DIARY FOR JUNE.

1. Sun...Whit Sunday.
2. Mon...Supreme Court sits.
6. Fri....Convocation meets.
7. Sat....Easter Term ends.
8. Sun...Trinity Sunday.
9. Mon...County Court Term for York begins.
10. Tues..County Court sittings (ex. York) begin.
14. Sat....County Court Term for York ends.
15. Sun...1st Sunday after Trinity.
17. Tues..Burton and Patterson, J.J., sworn in as Judges of Court of Appeal, 1874.
18. Wed...Battle of Waterloo. Earl Dalhousie, Gov. of Canada, 1820.
20. Fri....Accession of Queen Victoria, 1837.
21. Sat....Thos. Galt sworn in as Judge, C.P., 1869.
22. Sun..2nd Sunday after Trinity.
23. Mon..Hudson Bay Co. Territory transferred to Dominion, 1870.
24. Tues..Convocation meets.
28. Sat....Queen Victoria crowned, 1837.
29. Sun....3rd Sunday after Trinity.

CONTENTS.

Canada Law Journal.

Toronto, June, 1879.

We are glad to see that our enterprising contemporary *The Legal News* has revived under the genial influence of spring, though in a diminished form. The publisher announces that it will be edited with a view to the special needs of the profession in the Province of Quebec.

In England, the present number of Queen's Counsel on the roll is one hundred and eighty-two. Of these about twenty are County Court Judges or in other judicial positions, and about thirty have retired from practice. In Ontario there are seventy-two Queen's Counsel, of whom about six are not in practice.

We have the authority of the Court of Queen's Bench in England for saying, that any person propelling a velocipede, may be legally regarded and accurately spoken of as a gentleman driving his carriage (see *Taylor* v. *Goodwin*, 27 W. R. 489), because a "carriage" is anything that *carries* people, and to "*drive*" is to make to run.

Mr. Justice Johnson gave a decision recently in Quebec, in the case of *Falardeau* v. *Smith*, on the Stamp Act, which will be of interest. It is published in the last number of *The Legal News*. The proper stamps were placed on the note sued on at the time it was made, but by some error or inadvertence were not cancelled by the maker. The plaintiff, the payee, at the trial, applied to be allowed to fix double stamps, so as to validate the note, etc., and the application was granted, and judgment given in his favour.

We expressed the belief last month that the Senate would not follow the vote of the House of Commons as to the Insolvent law. That belief has been verified. Whilst by no means of the opinion that an Insolvent law such as ours is an unmixed good, we think the Senate acted wisely at the present time in applying the "brakes" which the constitution gives them. Unless, however, some much more perfect law is prepared before next Session, the great army of official assignees will be as the locusts in the Red Sea, and their loss will be about as much regretted.

Mrs. Bradwell, of the *Chicago Legal News*, is very cheerful over the successful passage of the Act allowing women to be admitted to the bar of the Supreme Court of the United States. She contests the proposition that it will be necessary to have a nursery attached to the Court-room, and addressing herself to her noble brothers-in-law, promises on behalf of professional womankind that they will be very respectful, and prays in technical language "don't *man-dam-us* before we have had a hearing." Bella Lockwood is the first female name placed on the roll of Attorneys of the Supreme Court.

Sir James Hannen, President of the Divorce Court, in England, who has frequently remarked upon the advance of public morals in the wrong direction, has lately added to this branch of social literature by his judicial utterance in *Marshall* v. *Marshall*, 27 W. R. 400. He there gives his experience as follows:—"I must further observe that so far suits for the restitution of conjugal rights, from being, in truth and in fact, what theoretically they purport to be—proceedings for the purpose of insisting on the fulfilment of the obligation of married persons to live together—that I have never known an instance in which it has appeared that the suit was instituted for any other purpose than to enforce a money demand."

We call the attention of our readers to the full report, contained in this number, in the case of *McPhatter* v. *Blue*.

This was a matter which arose in Chancery Chambers, and related to the lien of solicitors on moneys recovered in a suit through their instrumentality. It shows the liability which a solicitor incurs who deals,—even though *bonâ fide*,—with a fund in Court, without having first duly given notice to the solicitor through whom the fund was recovered. The case was decided in the early part of 1876, but has never been officially reported. As, however, it has been several times referred to, it is hoped that this report may be of some service to practitioners. It has been compiled from the papers used on the application, and revised by some of the counsel who argued the matter.

INTEREST UNDER THE STATUTE.

It is desirable that there should be uniformity of decision in all the courts in regard to the allowance of interest, and after some conflicting opinions this seemed to be attained. Both courts of law and equity start from the same point. Lord Thurlow's language in *Boddam* v. *Riley*, 1 Bro. C. C. 239, explains this: "I take it, nothing but what arises from a contract, agreement or demand of a debt, can give rise to a demand of interest; and this Court in these cases follows a court of law." By statute, the provision in this Province is that the jury may allow interest upon any debt or sum certain, payable by virtue of a written instrument at a certain time, from the time when the claim became payable; and if

payable otherwise than by such a written instrument, then the jury may allow interest from the time when a demand of payment is made in writing, informing the debtor that interest will be claimed from the date of such demand: R. S. O. c. 50, sec. 267. It has been decided that a statute similar in terms is applicable when money is directed to be paid by a decree in equity: *MacIntosh* v. *Great Western R. R.* 4 Giff. 683; *Ridley* v. *Sexton*, 19 Gr. 146.

It has been held that no particular formality was required in the demand: it is sufficient if intimation is given in writing to the debtor by the creditor that he claims interest. *Mowatt* v. *Londesborough*, 3 E. & B. 307; 4 ib. 1; and *Geake* v. *Ross*, 32 L. T. N. S. 666. So in *Ridley* v. *Sexton* 19 Gr. 146, and 18 Gr. 580, the majority of the court held that the usual count for interest in a declaration was a sufficient compliance with the demand required by the statute to warrant the allowance of interest from the date of its filing and serving, though in that case the amount of the claim could not be ascertained without taking accounts. The arguments of the dissenting judge in *Ridley* v. *Sexton*, however, appear to be met by the line of reasoning in a recent decision, in which it is broadly laid down that courts of equity are not bound by the statute, so as to be limited to cases therein provided for. In *Spartali* v. *Constantinidi*, 20 W. R. 823, interest was allowed upon profits which the defendant retained beyond the expiration of the period when they should have been paid over, although they were not set apart at that time. But Bacon, V. C., held that as they were capable of easy ascertainment the maxim applied, *id certum est &c.* He then proceeded to act upon "the well-established law of the Court," that money being payable at times susceptible of being easily ascertained, from each of these times the person entitled to receive the money at that time is entitled to interest upon that money from that day. This case was appealed, but pending the appeal was compromised: See 21 W. R. 116.

In *Duncomb* v. *Brighton Co.*, L. R. 10 Q. B. 441, the Court differed in the meaning of the statute regarding the words "payable by virtue of a written instrument at a time certain." Blackburn J. thought that the written contract should expressly state the time of payment, and that it was not enough that the time might be ascertainable therefrom. But the other members of the Court decided that it was enough if a basis of calculation by which it might be ascertained should be established by the written document. This is in accord with the principle adopted by Bacon, V. C., in *Spartali* v. *Constantinidi*.

As opposed to the views of Bacon, V. C., the decision of Hall, V. C., in *Hill* v. *Stafford*, L. R. 18 Eq. 154 is noticeable. He there lays it down that if there is no express stipulation to pay interest in the contract, there should be a demand in writing for payment of a sum certain payable at a time certain. This, however, even the Common Law Judges thought was a too rigid construction of the statute, and they declined to follow it in *Geake* v. *Ross*, already cited.

Interest was disallowed in *Inglis* v. *Worthington Hotel Co.*, 29 C. P. 387, on the ground that there was no written contract, and no demand of interest was proved.

FREDERICK HARRISON ON THE ENGLISH SCHOOL OF JURISPRUDENCE.

Whenever Mr. Frederick Harrison takes up his pen to write on any subject he is sure to deal with it as a deep

thinker, and an accomplished scholar. Certain articles by him under the above title have appeared recently in the *Fortnightly Review*, which, if fragmentary in their character, are nevertheless full of suggestive remarks. The first two, contained in the October and November numbers for last year, were mainly a criticism of certain parts of Austin's writings, and especially of his view of Sovereignty and Law, as considered by the light of Sir Henry Maine's researches. It is not intended to dwell upon them, but it may be worth while to repeat the the author's statement of what he understands by Jurisprudence. "Jurisprudence," says he, "can be placed no higher than a systematic arrangement of rules established by practical convenience; and the attempt to base it on psychological principles or theories of abstract logic, seems arbitrary and quite illusory. Practical convenience is the source of law; and technical convenience is the aim of all classification. The attempt to force metaphysical precision on a body of technical rules would be a mischievous form of pedantry."

It is, however, to the third of these articles, namely, that on the Historical Method, which is contained in the *Fortnightly Review* of January last, to which it is especially desired to call attention. Mr. Harrison begins with some remarks on the *history* of the Historical Method in Law. While some approximation to it may be found in the works of such early writers as Bodin and Grotius, the conception is first found in its fulness in a juvenile production of Leibnitz, viz., the *Nova methodus discendæ docendæque jurisprudentiæ*, published in 1667. Here Leibnitz speaks of the historical method of explanation, and distinguishes between the *external* and the *internal* history of Law; the latter being the history of events which accompanied and affected the actual internal history of law itself. He speaks of an *historia mutationum legis* as one of the things wanted in law.

The next occasion when we meet with the historical method treated in any fulness is in the celebrated 44th chap. of Gibbon's Decline and Fall (1776–1788). For, though, Montesquieu has, in his "Spirit of the Laws" (1748), some allusions to the historical method, and even in some chapters has actually exemplified this method, his book is concerned rather with political and social changes and with the external history of law, than with the internal history. Gibbon's chapter is a most wonderful analysis of the external and internal history of Roman Law. Partly no doubt owing to him an Historical School of Jurists arose in Germany, which is identified with the name of Hugo, author of a celebrated history of Roman Law (1790). Hugo with Haubold and Cramer prepared the field for the historical genius of Savigny, whose work on Possession (1803) marks a distinct revolution in the study of Jurisprudence, and is a complete proof of the value of the historical instrument.

His next great work was the History of Modern Roman Law in which he traced the continuity of the Civil Law from Justinian to the end of the middle ages. Niebuhr's researches in Roman history, and his discovery of the MS. of Gaius, in the Chapter-house of Verona, in 1816, added a new stimulus to the historical treatment of Roman Law. "Gaius" has been described as the best book on Law ever written. But the next great advance in the Historical Method was due to the English School, as represented by Sir H. Maine. This school may be connected by repulsion with Bentham and Austin. Austin does, however, in some parts show traces of the Historical Method. Sir H. Maine shows, with

striking clearness, how familiar legal principles and institutions are traced in widely varying and distant communities.

