporation such as the plaintiffs' can maintain an action of libel in respect of a charge of corruption affecting their business without alleging special damage.

Metropolitan Saloon Omnibus Co. v. *Hawkins*, 4 H. & N. 87, commented on and distinguished.

South Hatton Coal Co. v. *North-Eastern News Association*, (1894) 1 Q.B. 133, followed.

Nonsuit by FALCONBRIDGE, J., set aside.

Shepley, Q.C., for the plaintiffs.

McCarthy, Q.C., and *Stuart Henderson* for the defendant.

Practice.

Q.B. Div'l Court.] [May 25.

IN RE WILSON AND COUNTY OF ELGIN.

Courts—Appeal from judge in court—Divisional Court—Consent—Rule 219.

The words "other cases where all parties agree that the same may be heard before a Divisional Court," in Rule 219, do not include appeals from a judge in court; and the consent of all parties cannot give a Divisional Court jurisdiction to hear such an appeal.

Beatty v. *O'Connor*, 5 O.R. 731, 737, not followed.

N. McDonald and *James A. McLean* for the applicant.

J. M. Glenn for the township.

Chy. Div'l Court.] [June 9.

COLEMAN *v.* BANK OF MONTREAL.

Evidence—Foreign commission—Discretion—Terms—Security for costs.

An order for a foreign commission being discretionary, there is power to impose proper terms in making it.

And the plaintiff was required to give security for the costs of a commission to examine a witness abroad where the information as to his exact locality was slender, and it seemed doubtful whether he would attend to be examined.

Langen v. *Tate*, 24 Ch.D. 523, followed.

W. R. Riddell for the plaintiff.

Worrell, Q.C., for the defendants.

MASTER IN CHAMBERS.] [April 24.
STREET, J.] [May 30.

IN RE CHISHOLM AND LOGIE, SOLICITORS.

Solicitor and client—Taxation of bill of costs—Ex parte order—Time—Services as parliamentary agents—"Special circumstances"—Burden of proof.

Where a bill of charges and disbursements rendered by solicitors was posted to the client on April 11th, 1893, but did not reach the client till a day or two later,

Held, per the Master in Chambers, that an *ex parte* order for taxation made on April 11th, 1894, was made after the expiry of twelve months, and should be set aside.

The bill was for services rendered and moneys expended in obtaining an Act of Parliament for the divorce of the client from her husband.

Held, per the Master, that it was a solicitor's bill, and as such taxable under the Solicitors' Act.

Quære, per STREET, J., as to this.

Held, per STREET, J., that "special circumstances" justifying an order for taxation after twelve months from delivery of the bill must be proved by the affidavit filed upon the application; and where they consist of alleged overcharges, they should be plainly indicated by the applicant, on whom lies the onus of establishing them.

And where the only overcharge indicated was the payment to a physician, who was absent from his business three days for the purpose of giving evidence before a parliamentary committee, of $50 and his disbursements, and it appeared that the solicitors had paid the amount in good faith and the client had at one time assented to it, and it did not appear that the physician's attendance could have been secured for any lesser sum;

Held, that there were no special circumstances warranting an order for taxation afte the lapse of twelve months and after settlement of the bill by cash and notes, which latter had been paid in part and renewed from time to time.

Decision of the Master on this point reversed.

E. T. English for the solicitors.

Allan McNab for the client.

ROBERTSON, J.] [May 26.

MERCER CO. *v.* MASSEY-HARRIS CO.

Venue—Change of—Expediting trial—Illness of witness—Costs.

The place of trial of an action may be changed for the purpose of expediting the trial.

And where the plaintiffs named Barrie as the place of trial, and the defendants had it changed to Toronto, and, through no fault of the parties, the action was not tried at the spring sittings there, nor at Barrie under an alternative order, it was, on the application of the plaintiffs, changed to Bracebridge, where a summer sittings had been appointed, a witness for the plaintiffs being so dangerously ill that he might die at any moment, and there being no summer sittings at Toronto or Barrie.

Costs were not given against the plaintiffs, as they were not in fault.

Bleakley v. *Easton*, 9 U.C.L.J. (O.S.) 23; *Mercer* v. *Voght*, 4 U.C.L.J. (O.S.) 47; and *McDonell* v. *Provincial Insurance Co.*, 5 U.C.L.J. (O.S.) 186, specially referred to.

F. E. Titus for the plaintiffs.

A. Mills for the defendants.

BOYD, C.] [May 30.