Mr. Harrison, then, goes on to point out that historical enquiry into law must in nowise be considered as a substantial part of Jurisprudence. Jurisprudence, as has been seen, is concerned with the symmetrical classification of law as it is. Indeed the study of the history of law even has its dangers for the student, who aims at being a practical lawyer. The historical student is concerned with the continuity of law, the practical lawyer with the solidarity of law, that is, with law as it is at any one time. Law as it is in 41 and 42 Vict. The great lesson of Roman Law is the wonderful symmetrical whole which ultimately issued from out of the ancient anomalies. Hence it is best for the student to be first master of the Institutes of Justinian before he dives into the history of prior Roman Law.

Much of the history of Roman Law is almost worthless from the point of view of Jurisprudence,—where useful it is only useful as a method of explanation. Moreover, to study the history of law it must be divided into detached titles; the history of each being studied as a separate subject. The result to the overburdened memory is a series of anachronisms; and many a student well up in the history of Roman Law could in nowise give a connected view of the state of it as a whole at any one time.

Englishmen, says the writer, have great advantages in regard to Jurisprudence.

In the first place they are brought, in their vast empire, into contact with many varying systems of law, especially in India, pregnant with means of historical explanation. This advantage, however, they share with others, for the study of these institutions is open to all men. They have, however, a special advantage of a practical nature. They are forced to accommodate their laws to the wants of the different peoples embraced in their empire. They have to simplify English Law, to clear it from archaisms and anomalies, and to codify it, and place it in a shape fit to be administered by men who are rather political officers than actual lawyers. In doing this—in developing their *jus gentium*—they have a task which the Romans were relieved from. The Romans always had their law in a more or less tabular and codified form. But English jurists have, from the vast materials open to them, to collect and codify. Much has already been done. English Law is approaching the most important epoch in its brilliant career. And just as the Romans at length thought that in their *jus gentium* they had discovered the Law of Nature, so Englishmen may find that in their codes for India and Jamaica, and certain other colonies, they have discovered the road to a more scientific and convenient method of dealing with English Law itself.

F. L.

SELECTIONS.

THE LAW OF EVIDENCE AND THE SCIENTIFIC INVESTIGATION OF HANDWRITING.

The magnitude of the interests involved in the use of written documents can hardly be overestimated, hence the necessity that they should be guarded as far as possible against falsification or fraudulent alteration. A mere enumeration of the many ways in which they enter into the complex relations of modern society would fill volumes, and would require years of study, ranging over the entire history of civilization to record. The preservation of property, character and life itself even, frequently depends upon the integrity of a few words re-

corded with a pen, and hence the various laws devised to prevent the falsifications of writing and the necessity of some sure means of detection in such cases. That such crimes are alarmingly frequent at the present time, and becoming more common every day, cannot be questioned. This I think is more due to the inefficiency of the laws upon the subject, and the unscientific methods of investigation resorted to in many of these cases, than to increased skill on the part of those engaged in such crimes, or to the invention of new methods of working to the same end. Whatever may be the conclusion in this respect, however, it is certain that this class of crimes often escapes detection under the usual methods of investigation as prescribed by the courts, when the evidence is based mainly or as a whole upon that derived from the visible characteristics of the documents themselves. Though no evidence will be deemed necessary in order to prove the fact, as it regards the vast number of crimes of this description which are brought to our knowledge every day, nevertheless I shall give in brief some account of a few of the cases which have been put into my hands for examination, as I shall have occasion to refer to them when coming to the proof of my proposition, that the present rules of evidence in such cases, and the usual methods of investigation recognised by the courts, so far from tending to prevent the occurrence of such crimes, on the contrary, serve to encourage them, by placing obstacles in the way of their detection. And this is eminently the fact as it regards the most skilful workers in this field of art; for where the result depends wholly upon the comparison of handwritings under the most liberal ruling of the courts, surely, the close resemblance of the work of the skilful forger to that of the writing in question, which is sure to deceive the most accomplished expert where the examination is made through the eye *alone*, or, indeed, by the aid of magnifying glasses without other appliances, would necessitate the giving of a positive opinion in his favour. And it is this opinion which is called evidence and which the jury are expected to weigh in these cases. The lawyers themselves recognise the fact of the unreliable character of this class of testimony, in the common saying that they can prove anything by scientific witnesses. This is but declaring that under the rules of the courts they can and do get men to give opinions, or rather guesses, which they present to the jury as facts, and which are allowed to weigh as evidence. As those who make these rules are themselves lawyers, it would seem as if the responsibility of such a perversion of the very idea of justice should rest on their heads alone.

Surely, no scientific man, nor indeed any one who has the smallest claim to such distinction, were he to reflect for one moment, would allow himself to be used in such a manner. His guesses are of no more value than those of the unprofessional witness. If the expert should be, as he is, disgraced by lending his aid in any manner to such practices, what ought to be our opinion in regard to the courts and the lawyers themselves, who call such testimony competent, and allow cases to be proved and decided by this very class of evidence, which they stigmatise as wholly unreliable.

In no other "science" but that of the law, I submit, would such methods of investigation be deemed of the least value. In medicine, which is often charged with being mainly dependent upon guessing, the field of investigation is left entirely open, and its methods are wholly unfettered by iron rules which preclude all true progress. The school of Salerno no longer prescribes the observance of the planets, in order to know the times and seasons for gathering medicines or for administering them. The weapon ointment is no longer used in cases of wounds, for the reason that Paracelsus or Sir Kenelm Digby prescribed it. Nor would the decisions of Sir Tumley Snuffee or Mr. Justice Starleigh have the least influence in fettering the investigations of any modern scientist outside of the field of the law.

I proceed, as necessary to my plan, to give in brief the rules of the courts as regards the examination of written documents; including under the term examination, whatever may be required or allowed to be done in such cases.

"The testimony of experts is receivable in corroboration of positive evidence, to prove that in their opinion the whole of an instrument was written by the same hand, with the same ink, at the same time:" *Fulton* v. *Hood*, 34 Penn. St. 365.

"All evidence of handwriting, except where the witness saw the document written, is in the nature of a comparison, It is the belief which a witness entertains upon comparing the writing in question, with its examplar in his mind derived from some previous knowledge. . . . It is agreed that if the witness has the proper knowledge of the party's handwriting he may declare his belief in regard to the genuineness of the writing in question. He may also be interrogated upon the circumstances upon which he founds his belief. The point upon which learned judges have differed in opinion is upon the source from which this knowledge is derived rather than as to the degree and extent of it:" 1 Greenl. on Evid., § 576.

"There are two methods of acquiring this knowledge. The first is from having seen him write. It is held sufficient for this purpose that the witness has seen him write but once, and that only his name * * The second mode is from having seen letters, bills or other documents purporting to be the handwriting of the party, and having afterwards personally communicated with him respecting them, or acted upon them as his, the party having known and acquiesced in such acts, founded upon their supposed genuineness, or by such adoption of them in the ordinary business transactions of life as induces a reasonable presumption of their being his own writings:" 1 Greenl. on Evid., § 577.

"This rule requiring personal knowledge on the part of the witness has been relaxed in two cases. First, where the writings are of such antiquity that living witnesses cannot be had, and yet are not so old as to prove themselves. There the course is to produce other documents either admitted to be genuine or proved to have been respected and treated and acted upon as such by all parties, and to call experts to compare them, and to testify their opinion concerning the genuineness of the instrument in question. Second, where other writings admitted to be genuine are already in the case. Here the comparison may be made by the jury with or without the aid of experts:" 1 Greenl. on Evid., § 578.

Before being admitted to testify as to the genuineness of a controverted signature, from his knowledge of the handwriting of the party, a witness ought beyond all question to have seen the party write or be conversant with his acknowledged signature. The teller of a bank, who as such has paid many cheques purporting to be drawn by a person who has a deposit account with the bank, but has not seen him write, if the testimony shows nothing further, is a competent witness to testify to the handwriting of such a person; but he is not a competent witness to testify to the handwriting of such a person if it appears that some of of the cheques so paid were forged, and that the witness paid alike the forged and the genuine ones:" *Brigham* v. *Peters*, 1 Grey, 139, 145, 146.

A witness who has done business with the maker of the note, and seen him write, but only once since the date of the disputed note, may nevertheless give his opinion in regard to the genuineness of the note, the objection going to the weight and not to the competency of the evidence: *Keith* v. *Lathrop*, 10 Cush. 453.

A third mode of acquiring a knowledge of a person's handwriting is by putting writings acknowledged to be his in the hands of the witness and allowing him to study them and thus become acquainted with the handwriting; and as the result of such study he is in some states, though upon this point there is a conflict, admitted to be competent to testify as to the case in question; that is to examine the document in the case and to give his opinion as to its genuineness. See the authorities, collected in 1 Greenl. Evid., § 579, 581, and notes.

The reasons for refusing to allow such comparisons of handwritings are: 1st. The danger of fraud in the selection of writings offered as specimens for the occasion, or if admitted, their genuineness may be contested and others successively introduced, to the infinite multiplication of collateral issues and the subversion of justice: 1 Greenl. on Evid., § 580.

I next proceed to quote other learned authorities on this part of my subject, some of them opposed to the rules, but all resting upon the false idea, as I conceive it to be, that *opinions* based upon a comparison of handwritings as a question of resemblance or non-resemblance in form alone should have weight as testimony in courts of justice. The more close the likeness the more danger is there, of course, of coming to a false conclusion, and herein lies the danger as I have illustrated more fully in another part of my paper. Again, there is as great difference in the ability of persons to recognise variations in form as there is in the power of distinguishing colour. Many persons are *form*-blind as well as colour-blind, and of this they are, of course, themselves unaware; hence, perhaps, in many cases, the conflicting testimony of witnesses in this respect. Were they required to give reasons for their opinions in such cases, the discrepancy would be self-evident.

This rule would not include such comparison as a means of showing points of difference in handwriting, where such points of difference were made use of by the expert, in connection with other facts which, on account of their relation to each other and to these first also, might help him to come to a conclusion.

"Evidence of handwriting, like all *probable* evidence, admits of every possible degree, from the lowest presumption to the highest moral certainty, and affects the jury accordingly:" 21 Ill. 415, per Breese, J.

It will be seen that this dictum is based upon the idea that such evidence is deducible from a comparison of handwritings, as before explained, which, as I have said before, is less conclusive in those cases where the samples compared most resemble each other; for the expert forger as has been frequently proved, finds but little difficulty in producing *fac similes* of the writings he wishes to imitate; and of course, the so-called expert, in these cases, under the usual methods of examination, can only testify that in his opinion such specimens are genuine. Thus the highest "moral certainty" of the learned judge (and I submit of the courts generally) becomes the strongest physical uncertainty, so that when the court and jury were most affected in this direction, there would be the greater reason to doubt, or at least to make a thorough scientific examination of the writing in question.

"All evidence of handwriting," the judge goes on to say, "except when the witness has seen the disputed document actually written, is in its nature comparison."

"It is only the belief which a witness entertains upon comparing the writing in question with an abstract picture in his mind, derived from some previous knowledge, and he must upon the moment apply that picture or example to the particular writing in question." The exception here laid down in regard to the document not being subject to the same law of recognition, provided the witness saw it written, seems to me not to be quite correct, unless the document had remained in his keeping up to the time of its presentation. He could only recognise it by comparing it with the abstract picture in his mind, painted there at the time it was written, and this same statement would hold good had the document in question been the work of his own hands. It is as necessary to the success of the forger that he be able to bring all parts of his falsified paper in perfect harmony with his model, as that the writing itself should be in the same condition, and this is very often done, and is indeed much less difficult of accomplishmeut under the rulings of the court than the falsification of the writings itself even.

I have had case after case of the kind where the parties themselves, who had made documents for the express purpose of testing this fact, failed to distinguish between the true and the false; not from the comparison as expressed above of the similated papers with the image remaining in the mind, or recalled by memory alone, but by the actual presence and comparison of the true and the false documents with each other. From these facts alone I think we should be warranted in coming to the conclusion that testimony based upon the resemblance or non-resemblance of handwriting, joined with the evidence deduced from the ex-

ternal appearance of the documents, is, if we go no further, of no kind of value whatever, and that we should oftener get justice in such cases by resorting to the old method of settling doubtful questions by casting lots. Indeed, it seems to me that the present system, like loaded dice, is vastly in favour of the expert forger, if not also of the mere beginner or bungler in the art.

In the continuance of his comments upon the rules of the courts in respect to the comparison of handwritings, Judge Breese, goes on to say, "It has been already stated, that a witness who testifies on the subject of a handwriting, gives at best but the result of a mental comparison made by him of the disputed writing, with that which he has seen, and the impression of which remains in his memory." "What difference could it make if this comparison was carried on in the mind, which the rules of evidence allow, or was actually made in the presence of the court and jury? Is speaking from an impression made on the mind more convincing, more worthy of regard and belief than a present conviction produced by actual comparison?" In Pennsylvania, in *Farmers' Bank* v. *Whitehall*, 10 S. &. R. 112, the court, in discussing the matter, say, "It is more satisfactory to submit a genuine paper as a standard and let the jury compare that with the paper in question, and judge of the similitude, than the evidence continually received of allowing a witness who has seen the party write once, to compare the disputed paper with the feeble impression the transient view of the writing may have made upon his memory."

In a recent English case, 4 Phil. Ev. (Cow. and Hill's notes), part 5, p. 478, it is said "Why is it not as reasonable when a doubtful paper is sought to be made evidence that the opposite party should show a genuine paper and by a comparison of a disputed paper with it that the probability is against its genuineness."

The arguments in favour of the rules of the courts it will be hardly necessary for me to notice. They all of them seem to me of as little value as the first mentioned, which contains in its very proposition its answer, *e. g.* where *genuine* papers are brought forward for comparison, &c. Objection, "The danger of admitting fraudulent ones; of course no paper should be used for the purpose which would not be admitted by all parties to be genuine. No comparison of the kind would be of the least scientific value except under such conditions.

"1st. The testimony of experts may be received to prove that an instrument was written by the same hand, with the same ink, and at the same time." Suppose every latitude should be allowed in such a case, still, under the received methods, if the paper should be skilfully executed, the witness is pretty sure to come to a wrong conclusion. If he guess at the matter, or is governed by his prejudices, which is very apt to be the case, his statements surely ought not to be received as evidence. It is very easy so to prepare ink, and this is constantly done, that it may appear to the eye to be of the age required. Microscopical and chemical tests may be competent to settle the question, but *these* should not be received as evidence, I think, unless the expert is able to show to the court and the jury the actual results of his examination, and also to explain his methods so that they can be fully understood. Surely, in matters involving such important questions, this is not too much to demand of the scientific witness, and he will as surely court such test if he have the least self-respect or regard for the honour of his vocation.

The investigations under this rule have been, heretofore, usually made by the eye, sometimes aided by optical instruments, which are like edge tools in the hands of unpractised persons; sometimes with chemical reagents, which in the present state of the science, can tell nothing in regard to the age of writing, but can tell sometimes as to the kind of ink. The practice has been, and still is, to call on both sides professional experts and others who have seen the party write, or are qualified in either of the ways described, to give an opinion upon the question at issue, and such opinions are to go to the jury as evidence which they are to weigh, say the court, and the value of which they must estimate as one end or the other of the scale shall preponderate.

Is not this the veriest farce and mockery of justice imaginable? and would not drawing lots, as I have suggested, be far better, as it would be far more expeditious and much less costly? If we desire authority for this last method of deciding cases, we have such authority, much older than that of the Romans, which is so often quoted. "The lot causeth contentions to cease and parteth between the mighty." Prov. xviii. 18. It will be seen that I object entirely to those persons being called experts in any case who have not prepared themselves to give scientific testimony (in the full meaning of the word science, *e. g.*, knowledge certain and evident); not only in cases involving the validity of written documents, but wherever the nature of the case is susceptible of this class of evidence.

I use the word opinion in this discussion in its legitimate sense as used in the courts, *e. g.*, "an opinion is an idea or thought about which doubt can reasonably exist, as to which two persons can without absurdity think differently." Out of this system of admitting opinions as testimony in courts of justice, it seems to me, has grown the practice of heaping up such testimony in a certain class of cases, and also the efforts to impose upon the jury by numbers of witnesses, or by some fancied superiority of one witness over another, through the quackery of sounding names or titles, or of *ex cathedra* authority on the part of such witnesses. At a recent trial, a so-called expert was asked what offices he had held which gave him a right to such title. He replied, "I was president of the State Microscopical Society; I am president of the Academy of Sciences," and this statement was pleaded as good reason why his opinion should have great weight in deciding a question of handwriting.

In a recent case involving a large sum of money, in which the writer was engaged, the facts of the inviduality of the handwriting, identity of ink and time, were all required as evidence. Here some ten witnesses, experts and others, were sworn on each side; some actually stating that they had seen the signature of the endorser (which alone gave the note any value), affixed to it by his own hand. This note purported to be nearly six years old. It was written with two different kinds of ink, and the writing, though having a somewhat faded appearance, still was perfectly legible, so that I had no difficulty in making a copy of every letter, and of getting one also by the photographic process. Upon making a micro-chemical examination of the ink, I found it was quite fresh, and moreover, that both kinds used were of such a nature as to grow old rapidly, as seen by the unaided eye, or under direct light, when viewed by aid of the microscope.

Here the experts and other witnesses swore as positively in favour of the sides on which they were employed, as is the usual fact in such cases, and the court remarking that "no court in the world had to do so much guessing as this court," decided in favour of the genuineness of the note. The case was appealed, and a year elapsed before it came to trial. At this time, when the paper was again presented for examination, many letters and several whole words, even, had become totally illegible, thus confirming the conclusions to which I arrived on my first examination, that it could at that time have been but a few months or weeks old. The very astuteness of the skilled forgers in this case contributed to their defeat; they having selected, or more probably made, these inks themselves for the very purpose that they might rapidly grow old in order to appear so when presented for payment.

There is another point of view from which I desire to notice this case. It was carried in the first instance, as said the court, by guessing, or by the balancing of the opinions of experts and others, based upon the comparison of handwritings, under the rulings of the courts. My own testimony was not admissible in this respect, as I had never seen the endorser of the note write. I had in my possession hundreds of documents of his, consisting of cheques, notes, deeds, etc., of which I had made most careful examinations, and yet I was not sufficiently acquainted with his handwriting to give an opinion in the case; while a mere labourer in his employ, who had once seen him sign his name when receipting a bill, was fully competent to testify, that is, to give an opinion in the case.

I should remark that the rule which precludes papers not in the case from being used for the purpose of comparison, is not binding in some of the states nor in the Federal courts.

There are certain methods of examination fairly coming under this head, not, however, contemplated by it or by any other rulings of the courts, which I should deem conclusive. One of these methods I have alluded to in connection with the specimens I have given in the engraving; the other is embodied in the study of the anatomy or skeleton, so to speak, of the handwriting. By the anatomy of the writing, I mean the principles on which the letters are formed. This not unfrequently consists of an undermarking or skeleton which may not appear to the eye, but which constitutes an absolute distinction in style. This can best be illustrated by an actual case.

(To be continued.)

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

Re Gearing.

Insolvent Act of 1875—Married Woman—Trader.

Mrs. Gearing, who was married in 1859, had ever since resided with her husband, who carried on a mercantile business until February, 1876, when he became insolvent. Subsequently at a meeting of the creditors, a sale of his estate was made to Mrs. Gearing, who was not present at the meeting, and took no personal part in its inception or completion, but it was arranged that the purchase should be in her name, and that she should give her promissory notes for the price secured by a mortgage on her separate real estate. Her husband stated that he was really the purchaser, but as he had not obtained his discharge, and had no other security to offer, this arrangement was made, and it appeared that it was understood by every one engaged in the transaction that its object was to enable the husband to continue the business. After the security had been given, the shop was re-opened, the same sign-board remained over the door, and the business appeared to be carried on precisely as before. Purchases of goods were made in her name for which she signed notes, but the orders were always given by her husband, and the correspondence, although conducted in her name, was written and signed by her husband, without any communication with her. After a time he obtained his discharge, and substituted his own name for his wife's in correspondence and on the notes.

Held, that she was not a trader within the meaning of the Insolvent Act of 1875, and a writ of attachment issued against her for a balance due upon her note given before her husband's discharge was set aside.

Delamere, for the appellant.

McMichael, Q.C., for the respondent.

Appeal dismissed.

[May 14.

Re Olivier Boucher.

Habeas Corpus—Appeal.

A *rule nisi* to show cause why the prisoner should not be discharged and for the issue of a writ of *habeas corpus* was granted by the Chief Justice of the Queen's Bench sitting for the Court out of Term, and subsequently cause was shewn before the Chief Justice sitting in Court and the rule discharged. A formal rule to this effect was drawn up, signed by the Clerk, purporting to be the act of the Court, and headed in the "Queen's Bench before the Honourable Chief Justice Hagarty."

Held, that an appeal to the Court of Appeal did not lie from this judgment under either 29-30 Vic. c. 45, or under R. S. O. c. 38, sec. 18

W. W. Ward for the appellant.

Scott, Q.C., for the respondent.

Appeal dismissed.

C. C. Ontario.] [May 15.

Nisbet v. Cook.