BARBER *v.* ADAMS.

Attachment—Disobedience to subpœna—Substituted service.

A witness is not liable to attachment for disobedience to a subpœna served substitutionally pursuant to an order authorizing such service.

Mills v. *Mercer*, 15 P.R. 281, applied and followed.

N. McCrimmon for the plaintiff.

Kilmer for the witnesses.

BOYD, C.] [June 2.

REGINA *v.* GILLESPIE.

Evidence—Criminal Code, 1892, ss. 584, 843—Appeal to Session—Subpœna to witnesses in another province.

Under the provisions of ss. 584 and 843 of the Criminal Code, 1892, it is competent for a judge of the High Court or County Court to make an order for the issue of a subpœna to witnesses in another province to compel their attendance upon an appeal to the General Sessions from the action of justices of the peace under ss. 879 and 881.

F. E. Hodgins for the applicant.

BOYD, C.] [June 2.

ADAMS *v.* ANDERSON.

Summary judgment—Rule 739—Conditional leave to defend—Payment into court—Discretion.

In an action to recover $1,547.47, the plaintiffs moved for summary judgment under Rule 739, and the defendant set up as a defence that the plaintiffs

had agreed to discharge him upon his making an assignment for the benefit of creditors to their nominee. The weight of testimony upon the motion was against the existence of such an agreement.

Held, that it was a proper exercise of discretion to require the defendant to pay $300 into court as a condition of being allowed to defend.

Dunnet v. *Harris*, 14 P.R. 437, followed.

Rowell for the plaintiffs.

Masten for the defendant.

FERGUSON, J.] [June 7.

KENDELL *v.* ERNST.

Writ of summons—Provisional judicial districts—Shortening time for appearance—47 Vict., c. 14, s. 7—Rules 3, 275 (a), 485—Local venue—Action of ejectment—57 Vict., c. 32, s. 3—Rule 653.

The effect of Rule 275 (*a*) is to supersede s. 7 of 47 Vict., c. 14, and to incorporate its provisions into the rules, and the former practice, being inconsistent with the rules, is superseded by the provisions of Rule 3; and therefore there is now power, under the provisions of Rule 485, to abridge the time for appearance to a writ of summons issued in the District of Algoma or Thunder Bay.

The indorsement on a writ of summons, issued in the District of Thunder Bay after the passing of 57 Vict., c. 32, showed that the claim was for cancellation of a lease of a mining location in the District of Rainy River, for possession of the location, and for an injunction restraining the defendant from entering thereon.

Held, that the action was not one of ejectment within the meaning of Rule 653, and therefore the venue was not local, and it was not necessary that the writ should be issued by the local registrar at Rat Portage under s. 3 of the Act.

E. T. English for the plaintiff.

D. W. Saunders for the defendant.

MANITOBA.

COURT OF QUEEN'S BENCH.

Full Court.] [May 26.

THE QUEEN *v.* CHAMBERLAIN.

Perjury—Criminal Code, 1892, s. 148—Dominion Elections Act, s. 45—Authority to administer oath—Personation.

The prisoner was convicted at the last assizes at Winnipeg on an indictment for perjury in having sworn, before the deputy-returning officer at an election for member of the House of Commons, that he was the person whom he represented himself to be, named on the list of electors for the polling subdivision. He was not an elector.

At the trial prisoner's counsel contended that there was no authority for the deputy-returning officer to administer an oath to any person but an elector, and relied on a strict construction of section 45 of the Dominion Elections Act, R.S.C., c. 8, as amended by statute 51 Vict., c. 11, s. 7. The judge reserved a case for the opinion of the court as to whether the prisoner could properly be convicted. It appearing that he was not an elector, and had no right to vote at such election,

Held, that the statute must receive a reasonable construction, and that authority was intended to be conferred upon the officer to administer the oath to any person presenting himself and claiming to be an elector entitled to vote.

Tribunals of limited jurisdiction have implied authority to receive proof of the facts on which their right to exercise their jurisdiction depends.

Regina v. *Proud*, L.R. 1 C.C. 71, followed.

Conviction sustained.

Phippen for the prisoner.

Howell, Q.C., for the Crown.

BAIN, J.] [May 25.

IN RE COMMERCIAL BANK OF MANITOBA.
REV. DR. ROBERTSON'S CASE.

Winding up—Insolvent bank—Fraudulent preference—Withdrawal by bank president of customer's deposit.