Chattel Mortgage—Affidavit of bona fides—Omission of name of Commissioner.

Where the name of the justice of the

peace before whom the affidavit of *bona fides* to a chattel mortgage was sworn was omitted through inadvertence, it was held invalid as against a subsequent execution creditor.

C. H. Ritchie for the appellant.

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

Appeal dismissed.

CHANCERY.

Chancellor.] [April 23.

TORONTO DAIRY CO. v. GOWAN.

Covenant in restraint of trade—Injunction—Liquidated damages.

The defendant agreed to serve the plaintiffs in their business of milkmen, and in case of any breach by him of the agreement entered into between the parties, and signed by them, that he would forfeit the sum of fifty dollars, to be recovered by the plaintiffs as stipulated damages, and not as a penalty.

Held, That this did not enable the defendant, on payment of the $50, to do the prohibited acts; and in a bill seeking to enforce the agreement the plaintiffs prayed for payment of the amount of the liquidated damages, and for an injunction to restrain the defendant from acting in breach of his agreements.

On the motion for injunction coming on,

Held, that the plaintiffs were at liberty to waive their claim for damages and elect to have relief by injunction.

COMMON PLEAS.

Osler J.] [May 27.

BRILLINGER v. ISOLATED RISK &C. INSURANCE COMPANY.

Insurance—Statutory conditions—Departure—Pleading.

The second count of a declaration, after alleging that it was on a fire insurance policy for $1,000, dated 28th May, 1877, which, by its terms, was said to be subject to certain pretended conditions endorsed on said policy and set out at length in the first count, averred that the policy was a policy entered into and in force in Ontario with respect to property situate therein, and that the said conditions were the only conditions, and were not, nor was any of them in conformity with the Fire Insurance Policy Act, nor variations of such conditions as required by said Act, whereby the conditions so endorsed upon the policy are inoperative and void, and the policy is free from all conditions as against the plaintiff.

The fifth and sixth pleas alleged that the policy was subject to the conditions in the words and figures following, that is to say, setting out conditions with respect to proofs of loss, &c., and averred respectively non-performance by omitting to give notice of loss forthwith, and to deliver a statutory declaration that the loss was just, &c.

To these pleas the plaintiff replied, setting up grounds of excuse for the non-performance of the conditions set out therein.

Held per OSLER, J., replication bad as being a departure from the declaration; but that the pleas were also bad, for that the conditions set out therein, being the statutory conditions, and not being endorsed on or in any way appearing in the policy, and not being conditions of the character referred to in *Geraldi* v. *Provincial Ins. Co.*, 29 C. P., they could not be set up as a defence to the action.

J. A. Patterson for the plaintiff.

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

COMMON LAW CHAMBERS.

McLAREN v. McCUAIG.

Mr. Dalton.] [May 3.

Similiter—Jury notice—Notice of trial—Chancery sittings.

After issue joined, the plaintiff served notice of trial for the Chancery sittings. Defendant afterwards served a similiter and jury notice. *Held*, that the similiter and jury notice are good, and that the notice of trial must be set aside.

Alan Cassels, for plaintiff.

Aylesworth, for defendant.

Regina v. Campbell.

Hagarty, C. J.] [May 6.

Liquor license—Married woman.

A married woman was lessee of certain premises in which her husband sold liquor without a license, contrary to the provisions of R. S. O., ch. 181. *Held*, that she was liable to be fined under sec. 83 of the Act, although the sale of the liquor took place in her absence.

Blackstock, for defendant.
Fenton, contra.

CHANCERY CHAMBERS.

Mr. Holmested.] [Feb. 14.
Proudfoot, V.C.] [Mar. 3.

Re Goff.

Statute of Limitations—Possession for infant.

McC., a spinster, made her will in 1862, devising certain land to trustees in trust for G. an infant. McC. then married, and in 1864 was with her husband drowned at sea.

At the time of her death, the property in question was subject to a lease having two years to run. The tenants attorned and paid rent to the trustees under the will, and on the expiring of the lease continued in possession, paying rent first to trustees, and then to G. the infant, after she came of age.

G. in 1879, filed a petition under the Quieting Titles Act, and one, Hunter, appeared in the course of these proceedings, and claimed the land as heir-at-law of McC.

The Referee of Titles *held* that G. had acquired a good possessory title.

On appeal, Proudfoot, V.C., affirmed the Referee's ruling.

Spragge, C.] [April 7.

Sivewright v. Sivewright.

Examination—Presence of parties.

Two defendants were being examined after answer before the Master at Chatham, and the Master, at the request of their solicitor, directed two other defendants who were present on behalf of the plaintiff to withdraw, but they refused. The Master thereupon refused to proceed with the examination.

Spragge, C., *held*, that the Master should have allowed one defendant to be present on behalf of the plaintiff, but by analogy to R. S. O. cap 50, sec. 260, might require such defendant to be first examined himself.

Spragge, C.] [April 16.

Re Kingsland.

Mortgage—Surplus after Sale—Proof of Title by claimant of—Costs.

When mortgagees had a surplus in their hands after a sale under their mortgage, and S. claimed it, but failed to give sufficient proof of his title thereto, and the mortgagees paid the money into court, see *ante*, page 85.

S. then applied to have the surplus paid out to him.

Order made directing surplus to be paid out to S., after deducting mortgagees' costs of paying in, and of this application.

Proudfoot, V. C.] [May 28.

Williams v. Corby.

Striking out interrogatories as impertinent—Jurisdiction of Referee.

The Referee made an order striking out interrogatories to be administered to a witness under a commission to the State of Ohio for impertinence.

This was appealed from on the ground that the Referee had no power to make the order.

Proudfoot, V.C.—A witness can always protect himself from answering impertinent questions by demurring, and that, I think, is the only way of taking advantage of impertinence.

W. Cassels for appeal.
Hoyles, contra.
Appeal allowed with costs.

CANADA REPORTS.

ONTARIO.

MUNICIPAL ELECTION CASE.

Reg. ex Rel. Ferris v. Iler.

Contract with Corporation—Reeve employed as Road Commissioner.

The defendant was elected Reeve of the Township of Colchester. At such time he was a Road Commissioner for the Township under sec. 454 of the Municipal Act, and entitled to a balance for commission on the money spent by the Township on a certain ditch.

Held, That he was thereby disqualified as a candidate.

[Sandwich, May, 1879—Leggatt, Co. J.

The second ground upon which the relator stated that defendant was not duly or legally elected was that the defendant was not qualified to be elected reeve of the said Township of Colchester, by reason of his having been employed on behalf of the said Township of Colchester, as commissioner for the expenditure of certain moneys in the making of the ditches known as Long Marsh tap ditch, the Holstend ditch and the Boyd tap ditch in said Township of Colchester, and for which the said John C. Iler, the defendant, was to receive and be paid certain percentages, commissions and allowances, whereby a contract was made and constituted between the said John C. Iler and the corporation of the Township of Colchester, which said contract was in force prior to, at the time of and since the said election.

The facts of the case were, as stated by the defendant, that he was appointed, by the corporation of Colchester, a commissioner to superintend the construction of the Long Marsh tap ditch and the Boyd ditch, for which contracts had been made with other parties, and that he was to receive for such service five per cent. commission upon the contract price to be paid by the said township for making the said ditches; that the Long Marsh ditch was to cost about $2,300; that it was not yet finished; and that he had received $50 on account of his commission; that the contract price for the Boyd special tap drain is $642; and that he had received $26 on account of his commission thereon; and that the work was incomplete; that the contract price for the Caya special tap drain was about $300; that it had not been completed; and that he had received $6 on account of it. It is apparent that the defendant had or would have a claim against the corporation when those works should be completed, of about $80 for the balance of his commission thereon, or in other words had an interest to that extent in these contracts with the corporation.

Leggatt, Co. J., the sections which have reference to disqualification of councillors, from the consolidation of the statutes in 1859 down to the present time, and which have been construed by legal decisions, are section 73 of Con. Stat. cap. 54, which enacts, after mentioning certain officials who shall be disqualified, that no tavern-keeper or saloon keeper no person receiving any allowance from the corporation *except as mayor, warden, reeve, deputy-reeve, or township councillor;* and no person having by himself or his partner an interest in any contract with or on behalf of the corporation, shall be qualified to be a member of the council of the corporation. This clause was re-enacted in 1866, by 29-30 Vict., cap. 51, section 73, in which others besides those officials already named were declared ineligible, but the language as to parties having contracts with the corporations was the same. This section also contained a proviso that no person should be held to be disqualified from being elected a member of the council of any municipal corporation by reason of his being a shareholder in any incorporated company having dealings or contracts with the council of such municipal corporation, or by having a lease for twenty-one years or upwards of any property from the corporation. This section, all but the proviso, was repealed by 31 Vict., cap. 30, section 8, and in 1873 re-enacted again with some additions as to parties disqualified in the same terms and language as used by section 74, R. S. O.

In the year 1862, when the clause relating to disqualification was that contained in the Consolidated Statutes of Upper Canada, the language of which with reference to con-

tracts with corporations is identical with that in section 74, R. S. O., but which contained an exception in favour of mayors, reeves, deputy-reeves or councillors receiving allowances from corporations, it was decided by Chief Justice Richards, in the case of *Reg. ex rel. Armour* v. *Coste*, 8 U. C. L. J. 291, that the proof of the mere fact of defendant being a road commissioner to expend moneys raised in and for 1861, did not necessarily imply that he was an officer of the corporation under Con. Stat., U. C., chap. 54, sec. 73, so as to make him ineligible to be elected in 1862, *unless clearly shown that his duties continued.* "By the terms of the by-law," says the judge, "the contracts were to be commenced by the commissioner on or before the 1st September, 1861, and from the nature of the work it is possible that all would be completed within the year. At all events the defendant seems to have received on the 12th December, 1861, all the money he was entitled to in respect of his services under the by-law, so that he would have no contract with or demand against the corporation in respect to such services at the time he was chosen reeve." And in the same year, 1862, by the same learned judge, it was determined in the case of *Reg. ex rel. McMahon* v. *DeLisle*, 8 U. C. L. J. 291, that when defendant had been appointed a commissioner for the expenditure of municipal funds, upon the roads of the municipality in which he resided, and the by-law appointing him fixed a certain commission to be paid to him for his services as such commissioner, and it was shown that some portion of his commission remained unpaid at the time of his election as a member of the municipal council, *he was disqualified as a person having an interest in a contract with the corporation.*

It was contended by the defendant in this case that as the statute and the law then stood it did not then work a disqualification when the allowance is to the person receiving it as reeve, deputy-reeve, &c., and that any compensation awarded to him under the by-law was in such capacity as reeve. The Chief Justice, however, in answer, said, "I am not prepared to give my assent to the proposition advanced in favour of the defendant. In that view, large sums of money might be raised for the purpose of making alleged improvements to be expended by the members of the municipal corporation who would get a percentage on it, and who might vote for the raising of the money to make money out of their commissions on the expenditure. The reason of the rule that excludes any one having a contract with the municipality from being elected a reeve or councillor, usually extends to prevent the councillors from increasing their own emoluments. The exception as to reeves and deputy-reeves from receiving an allowance from the corporation, undoubtedly means the $1.50 per diem which the council may allow them for their attendance in council. "It is not desirable," the Chief Justice continues, "that reeves or councillors should be mixing themselves up with the contracts given out on behalf of the corporations whose interests they are by law expected to look after. It is not desirable that they should be induced to vote for the raising of moneys to be expended under their own supervision in the hope of being able to make some petty percentage out of such expenditure, and thereby indirectly receive a profit out of their office, which the law does not contemplate."

It is apparent that the Chief Justice in these two cases observed a line of distinction between the case of a reeve who was appointed a commissioner to superintend the expenditure of money upon roads where the work was completed and the reeve paid for his services before his term of office had expired, and the case of a reeve acting in the same capacity where the work was not completed and when the commissioner had not been paid in full at the time of his re-election. In the former case, he declares the reeve not disqualified, but in the latter he adjudged him ineligible as a candidate for the office. It is also apparent that the Chief Justice regarded a reeve who filled the office of commissioner, and who was to be paid for his services, as a contractor with the corporation within the meaning of the statute relating to disqualification. It is also clear, I think, that if we are to apply the principle laid down in these two cases,

to test the validity of the election of Mr. Iler here, I would have to declare that the defendant was not duly and legally elected, for the reasons assigned by the relator, unless there is some enactment of the legislature since those decisions that would warrant or justify the court in upholding the election. But this is what the defendant contends is the case, and that the statute now no longer works a disqualification where a councillor or reeve is paid for his services as a commissioner, and refers to sec. 454, R. S. O., by which it is declared that nothing in that act shall prevent any member of a corporation from acting as a commissioner, superintendent or overseer, over any road or work undertaken and carried on in part or in whole at the expense of the municipality, and it shall be lawful for said municipality to pay any such member of the corporation acting as such commissioner, superintendent or overseer. By the Municipal Act of 1866, it was expressly declared that no member of a corporation shall be eligible to act as commissioner, superintendent or overseer, over any work undertaken at the expense of the municipality. See section 246. This was, however, repealed the following session, and the provisions of section 454 have been the law since then, or at all events since 1873.

When my attention was first called to this section, and while the case was in progress, there was a strong impression on my mind that defendant's contention was good, and that under that section a reeve or councillor would no longer be disqualified to be re-elected by acting as a commissioner, whether the work was complete or not, or whether he had received his pay in full or not at the time of his election; but, on reflection, and considering the several sections of the acts singly and collectively, I have come to a different conclusion.

Consider for a moment the language of section 454. It does not expressly or by implication repeal the disqualification clause. It leaves that section untouched. It simply declares that nothing in the act shall prevent any member of a corporation from acting as a commissioner, &c., and that it shall be lawful to pay any such member of the corporation acting as such commissioner, &c. It does not go on to declare and enact that a reeve or councillor who undertakes to act as a commissioner, &c., for a fee or reward in the shape of a commission on moneys expended, shall not be disqualified as a candidate for re-election. In the note to this section in Harrison's Manual, the author refers to section 410 as apparently the only section annulled or abrogated by the former clause. When a councillor or reeve seeks re-election, though nominally filling the office till his successor is sworn in, or till after the election, he goes, or should go to the electors as free and untrammelled from contracts with the corporation as he was when first elected. Can this be said of the defendant in this instance? Though the defendant's term of office was virtually ended by lapse of time, he did not or had not divested himself of his undertaking with the corporation to supervise the construction of those ditches, or his office of commissioner for the expenditure of money thereon, which he might have done by resigning, or by repealing that part of the by-law or resolution by which he was appointed.

If the principle contended for by the defendant were admitted, there would be no objection to the reeves and councillors of any municipality at the end of the year devising some grand scheme to dig drains, build bridges or construct roads, making provision for raising money to pay for the work, and appointing themselves commissioners, and then go to the country for re-election with the by-law in their pockets, and use it as a lever to induce influential persons in the municipality to vote and work for them, with the view or under the promise to them of participating in the contracts to be given, giving them an advantage over their opponents in the contest which the law never contemplated that they should possess or acquire.

If the construction put upon section 454 by the defendant was conceded, it would be but the entering of the thin edge of the wedge, which, when driven home, would rend to pieces the fabric built up by the legislature and the courts to protect the in-

terests of the public against venality and corruption in the administration of municipal affairs. It is the duty of courts so to construe statutes as to meet the mischief, to advance the remedy, and not to violate fundamental principles. Another rule of interpretation is that one part of the statute must be so construed by another, that the whole may, if possible, stand. Accordingly, it is a rule that such exposition of the statute is to be favoured as hinders the statute from being evaded.

The contract with the corporation in which the candidate has an interest at the time of the election need not be a contract binding upon the corporation to disqualify him, *a fortiori*, would it therefore be a disqualification where the contract was valid and binding. It would not be either wise or politic to give a wider construction to the section in question here, than the words themselves imply, which is, it is conceived, that it is lawful for the reeve or councillor to act as a commissioner for the expenditure of money, and to receive pay therefor, that is, to receive a fixed sum for his services as such, during the current term of his office, or if he is given a percentage or commission, as the defendant receives in this instance, as the work progresses, then the work must be completed, or he must have received all his commission or pay before his election. If otherwise—if the work is not finished, and the councillor has not been paid in full, but still has a claim already due or accruing due on the uncompleted work, he has such an interest in the corporation at the time of the election, as would disqualify him under the statute.

It might be contended here, perhaps, as in *Reg. ex rel. Davis* v. *Carruthers*, 1 Prac. R. 114, that the amount coming to the defendant, for his commission on these different contracts was ascertained and liquidated, and no possible dispute with reference to defendant's claim against the corporation could arise, and therefore the statute could not apply, but Chief Justice Robinson said in his judgment in that case, "No person can pronounce that a dispute might not arise at any time before the money is actually paid. I could," says he, "suggest several grounds of contention that might possibly be yet advanced, and the intention of the enactment is that in case of any dispute of any kind, the council should be composed of disinterested parties." I am therefore constrained to hold, I think, that the defendant was disqualified, and was not duly or legally elected for the reasons set forth in the latter part of the relator's statement.

Having come to this conclusion, it will not be necessary for me to express any opinion as to the first grounds for voiding the election in the statement of the relator. It is clear that the proceedings of the returning officer on the nomination day were irregular, but whether the irregularities were of such a vital character as to make the subsequent proceedings void, it is not necessary for me now to determine. See note (*a*) to section 112, Harrison's Municipal Manual.

As in *Reg. ex rel. Rollo* v. *Beard*, 3 Prac. R., 357, we may possibly regret the result, from the belief that the defendant was sincere in his conviction that he was not violating any provision of the Municipal Act when he went to the polls for re-election, and to use the very words of Hagarty, J., in that case, "I unwillingly feel compelled to make defendant pay costs, but I think I cannot weaken the effect of this wholesome provision by discouraging parties from bringing a case of disqualification under notice at the peril of having to lose the costs necessarily incurred." Defendant must be unseated with costs.

In the case of *The Queen ex rel. Ferris* v. *Iler*, the defendant must be unseated for the reasons assigned in the second part of the relator's statement. Costs are in the discretion of the court or a judge. As the relator here may have contributed towards placing the defendant in the position he was as to qualification at the time of the election, by failing to give the necessary security promptly when the contract was given to him, and to prosecute and complete the work, which, I assume, might have been done before the end of the year, if the contract had not, in consequence of the relator's neglect, to be re-let, I will award him no costs in this case.

CHANCERY CHAMBERS.

(Reported for the Law Journal *by* F. Lefroy, *Barrister-at-law.)*

McPhatter v. Blue.

Solicitor's lien.

Where D, a solicitor, had recovered certain money for his client B, and another solicitor, acting on the instructions of B, had obtained a cheque for the amount payable to the order of B, and had parted with the control of the said cheque without first giving proper notice to D, —he was held liable to D to the extent of D's lien on the said money so recovered through him.

[The Referee, April 3, 1876.
[Proudfoot, V.C., April 24, 1876.

This was a petition by one Duff who, during the proceedings in this cause in the Master's Office, had acted as solicitor for Donald Blue, one of the respondents in the above suit. The suit was one for administration, and by his report made therein, the Master found that there was payable to Blue, for his costs of suit, $74.62, and also in respect of a claim against the estate, the further sum of $51.81. It appeared from the affidavit of Blue that while the suit was going on, the petitioner said it was necessary for Blue's interests that he should take out letters of administration to the estate of the deceased, and told him to get money from some one for the purpose. Accordingly Blue went to one Wells and told him what the petitioner had said, and Wells lent him $28, which Blue promised he should get back out of the money that would be coming to him (Blue) in the suit. After the Master's report, as appeared from the affidavits of Wells, and of a member of the firm of Messrs G. W. & C., solicitors, Wells went to Messrs G. W. & C. and told them that he had a claim against Blue for money given him to pay his lawyer, which money, he said, Blue was willing to pay him out of his share of the money in Court. He, therefore, asked Messrs G. W. & C. to do what was necessary for the purpose, and they gave him a paper to be signed by Blue, giving them authority to apply for the money, and to pay Wells out of it the money advanced by him to Blue. Having received the paper, duly signed, they on March 10, 1876, obtained a cheque for $52.41, being the sum hereinbefore mentioned with interest, payable to Blue's order, and thereupon they gave it to Wells' son to be endorsed by Blue. They, then, on the same day, wrote to the petitioner, telling him that, in pursuance of a written retainer from Blue, received through the said Wells, they had obtained a cheque for him, and added: "we think it right that you should know this in case you have any claim on the money. The balance after paying Wells will probably be in our hands for a few days."

The above letter was the first intimation the petitioner had of the proceedings taken by Messrs. G. W. & C. for obtaining the money out of court on behalf of Blue. There was at that time due and unpaid to the petitioner his costs for proving said claim, his general costs of suit, and a further sum as costs between solicitor and client, in respect of which he claimed to be entitled to a lien on all moneys payable to Blue by the Master's report. He, therefore, on March 11, telegraphed to G. W. & C. as follows:—

"McPhatter v. Blue.

"Do not pay any money to Donald Blue from this suit. I have a lien for costs on same."

Afterwards on the same day, the petitioner wrote a letter to G. W. & C. telling them that he had a lien on the moneys recovered in this suit for Blue for his costs, both those taxed and also for certain costs as between solicitor and client. He, therefore, told them to let him know the amount they had obtained, and pay it over to him or else to hold it, until he could obtain an order for payment over to him.