This was an application by a depositor to be treated as a holder of $1,200 of the notes of the bank being wound up, the liquidators contending that he must rank only as an ordinary depositor. The circumstances were as follows: The claimant, having $1,200 on deposit in the bank, and being about to go on a journey, left a cheque for that amount with the president and general manager of the bank, payable to his order, so that he might invest it for the claimant in a mortgage as soon as suitable security could be found. On the last day before the suspension of the bank, no investment having yet been found for the money, the president, in order to protect the claimant, indorsed the cheque, drew the amount in notes of the bank from the teller, placed the notes in an envelope, which was then sealed up, addressed to Dr. Robertson, with the words "Twelve Hundred Dollars" written on it, and placed in the vault of the bank. The package was found there when the liquidators came into possession on the commencement of the winding-up proceedings a few days afterwards.

Held, that the cheque having been indorsed and the bank notes drawn without the authority of the claimant the notes were still the property of the bank, and that the claimant must rank only as an ordinary creditor.

If the package had been lost or destroyed, the claimant might have repudiated the action of the bank's president, and insisted on being treated as an ordinary creditor; and if, on the other hand, he had received the notes, the payment might probably have been set aside as a fraudulent preference.

Colin H. Campbell, Q.C., for the claimant.

Phippen for the liquidators.

TAYLOR, C.J.] [May 31.

GRANT *v.* MCKAY.

Practice — Infant — Next friend — Staying proceedings until next friend appointed—Delay in making application.

This was an application by an execution creditor to set aside the issue served by the claimant under an interpleader order, on the ground that the claimant was an infant, and could proceed only by a next friend.

The issue had been directed on an interpleader summons at the instance of the sheriff, and the claimant, who was an infant, had been ordered to be the plaintiff in the issue.

The claimant had appealed to the full court against this order, on the ground that he should have been defendant in the issue instead of plaintiff, but his appeal had been dismissed by the full court.

On the present application, the referee was of opinion that the execution creditor had acquiesced in the proceedings being carried on by the infant without a next friend for so long a time that he could not now insist on the appointment of a next friend. On his refusing to make the order, the execution creditor then appealed to a judge.

Held, that it was not necessary that a next friend should be appointed to act for the infant in the interpleader proceedings before the present stage.

Up to this time the sheriff was the party carrying on the proceedings, and he was entitled to relief and protection whether the claimant was an infant or not, and it is only when the claimant becomes an actor or plaintiff that a next friend for him becomes necessary.

It is laid down in Lush's "Practice," p. 231, and also in Archibald's "Practice," p. 1240, that a writ of summons may be issued by an infant without a next friend, but that the declaration in the action may be set aside, or proceedings stayed until a next friend is appointed, and the making up and serving an interpleader issue is analogous to the declaration in an ordinary action.

Held, also, that nothing appeared from which it could be said that the execution creditor had waived his right to object to the want of a next friend, and that, under the authorities mentioned, to which may be added *Campbell* v. *Mathewson*, 5 P.R. 91; *Grady* v. *Hunt*, 3 Ir. C.L. 525, an order should be made staying the proceedings until the appointment of a next friend, and, in defaul after one month, that the claim should be barred.

Baker for the execution creditor.

Vivian for the claimant.

BAIN, J.] [May 25.

IN RE COMMERCIAL BANK OF MANITOBA.

LA BANQUE D' HOCHELAGA'S CLAIM.

Alteration of cheque after acceptance—Liability of bank on altered cheque.

This was a claim made by La Banque d' Hochelaga for the amount of a cheque for $359.95 drawn upon the Commercial Bank of Manitoba by A. H.

Corelli, payable to the Equitable Life Insurance Society or order Mr. Corelli, having got the cheque marked accepted by the bank, forwarded it to the general agent in Toronto ; but on the subsequent failure of the bank, before it could be returned and collected, the cheque was sent back to Winnipeg without being indorsed by the Equitable Life.

Mr. Corelli having made arrangements with La Banque d' Hochelaga to advance sufficient money to take up the cheque and hold it as collateral security for the advance, then altered the cheque by writing the word "bearer" in place of the word "order."

The liquidators of the Commercial Bank contended that it was a material alteration, and that they were not bound to pay the cheque ; and as Mr. Corelli was indebted to the bank as endorser upon promissory notes which fell due after the cheque in question had been accepted to an amount exceeding the former balance to his credit, they claimed the right to set off this balance against such indebtedness. At the time of the acceptance of the cheque, the Commercial Bank had charged the amount to Mr. Corelli's account with them in the usual manner.