It appeared, however, from the affidavit of the said member of the firm of G. W. & C., that they did not receive this last mentioned letter until March 13th. They, however, duly received the petitioner's telegram on March 11th, but they had by that time given up the cheque to Wells' son. In fact, as set out in the said affidavit, they deemed notifying the petitioner at all was an act of courtesy, and not necessary in law; and they understood from the telegram, that all the petitioner objected to was their paying

any money to Blue, and that he did not object to Wells' being paid.

Accordingly, on the same day, March 11, they wrote to the petitioner as follows:—"We have your telegram of this morning. The cheque we got was only for Blue's share, not his costs. We have given the cheque to Wells to be endorsed by Blue, and returned to us after paying Wells out of it. The balance we will hold as long as we can to enable you and Blue to agree on a settlement."

Blue indeed swore in his affidavit that when he put this case into the hands of the petitioner and his partner, now deceased, he made an express bargain with the said partner of Mr. Duff, that he would not charge anything for attending to his interests in the suit beyond such costs as he could tax, and recover out of the lands when sold, and that he was not to pay him anything personally.

The petitioner, however, now prayed that it might be referred to the Master to tax his costs against Blue, in addition to those already taxed herein, and that Blue and G. W. & C. might be ordered to pay to him the amount of the said costs to the extent of $52.41, and his costs of this application.

Boyd, Q.C., for petitioner. G. W. & C. cannot hold the money without answering the lien of the petitioner. The said lien was a prior lien to that of Wells, and by withdrawing the said sum from Court without previous notice to the petitioner, G. W. & C. rendered themselves liable to pay the petitioner the amount due to him to the extent of $52.41. There had been no order to change the solicitors, therefore they are answerable for the consequences: *Haymes* v. *Cooper*, 33 L. J. N. S., Chy. 488. They don't say when they paid the money to Wells, therefore it must be assumed that they paid after having received notice by the petitioner's telegram.

Hoyles, contra: The petitioner's telegram only requires G. W. & C. not to pay to Blue. Blue swears that there was an express agreement between him and the petitioner that there should be no costs between solicitor and client: *Geddes* v. *Wilson*, 2 Chy. Ch. 447. The petitioner should have obtained a stop order. As soon as the money was paid out the lien ceased. Notice was necessary to render G. W. & C. liable. He also cited *Read* v. *Dupper*, 6 Term Rep. 361; *Brunsdon* v. *Allard*, 28 L. J. Q. B. 306.

Boyd, Q.C., in reply: G. W. & C. could not have been misled by the telegram. The previous letter from G. W. & C. to the petitioner did not state that Wells had any claim. The amount of costs due to the petitioner as between solicitor and client, must be taxed by the master, as the affidavits are contradictory. The solicitors G. W. & C. were affected with all the equities even without notice.

THE REFEREE refused the petition with costs.

On appeal this decision was reversed.

W. Cassells, for appellant.

Hoyles, contra.

PROUDFOOT, V.C.—I cannot ascertain from the papers what it was that was done in *Muntz* v. *Brown*.* At all events it was distinguishable from this because the solicitors entitled to the lien assented to what was done. Here there was no assent.

I think as against Blue the order asked is quite clear: and as to the solicitors who got the cheque from court and suffered a portion to be paid away, I also think the order must go. No case has been found in our Court. Those in England are in favour of the order asked, *Haymes* v. *Cooper*, 33 Beav. 431. As to notice I think it clear as a matter of fact they had notice, but as was said by the M. R. in the last case—"Where a man knows there is a fund in Court he knows also that it is subject to the solicitor's lien for his costs in recovering it and that he is entitled to be paid in the first instance;" and there does not seem to me to be anything in the practice of our Courts to sanction a variance from the English practice.

It is quite clear that G. W. & C. could not have been misled by the telegram of Duff, it did not reach them till they had given up the cheque.

Order to go as prayed.

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* The judgment does not show whether this case of *Muntz* v. *Brown* has ever been reported. I have been unable to ascertain.—REP.

IN THE COUNTY COURT OF THE COUNTY OF ONTARIO.

Lee v. Beall.

Practice—Service of a writ against a British subject residing without the jurisdiction—Not irregular when served within the jurisdiction.

[Whitby, March 26—Dartnell, J. J.

The papers filed showed that a writ, for service out of the jurisdiction, was taken out on the 27th of February, 1879; that the defendant was a permanent resident of the City of Montreal, but being temporarily in the Village of Port Perry, in the County of Ontario, was served with a copy on the 5th day of March instant. A summons was taken out to set aside this service as being irregular.

Dartnell, J. J. There does not seem to be any express decision upon this point of practice; the cases cited of *Hasketh* v. *Flemming*, 1 Jur. N. S. 475; *Green* v. *Braddyll*, 1 H. & N. 69; and *Medcalf* v. *Davis*, 6 Pr. Reports, 275, not being in point. A careful consideration of the clause of the C. L. P. Act bearing upon the subject leads me to believe that the intention of the Act was that judgment could not be entered against a British subject, residing without the jurisdiction, unless he had been served with a writ in the prescribed form. If this defendant had been served with the ordinary form of summons for service within the jurisdiction, no doubt it could have been set aside, on its being shown his residence was beyond it. It is not usual for Courts to set aside process or proceedings, where there has been a substantial compliance with the governing statute or rule. I think here that there has been such compliance. The defendant has received all the notice required, and what he in effect asks is, that the plaintiff, if he fail in his action, or he himself if the judgment be against him, should be saddled with the additional cost of service in Montreal. It is urged that the statutory endorsement that the "writ is for service out of Ontario," implies that such service cannot be made within it; but I think the reasonable meaning of this is, that it is for "service on a party *living* out of Ontario." It is urged that I could amend under sec. 38; but there is really nothing to amend. There is "no mistake or inadvertance," and besides this section is an enabling enactment, and the application must be made by the plaintiff, and cannot be made on a motion by the defendant.

As the point is a new one, and as the summons was moved without costs, I discharge it without costs. The defendant will have four days further time to appear.*

LAW STUDENTS' DEPARTMENT.

Examination Papers. Mich. Term, 1878.

First Intermediate.

Smith's Common Law, and Con. Stat. chaps. 42 *&* 44.

1. In how far will assault and battery be justified on the ground of its being in defence of a house?

2. What is the meaning of the term "*Merger*" in relation to contracts? Illustrate your answer.

3. "Estates for life are usually given *without impeachment of waste.*" Explain the meaning of the italicised words in this quotation, and state in general terms the rights of the grantee of such an estate.

4. A person owns a piece of vacant land adjoining a dwelling house, also owned by him, having a window overlooking the vacant land. He sells the vacant land to A and the house to B. Will it make any difference in the right to access of light to the house whether the conveyance to A is made before that to B; and, if so, what difference will it make?

5. What is the effect of the words "*lost or not lost*" in a Marine Policy of Insurance?

6. Explain fully the effect of the words "and not *otherwise or elsewhere*" following the name of the Bank at which a promissory note is made possible.

7. What is the effect of one of two joint contractors making a payment on account, after the remedy on the contract is barred by the Statute of Limitations?

[* The converse of this case was decided in Chambers by Morrison, J. on appeal from Mr. Dalton, in *Snow* v *Cole*, 7 Prac. R. 168. Ed. L. J.]

Williams on Real Property.

1. What were the means by which the feudal system was introduced into England? Give, as far as you can, the various opinions upon the subject and the reasons for them.

2. Explain the origin or significance of the terms real and personal property, and the reason for classing estates for years under the latter division of property.

3. What was the nature of the tenure acquired by a *conditional gift* under the feudal system?

5. State shortly the effect of the statutes of Elizabeth as to voluntary conveyances.

5. What were equitable assets? In what way did their distribution among creditors differ from the distribution of legal assets, and what was the ground of such distinction?

6. In what manner at the present day are assets of a deceased person applied in payment of his debts where the assets are insufficient to discharge all the liabilities?

7. Distinguish between *heir apparent* and *heir presumptive.*

SECOND INTERMEDIATE.

Leith's Blackstone—Greenwood on Conveyancing.

1. Enumerate and distinguish between the various kinds of advowsons.

2. What do you understand by common of estovers?

3. By what different modes may *ways* arise? Give an instance of an implied grant of a way.

4. What do you understand by free and common socage?

5. What effect (if any) has a divorce upon a right of dower?

6. Has a husband any, and if so what, rights as tenant by curtesy in equity which would be denied him in a Court of law?

7. What do you understand by tracing descent *per capita* and *per stirpes?* Give examples.

CERTIFICATE OF FITNESS.

Taylor's Equity Jurisprudence — Pleading and Practice.

1. Discuss the principles upon which the Court acts upon a bill to set aside a compromise of doubtful rights.

2. In what cases will the Court rectify mistakes in wills? Illustrate your answer.

3. What is the extent of the obligation which rests upon a creditor to make disclosures or give information to an intending surety? Answer fully.

4. In a will there is a bequest of personalty and a devise of realty, with certain conditions annexed. Give the rules as to the vesting and divesting of the gifts according as the conditions may be good or bad, or may be observed or disregarded.

5. In what proportions must a tenant for life and remainderman contribute to the payment of an encumbrance upon the estate?

6. What law governs the administration of assets of a foreigner, and what the determination as to whether debts are primarily chargeable upon realty or personalty?

7. When can a suit for the recovery of a legacy be commenced at Law, and when in Equity? What is the reason for the distinction?

8. What is the full extent of the right of a plaintiff in a suit as to obtaining orders to amend his bill, and how must these various orders be applied for?

9. A is indebted to B and B to C. B, by his bill of exchange, directs A to pay the amount of his indebtedness to C. A refuses to accept the draft when presented by C. Has C any remedy against A? Give your reasons.

10. What cases are set down to be heard by way of motion for decree? How are they so set down, and what material can be used upon such hearing?

Snell's Equity and 29 Vic. Cap. 28.

1. Illustrate the maxim that "*Equality is Equity.*"

2. Define executed and executory trusts.

3. In favour of what classes of persons will a presumption of advancement be raised, in case of purchase being made in the name of the person not the purchaser? Explain your answer fully.

4. Define and illustrate the equitable doctrine of performance.

5. Give the rules given by Snell as to the distinction between a penalty and liquidated damages.

6. What remedy has a surety in case the creditor delay proceedings against the principal debtor? Can he compel the creditor to proceed?

7. What is the effect on the remedy of a person who claims against the estate of a deceased person, of the executor giving notice in writing to such creditor that the executor rejects or disputes his claim?

Smith on Contracts— The Statute Law.

1. A grantor delivers an executed deed to the grantee therein named, saying at the time in express terms that he intends the delivery to be conditional on the performance of some condition. What is the legal effect of this? What is an escrow? Explain fully.