Held, that although the alteration was not one of the kind specified in s. 63 of the Bills of Exchange Act, 1890, it amounted to a change in the contract, and was therefore a material one, and that the cheque was thereby voided ; and that claimant could not rank as a creditor in respect to it upon the Commercial Bank.

An unaccepted cheque is not, in any sense, an assignment of the money in the hands of the banker.

There is no debt between a banker and his customer till a demand has been made for payment.

There seems to be a distinction between the liability of a bank which has accepted a cheque at the request of the drawer and the liability where an acceptance is given at the request of the holder, and that in the former case the holder of such a cheque is in no different position from the holder of an unaccepted cheque. The question of the materiality of the alteration in a bill is a question of law, and must be considered with reference to the contract itself, and not at all with reference to the surrounding circumstances.

Phippen for the liquidators.

Huggard for the claimants.

TAYLOR, C.J.] [May 31.

DE MILL *v.* MCTAVISH.

Execution--Exemption-- Non-resident.

The short point decided in this case was that an execution debtor may claim exemptions from seizure under execution, although he is not a resident of this province.

Huggard for the execution creditor.

Bain for the defendant.

TAYLOR, C.J.] [June 5

HANBURY *v.* CHAMBERS.

Pleading—Amendment—Dispute note—Weights and Measures Act.

Appeal from the County Court of Brandon. The plaintiffs recovered a verdict for $163.69 for the price of a quantity of lime purchased by the defendant.

The only point argued upon the appeal was whether the plaintiffs were bound to show that the lime was measured by a standard measure according to the Dominion Weights and Measures Act, and whether they could recover without having shown that.

The defendant had not, in his dispute note, set up the provisions of this Act or claimed the benefit of it, or alluded to it in any way. His counsel had, however, at the trial, requested the judge to allow an amendment setting up this defence, but the learned judge had refused it.

Held, that the judge had a discretion to allow or to refuse the amendment, and that the court above should not in this case interfere with the exercise of such discretion.

Held, also, that the defendant could not avail himself of the provisions of the Weights and Measures Act, as against the plaintiffs' claim, without having set up such defence in his dispute note.

There are no formal pleadings in the County Courts in Manitoba, but the County Courts Act requires the defendant to state briefly the nature or grounds of his defence, whether statutory or otherwise; and, therefore, the defendant in such a suit, intending to rely on any statutory defence which it would be necessary for him to plead specially in an action in the Superior Court, must set it up by his dispute note.

Illegality, whether it arises on a statute or at common law, must be pleaded: *Potts* v. *Sparrow*, 1 Bing. N.C. 594; *Martin* v. *Smith*, 4 Bing. N.C. 436. And it makes no difference whether the illegality appears from the plaintiffs' own proofs or otherwise: *Fenwick* v *Laycock*, 1 Q.B. 414.

The onus of proving the illegality rests also upon the defendant: *Forster* v *Taylor*, 5 B. & Ad. 887; and as there was no evidence in this case that the measure used was not duly stamped, the appeal was dismissed with costs.

Ewart, Q.C., for the plaintiffs.

The Attorney-General for the defendant.

Personalia.

Mr. Harry Symons retires from the firm with which he has been so long connected, and which will now be known as Kingsmill, Saunders & Torrance. Mr. Symons is following the advice of Horace Greeley by "going west," for he has formed a partnership with Mr. H. W. C. Meyer, under the name of Symons & Meyer, at Calgary, Alberta. The many friends of Mr. Symons will wish him all success in his new home. He will, doubtless, take a place in the front rank of the profession in that thriving city.

Appointments to Office.

SUPREME COURT JUDGES.

Province of Prince Edward Island.

Rowan Robert Fitzgerald, of the City of Charlottetown, in the Province of Prince Edward Island, Esquire, one of Her Majesty's Counsel, learned in the Law, to be Vice-Chancellor and an Assistant Judge of the Supreme Court of Prince Edward Island, *vice* the Honourable Joseph Hensley, deceased.

POLICE MAGISTRATES.

County of York.

Rupert Etherege Kingsford, of the City of Toronto, in the County of York, Esquire, Barrister-at-Law, to be Deputy Police Magistrate, in and for the said City of Toronto, without salary.

CLERKS OF THE PEACE.

County of Haldimand.

Charles Wesley Colter, of the Town of Cayuga, in the County of Haldimand, Esquire, Barrister-at-Law, to be Clerk of the Peace and County Crown Attorney, in and for the said County of Haldimand, in the room and stead of John Robert Martin, Esquire.

Flotsam and Jetsam.

WE learn from the *Albany Law Journal* that there is more truth than poetry in the current story about a negro prisoner in Missouri who, when asked, "Are there any more jurymen who have a prejudice against you?" replied, "No, sah; de jury am all right, but I want to challenge the judge."

ACCORDING to a London newspaper, a cow that wore a bell having been run over and killed on the railway, the owner brought a suit against the railway company for damages. It was proved that the driver blew the whistle loudly, and tried to frighten the cow off the track. But the farmer's lawyer also proved that the cow rang her bell and tried to frighten the engine off the track, and so the jury decided in his favour.

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Latest additions:

Benjamin, W. E., Table of New York Cases, 1887-93, New York, 1893.

British Columbia Supreme Court Rules, Victoria, 1890.

Burrill, A. M., Voluntary Assignments, 6th ed., by J. A. Webb, New York, 1894.

Chalmers, Judge, Sale of Goods Act, 1893, London, 1894.
Colonial Office List, London, 1894.
Coxe, Brinton, Judicial Power and Unconstitutional Legislation, Phila., 1893.
Dillon, J. F., Laws and Jurisprudence of England and America, Boston, 1894.
Dreyfus, Ferd., L'Arbitrage International, Paris, 1892.
Fletcher, W. J. and Bowker, R.R., The Annual Literary Index, 1893, New York, 1894.
Hertslet, Sir E., Treaties and Conventions, vol. 18, London, 1893.
Heywood, Judge, The Annual County Court Practice, 2 vols., London, 1894.
Jones, L. A., Law of Liens, 2nd ed., 2 vols., Boston, 1894.
Jones, Chattel Mortgages, 4th ed., Boston, 1894.
Kay, Joseph, Shipmasters and Seamen, 2nd ed., London, 1894.
La Revue Legale, vols. 1-21, Montreal, 1869-91.
Lloyd, A. P., Law of Building and Buildings, 2nd ed., Boston, 1894.
Manson, E., Debentures and Debenture Stock, London, 1894.
Masters, C. H., Canadian Appeals, Toronto, 1894.
Mayne, J. D., A Treatise on Damages, 5th ed., London, 1894.
National Legal Bureau Directory, 1894, Chicago.
New York State Reporter, vols. 1-48, 1886-93.
O'Brien, A. P., The New Conveyancer, Toronto, 1893.
Scots Law Times, vol. 1, Edinburgh, 1893-4.
Sheldon, H. N., The Law of Subrogation, 2nd ed., Boston, 1893.
Smith, William, History of Canada, from its discovery to the Peace of 1763, 2 vols., Quebec, 1815.
State Papers, relating to British Columbia and Vancouver Island, London, 1859-66.
The Reports, 1893, 5 vols., London.
Tiedeman, C. G., Municipal Corporations, New York, 1894.
Windsor, Justin, Cartier to Frontenac, Boston, 1894.
Session Laws, 1893, of the following States: Arkansas, Colorado (1893-4), Delaware, Florida, Georgia, Idaho, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Mexico, and West Virginia.

LITTELL'S LIVING AGE.—Especially timely and valuable papers characterize the contents of recent issues of *Littell's Living Age*. Selecting the richest from what is already the *crême de la crême* of recent English periodical literature, we would call particular attention to "Kossuth and the Hungarian War of Liberation," by Sidney J. Low; "A Visit to the Tennysons in 1839," by Bartle Teeling; "Mr. Gladstone," by Richard Holt Hutton; "The Queen and Her Permanent Minister," by Reginald B. Brett; "A Note on Walt Whitman," by Edmund Gosse; "A Russian View of the American Press," by Professor I. I. Yonjoul. The papers on Kossuth, Tennyson, and Gladstone are full of interest.

We would again call the attention of our readers to the generous offer recently made by the publishers, viz., to send the 13 numbers of the magazine, forming the first quarterly volume of the new series (January to March, 1894) *free* to any one remitting six dollars in payment for the nine months, April to December inclusive, 1894. This offer will be kept open through June. The subscription price is $8 a year. Specimen copies, 15 cents each. Littell & Co., Boston, Mass., are the publishers.