2. What is the test of the admissibility of oral evidence of custom for the purpose of varying or explaining a written contract?

3. What is the marked distinction between bills of exchange and promissory notes and other simple contracts? Explain and illustrate your answer.

4. What is the legal effect of a deed providing for the support of a wife on the occasion of an immediate separation? Give reasons for your answer.

5. What effect will the reconciliation and living together of man and wife after execution of a lawful deed of separation have on the deed? Explain your answer fully.

6. In how far, if at all, is the general rule, that, *where money has been paid upon a consideration which totally fails, an action will lie to recover it back again*, true where the contract is an illegal one?

7. A and B are co-sureties to C for the debt of D to C. C has obtained judgment and execution against D, but is unable to realize, and is threatening proceedings against A and B. State shortly the rights and remedies of the various parties mentioned, with special reference to any statutory enactment affecting them.

8. Give the principal rules for the construction of contracts referred to by Mr. Smith.

9. A wishes to purchase certain goods from B, which are to remain in the possession of B after the sale. What formalities would you advise them to comply with in order to secure their intentions being effectually carried out? Give reasons for your answer.

10. What is a registered lien under the Mechanics' Lien Act, and wherein does it differ from an unregistered lien?

BARSTOW SCHOLARSHIP.

Constitutional Law and Legal History.

1. Trace the connection between the compurgators of Saxon times and the jury under the early Plantagenets, marking the steps of the development of the institution of the jury, and showing how their position was understood in the times of Mary I. and of Charles II. respectively.

2. Describe the machinery by which justice was administered under Henry II., and specify the principal modifications which it had undergone by the close of the reign of Edward III.

3. Explain the purport of the Statute of Fines. To what motives has this enactment been attributed, and what are Hallam's conclusions as to the tenability of this theory? For what purposes were they principally used, and when were they abolished? What are the modern substitutes for them?

4. Sketch the history of the law determining the duration of Parliament and the frequency of its summons, and point out the existing securities for its annual convocation.

5. What is understood by the privilege of freedom from arrest enjoyed by Members of Parliament? Shortly sketch the history of this privilege, mentioning any notorious cases in which it has been violated. Why has this privilege lost much of its practical importance, and what does it at the present day practically amount to?

6. Lord Shaftesbury, in 29 Car. II., having been committed to prison, sued his writ of Habeas Corpus, the return to which stated that he was imprisoned "by order of the Lords Spiritual and Temporal during the King's pleasure, and during the pleasure of this House, for certain high contempts against this House." Could any objections have been taken to the validity of this return?

7. How does Lord Mansfield define "Liberty of the Press"? Give a short history of the subject, showing how it has been from time to time repressed, and stating the purport (according to Scroggs) of the opinions of the judges upon this subject. What is at present deemed to be the limit of lawful publication of comments on the management of public affairs or on the conduct of public men?

8. What points were settled in the reign of Charles II. as to the judicial powers of the House of Lords? Briefly state the cases in which the questions on this subject were raised.

9. What was Sir Henry Vane's defence on his indictment for treason, and how was it dealt with by the Court? What is Hallam's principal censure upon the conviction of Vane? How far is it conclusive? What points upon the law of treason or upon the procedure for that crime were raised in the several cases of Sidney, Messenger and Armstrong?

10. What arguments were there for and against the clause in the Act of Settlement excluding placemen from the House of Com-

mons? When was the clause repealed, and what provisions were subsequently made to mitigate the evils arising from the presence of pensioners and placemen in the House?

Jurisprudence, including International Law, public and private.

1. "Omne autem jus quo utimur vel ad personas pertinent vel ad res vel ad actiones." How far is this a scientific or convenient distribution of the field of law?

2. Explain the juristic character of marriage, discussing the various views which have been maintained upon the subject.

3. What is "public law," and what is its relation to "the law of nations" and to the so-called "private international law?"

4. What rules of maritime international law which were generally accepted a century ago have now ceased to be so accepted? Through what historical events and by what diplomatic acts has the change in each case been brought about?

5. By what law is the validity of the transfer of property of various kinds to be decided? How far are the authorities agreed upon this point?

OBITUARY NOTICE.

Nesbitt Kirchoffer, Q. C.

This gentleman died at his residence, in Port Hope, on 26th April last. At a meeting of the Bar in that locality—

Mr. T. M. Benson, seconded by Mr. R. H. Holland, moved—"That we desire to express the regret with which we have received the intelligence of the death, at an early hour this morning, of Mr. Nesbitt Kirchhoffer, Q.C., who was for many years a Bencher of the Law Society of Upper Canada. For a long time he had held the position of senior member of the profession in this County, and he enjoyed the respect of the whole Bar of this District. He will long be remembered as a lawyer of ability and integrity, and as one who, in a profession singularly exposed to misrepresentation, gained and held throughout a long professional career the confidence and esteem of the community in which he lived. It is resolved that we will attend his funeral in a body, and that the members of the profession in Cobourg (the County Town) be invited to join us in paying this last tribute of respect to one whose decease is a loss to the bar of these Counties. We desire also to express our sympathy with his bereaved widow, and to offer her our respectful condolence; and we instruct our Secretary to communicate to her the contents of this resolution." Carried.

At a joint meeting of the Bars of Port Hope and Cobourg, held on the afternoon of Monday, April 28, the members of the Cobourg Bar expressed their concurrence in the above resolution, and desired to join therein.

CORRESPONDENCE.

Mechanic's Lien.

To the Editor of The Law Journal.

Sir,—From the note of the case of *Hynes* v. *Smith*, which appeared in your last issue, it appeared that the plaintiff had commenced work, in respect of which he claimed a mechanic's lien before 31st Dec. 1877. Subsequently the owner made two mortgages, one of which was registered 31st May, 1878, and the other on the 8th June, 1878. On the 18th June, 1878, plaintiff registered his lien, and on 28th August following filed his bill. On this state of facts it was held that the mortgagees were prior to the plaintiff. The reasons of this decision have not yet been published, and it seems at first sight to be difficult to reconcile it with the Act.

The interpretation clause defines that the true "owner" is to include all persons claiming under him, at whose request the work is done, whose rights are acquired after the work is *commenced*. Section 3 gives the lien-holder a lien "*by virtue of being so employed*" against the estate and interest of the owner, not by virtue of registration, it is to be observed. Section 26 provides that the Registry Act shall not apply to any lien arising under the provisions of the Act, except as therein otherwise provided, and there is no provision, I think,

affecting the present case, assuming the lien to have been registered within thirty days of the completion of the work, as provided by section 20.

It is possible the provisions of section 26 may have been lost sight of.

One would think, apart from the Registry Act, there could be no question that if the lien attaches upon the estate and interest of all who acquire an interest in the land after the *commencement* of the work, that, on the facts stated in the note, the mortgagees were clearly subsequent to the plaintiff.

READER.

FLOTSAM AND JETSAM.

On 22nd of Jan. last, the University of Dublin conferred the degree of LL.D., *honoris causâ*, upon Lord Dufferin. The Rev. Dr. Hart, Vice-Provost and Pro-Vice-Chancellor, presided in the absence of the Chancellor and Vice-Chancellor of the University. After the Earl of Rosse had been first introduced and signed the roll, Lord Dufferin next came forward, and Dr. Webb, Regius Professor of Law, introduced him in an eloquent little Latin speech. The following is a humble attempt to do justice to the original:—

"Most honourable Mr. Pro-Vice-Chancellor and gentlemen of this University, I present to you Frederick Temple, Earl Dufferin, a man by birth and rank illustrious, in culture, eloquence and administrative skill absolutely unrivalled. In him, born as he was of more than monarch ancestors—for Sheridan's grandson, I hold to be the offspring of a more than regal line, the nation foresaw a future greatness, and greeted him while yet a stripling. In his early manhood, obeying the dictates of his versatile genius, he scorned patrician luxury, and 'Far to the chilly North his flight pursued,' and by the cunning of his story breathed on those icy regions, his own spirit's warmth (mentis suæ calorem inspiravit). Nor was it long before the nodding heights of Lebanon knew in him an ambassador, arbiter, and peace-maker, Lebanon which had looked down upon so many and so mighty conquerors. A pinnacle was added to his renown by his illustrious, his brilliant administration of Canada. Factions pacified, races united in amity, provinces at variance amongst themselves brought to unity, the Dominion ultimately established—these are his achievements, these form his fame, these his civic crown. He was not the man to cast off loyal colonies of kindred blood, most warmly attached to us (colonias consanguineas fideles et nostri amantissimas projicere). He was not the man to weaken and hold of no account the British Empire, founded by a valour truly Roman. His was a genius, as all men agreed, capable of government, a genius whose capacities his government made known as never they were known before. How great thy debt to Ireland, O Anglia, these names alone testify—Wellesley, Wellington, Monck, Lawrence, Mayo, Dufferin, By such heroic stock are empires founded and maintained,—

'Sic fortis Etruria crevit.'

Then rose Britannia, echoing name. May it through eternal ages echo still."

Lord Dufferin, having affixed his signature to the roll, was greeted with warm applause, and shook hands with the presiding functionaries. There were repeated calls for a speech; he did not however, respond to them.

In the Court of Appeal at Lincoln's Inn, a case involving the doctrine of a wife's equity to a settlement was heard the other day before Lords Justices James, Bramwell, and Brett. In the course of the argument Lord Justice Bramwell said: "There's no such thing as an equity since the Judicature Acts came into operation—is there?" Counsel ventured to suggest that it was rather law than equity which had been abolished. "It's like shot silk," observed Lord Justice James, "both colours are there, and it depends upon the light in which you look at it which colour you see."—*Mayfair.*

In the recent case of *Nunn* v. *Hemming*, brought by an ex-lunatic, against the keeper of the lunatic asylum in which he had been confined, for assault, it seems to have been assumed both by judge and jury that a man subject to hallucinations on one point is necessarily untrustworthy as a witness, and that his evidence on all other subjects must therefore be discredited. There is a well-known story, illustrative of the contrary proposition, told of Burke, who, in collecting information for a speech that he was about to deliver in the House on an Indian question, was referred to an ex-official, then the inmate of a lunatic asylum. Burke had an interview with the lunatic, who proved to be a man of excellent information, and fully competent to advise on the subject on which he consulted him. On leaving the asylum Burke expressed his indignation to the keeper of the asylum, and intimated his intention of bringing the matter before Parliament. "Before you do that, sir," replied the keeper, "go back and ask him what he had for breakfast this morning." Burke did as

he was requested, when the lunatic at once burst into indignant invective against the authorities, and replied, "Hobnails, sir; is it not disgraceful? Hobnails; nothing else." Burke was satisfied; but I never heard that he rejected the poor man's testimony on the Indian question—*World.*

Lord Justice Cotton has taken to "criminal business" as a "duck does to water," as the saying is. His robes, made evidently for the occasion of the present assizes, are of the brightest crimson, his ermine of the whitest. His "Archbold's Criminal Pleading and Evidence," his "Russell on Crimes," and his "Stephen on Evidence" are each, notwithstanding certain symptoms of hasty perusal, still radiant in the newest covers. But his *black cap!*—that is, indeed, a sight worth a journey to Maidstone. Unlike the plain square of black cloth ordinarily used, it is daintily turned up at the corners and secured apparently by pins, and presents somewhat the appearance of an ecclesiastical *birreta.* The shape and sit of this article of judicial attire have evidently been the subject of much thought, both on the part of his lordship and his *body-clerk.* Most judges when they have to pronounce sentence of death, take the black cap from a drawer in the desk before them, or from their pocket, and place it on their heads. Not so Lord Justice Cotton. As the time approaches for sentence to be delivered, and whilst he is still addressing the prisoner, his body-clerk slips out of his seat, and, going behind the judicial chair, arranges the cap, pinned up as aforesaid, daintily on his lordship's wig, and lightly and noiselessly retires until sentence is passed, when my lord majestically retires to his private room, possibly with a view to study the effect at leisure.—*World.*

In the death of Mr. Isaac Butt, which occurred near Dublin, on the 5th inst., the Irish Bar has lost its most brilliant member. Mr. Butt was born in 1813, and was educated at Raphoe School, and at Trinity College, Dublin, where he graduated B. A. (in classical and mathematical honours) in 1835, and LL.D. in 1840. He was called to the bar in Ireland in November, 1838, when he joined the Munster Circuit. He was frequently engaged as counsel for the Corporation of Dublin, and in 1840 he was heard at the bar of the House of Lords in opposition to the Irish Corporation Reform Bill. Mr. Butt became a Queen's Counsel in 1844, and was called to the bar at the Inner Temple in Michaelmas Term, 1859. He rapidly rose into leading business at Dublin, and held briefs in many important cases, including *Smith O'Brien's case,* the Fenian prosecutions, and the recent probate suit of *Bagot* v. *Bagot;* and was also often engaged in Irish appeals to the House of Lords. Mr. Butt entered the House of Commons in May, 1852, as M.P. for Harwich in the Conservative interest, and at the general election in the ensuing July, he was returned for Youghall. For several years he acted with the Conservative party, but at a later day he gave an independant support to the government of Lord Palmerston. At the general election of 1865 he lost his seat by a few votes, and for the next few years confined himself to his professional duties: but in 1871 he was returned without opposition for the City of Limerick, and was thereupon selected as leader of the new Home Rule party, which position he occupied until his death. As an advocate Mr. Butt belonged to the class of which Scarlett and Follett are prominent examples among English barristers, having no very profound knowledge of the law, but readiness in acquiring whatever is necessary for the case in hand and facility in laying facts and arguments before courts and juries.

Judge Dillon has resigned the judgeship of the Eighth Federal Circuit, with the intention, it is rumoured, of accepting a professorship in the Law School of Columbia College. Although but yet in the prime of life, Judge Dillon has had a large experience as a judge, having been Chief Justice of the Supreme Court of Iowa for some time prior to his appointment to the Federal Judgeship, and he has won the reputation of being one of the ablest judges in the country. Mr. Secretary McCrary has been urged as successor to Judge Dillon.

A Female Attorney in Difficulties.—Mrs. Bella Lockwood has succeeded in obtaining admission to the Washington bar, but finds this is not a passport to other legal fraternities. A short time ago she entered the Court of Judge Magruder, of the Seventh Judicial Circuit of Maryland, and there attempted to act as an attorney. But the Court would not permit her to do so, and lectured her after this manner: "God," said the Judge, "has set a bound for woman. She was created after and is part of man. The sexes are like the sun and moon moving in their different orbits. The greatest seas have bounds, and the

eternal hills and rocks that are above them cannot be removed." When the Court finally adjourned Mrs. Lockwood attempted to address the ladies and gentlemen who were present, but a bailiff prevented her from making any speech in the Court room.

A LAY OF THE LAW.

Air.—"When I was young I had no sense."

Though I was old I had no sense,
Nor cared a fig for the great expense;
So I went to law, and I'm vexed to say
That my luck was bad, and I won the day.

For if I had lost I did not intend
On another trial more cash to spend;
But as I had won, what could I do,
When the loser appeal'd, but fight it through?

And so the matter was tried again,
And I my triumph did not maintain,
For whereas one Judge had said white was white,
Two ruled 'twas a different colour quite.

This made me angry—I don't conceal—
And I resolved to once more appeal;
And three more Judges in proud array
Decided that white was bluish gray.

Now since the court below had said
That the white in point was a rusty red,
The latest judgment was felt to be
On the whole a verdict in favour of me.

Upon which at once my obstinate foe
Declared to the House of Lords he'd go;
And their Lordships ruled by three to two
That my white was really a Prussian blue.

So I lost my case, since there was, alack!
No higher tribunal to say 'twas black;
And a thousand guineas I had to pay
Because at the start I won the day.

But though this sum of money I've paid
The law to me no return has made,
Except to tell me in accents dread
That white is gray, and blue, and red!

Now, if 'tis truly a Prussian blue,
Why didn't the first Judge say so too?
Or why couldn't I, expense to save,
At once the highest opinion crave?

For law is law, as it seems to me,
And all of it ought first-class to be,
Since suitors must be perforce be-fooled,
When courts but exist to be over-ruled.

Christmas number of Truth, 1878.

The newspaper reporters of this day are certainly enterprising. One of them has divulged the secrets of the interior of Africa, and another, pretending to be insane, had himself confined in a lunatic asylum, and exposed the abuses to which the real lunatics were there subjected. And now comes a *World* reporter, who not being married, found an accommodating New York city attorney, who for $35, and upon the candid statement that the applicant had no cause for divorce, procured him a divorce in a Wisconsin court! It seems to have been a case of "diamond cut diamond." The reporter imposed on the attorney, Mr. Munro Adams—who by the way is not an attorney at all—by pretending to be married to a Canada wife of "incompatible temper." A summons and complaint in blank as to the defendant, the complaint apparently but not really verified, were drawn up, and the injured husband sent them to a friend in Canada, who was in the secret, with a letter from the attorney stating that the wife's admission of service would assist the husband in a suit against a party whose name was not definitely ascertained. In due time the admission was returned apparently signed by the wife, from whom the pseudo husband also apparently obtained some letters acknowledging her faults, etc., to facilitate the matter. In a few weeks, without any thing more having been done to the knowledge of the reporter, he was furnished by the attorney with a copy of a decree of divorce of the circuit court of Walworth county, Wisconsin, purporting to have been rendered after a hearing of proofs, etc., and purporting to be signed by John T. Wentworth, circuit judge, and certified and sealed by the clerk, all very formal and red tapes. We understand that the reporter is now on his way west to investigate the genuineness of the document. This story occupies four columns of the *World*, and is rare reading. The probability is that the document in question is an impudent forgery, and that the transaction furnishes no criterion for judgment respecting the bogus divorce business, but still it is significant. At all events this enterprising reporter seems to have the ability to do even more effectual things in the exposure of iniquities. If we ever have need of acute services in this line, we shall address a line to Mr. A. Oakey Hall, of the *World*, asking him in De Quincey's words, "*Ubi ille est reporter!*"

Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 42nd VICTORIÆ.

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

William Egerton Perdue.
Elgin Schoff.
James Haverson.
John Cowan.
Ernest Henry Eden Eddis.
Edward Sydney Smith.
John Gilbert Gordon.
Joseph Alfred Wright.
Chester Glass.
Peter Vances Georgen.
James Pearson.
John Bishop.
Frederick William Barrett.
Thomas William Howard.
Daniel Bayarde Dingman.
John Inkerman MacCraken.
James Dowdall.
John Hodgins.
Reginald Gourlay.

And as special cases under 39 Vic. cap. 31 :—

John MacGregor.
William Jex.
Charles McMichael.

And the following gentlemen were admitted as Students-at-Law and Articled Clerks :—

Graduates.

Villeroi Switzer.
Henry Lincoln Rice.

Matriculants.

John Percy Lawless.
Thomas Hadzor Marshall.
Richard Henry Hubbs.
John Robertson Miller.
N. H. Beemer.

Juniors.

Stephen Frederick Washington.
William John Northwood.
John Graham Forgie.
Samuel Thomas Scilly.
Daniel Urquhart.
Levi Thompson.
Denis Joseph Mungovan.
Thomas B. Shoebotham.
Thomas Young Cain.
William Dickinson Farrell McIntosh.
John Dick Hepburn.
David Kirkpatrick J. McKinnon.
David Thorburn Symons.
James Bicknell.
Arthur Wellington Burk.
Lesslie Livingston Jackson.
Charles Creighton Ross.
Arthur Eugene Fitch.
Matthew Elliott Mitchell.
Robert Notman Ball.
George F. Cairns.
James Sidney Garvin.
Gerald Bolster.
Robert Christie.
Noble A. Bartlett.
Arthur Fred. James Spencer.
William Gilbert Macdonald.
Arthur William Johnson.

Articled Clerks.

William Henry Gordon.
Herbert Henry Bolton.
George Holmes Anderson.
Harold Victor Bray.
Edwin Duncan Cameron.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AND ARTICLED CLERKS.

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

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

Articled Clerks.

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography — North America and Europe.
Elements of Book-keeping.

Students-at-Law.

Classics.

1879 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.

1879 { Cæsar, Bellum Britannicum.
Cicero, Pro Archia.
Virgil, Eclog. I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1880 { Xenophon, Anabasis. B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

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

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.

Composition.

Critical analysis of a selected poem :—

1879.—Paradise Lost, Bb. I. and II.

1880.—Elegy in a Country Churchyard and The Traveller.

1881.—Lady of the Lake, with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek.

FRENCH.

A Paper on Grammar.

Translation from English into French Prose—

1878 and 1880 } Souvestre, Un philosophe sous les toits.

1879 and 1881 } Emile de Bonnechose, Lazare Hoche.

or GERMAN.

A Paper on Grammar.

Musaeus, Stumme Liebe.

1878 and 1880 } Schiller, Die Bürgschaft, der Taucher.

1879 and 1881 } Schiller { Der Gang nach dem Eisenhammer. Die Kraniche des Ibycus.

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

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the Final Examination, shall be :—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C.S.U.C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows :—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

FOR CALL.

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

FOR CALL, WITH HONOURS.

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

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

SCHOLARSHIPS.

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

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

3rd Year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

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

The Law Society Matriculation Examinations for the admission of students-at-law in the Junior Class and articled clerks will be held in January and November of each year *only*.