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The BARRISTER

A. C. MACDONELL, D.C.L. Editor.

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The Barrister.

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EDITORIAL.

On the 10th May the Hon. Mr. Justice Fournier passed away at Ottawa, aged 73. In 1873 Mr. Fournier accepted the portfolio of Inland Revenue in the Government of the Hon. Alex. Mackenzie, which position he held till 1875, when he resigned to take his seat as a Judge of the Supreme Court of Canada constituted in that year. About a year ago Judge Fournier resigned his seat and spent the rest of his days in private life.

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The sudden death of Hon. Timothy Warren Anglin was a shock to many at Osgoode Hall, who knew the deceased as a kind gentleman and a zealous official. Mr. Anglin was a person of very superior attainments, and he succeeded in raising himself into a high position in Canada. In New Brunswick, immediately on his coming to Canada, Mr. Anglin entered the newspaper field, and his publication wielded great influence, especially among the Catholic people, whose leader he became in the great controversy known as "The New Brunswick School Case." He was elected to the Local Legislature, and again later to the Dominion Parliament, of which body he was elected Speaker during the Premiership of Mr. Mackenzie. He subsequently removed to Toronto, and continuing his political inclinations he ran in North Simcoe, but was defeated by Mr. D'Alton McCarthy. Since then Mr. Anglin has been understood to continue his newspaper work, rendering special assistance to his old political allies in the columns of their great organ. Less than a year ago Mr. Anglin was appointed Surrogate Clerk for the Province of Ontario. He died at the age of 64, occupying this office.

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Something should be done to improve the position of counsel in the Toronto Police Court. In our March number we referred to trouble that was being felt in England from the officious insolence of a police inspector, who was allowed to act as Crown

prosecutor. We then intimated that the nuisance was not unknown here, and we suggested that perhaps the Kelly v. Archibald verdict would have a good effect. It seems, however, that no such effect has yet become apparent, but quite the contrary is the case. It has been the practice in this Court to refuse to hear law students, but these police inspectors have been admitted to practice, as it were, and enjoy all the privileges of members of the Bar, though upon what they found a better right than law students we are not aware. Last 12th May the moral inspector was prosecuting, while a member of the Bar was acting for the defence. Both these persons soon commenced making uncivil remarks towards one another, and both certainly acted in very bad taste, indulging in coarse Billingsgate. In this discreditable contest the honors were nicely even when the inspector turns upon the barrister and—as reported in three different newspapers, published simultaneously—said: "See here, if you give me any more of your impertinence I will have you put out of this Court." The lawyer uttered defiance, when the inspector pointed to a constable and roared "Remove that man." Throughout all this and much more disgraceful dialogue, described above in general terms, Acting Police Magistrate Millar sat on his magisterial throne, raised high above the contending parties, but he did not assert himself. Of course no one dared remove the lawyer. It is outrageous that a member of the Bar should be liable to such treatment.

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We have been reading an article on the practice of counsel humbugging juries in the Chicago Corporation Reporter, and we regret to have to say that there is a little too much of it even among our own model Bar. It is only about five years since we saw what we thought a hardly creditable exhibition by a great Queen's Counsel, who is more of a criminal than a civil lawyer. His opponent was a popular Q.C. of but little legal inferiority. The judge was Chief Justice Galt. Toronto was where the venue had been laid. During his address to the jury the first-named gentleman reached on the table for a book. Opening it in the most innocent way, he turned to the jury and said, "Now, gentlemen, my learned friend has been talking to you a lot about the law. He tells you that he has the law on his side. But I am now prepared, gentlemen, and I am just going to read you what the law really is on the subject." The opposing counsel rose and objected and was, of course, sustained; whereupon the greater Q.C. assumes a theatrical attitude. He had previously been cautious enough to have a

chair handy, and, in fact, had been talking over one. The book, open as it was, he allows to slip from his hand and fall on the chair. Then he utters the exclamation: "Well, if my learned friend is afraid to hear the law," etc., etc. Every law student on the side benches knew at the time, as the great Q.C. knew twenty years before, that he could not read the book, and the convenient chair showed that he knew the part in advance he was to play. We would like to see less of such humbug.

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Until recently there has been a great diversity of practice in England with regard to allowing interviews between counsel and prisoners on remand. The Home Secretary has lately recommended a practice that in all cases where prisoners are remanded to gaol or to the prison cells, they should be allowed to have interviews with Barristers or Solicitors on bona fide legal business in the presence, but not in the hearing, of a police officer. This is just and reasonable, and should be uniformly adopted in this country.

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Editorial Notes.

There are set down for hearing at the present sittings of the Court of Appeal 110 cases. And of these 73 are appeals under the Law Courts Act direct from trial Courts, and the rest are from Divisional Courts. Why are these 73 appeals not taken to the Divisional Court? A pronounced feeling appears to exist in favor of the Court of Appeal as against the Divisional Courts. One reason is that the former Court is able to give greater time and attention to what comes before it, on account of the Judges thereof being free from Assize Court work, and not having to sit in Chambers and Single Court. There is a very generally prevailing doubt about the soundness of some of the Divisional Courts judgments, but how can the Judges of a Divisional Court, who are overworked and rushed from one Assize Court to another, give that attention to the consideration of a legal point which the Judges of the Court of Appeal can give? We wait with interest to see what the outcome will be of the present congestion of business in the Court of Appeal.

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The new Benchers met in Convocation last week. There was a very large attendance. Mr. Emilius Irving, Q.C., was re-elected treasurer. Committees were struck, the estimates for the year passed and routine business transacted.

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Referring to the sale or other disposition of the good-will in a business, Law Notes, our ever-welcome English contemporary, refers approvingly to the decision in the English case of Trego

v. Hunt. We also think the decision should stand, and we refer our readers to the case of The Oriental Laundry Co. v. Carroll, reported in this number of The Barrister, where a similar principle is laid down.

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Owing to the large number of cases, both English and Canadian, to be reported this month, and other matter, a number of short articles on important legal subjects have been crowded out of this month's issue, but will be published in our June issue.

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The biblical requirement of "an eye for an eye and a tooth for a tooth" is seemingly successfully evaded by those of homicidal tendencies across the line; for Judge Parker, of Fort Worth, Ark., has made a table which shows that 44,000 human beings have been murdered in the American Republic in five years, and there have been only 725 legal executions, though there have been 1,118 lynchings during the same period. Judge Parker thinks the cause is largely the immunity extended by the Courts to murderers, and the obstruction of justice in many cases by appellate Courts. The denseness of population in the American Republic, and the fact that sudden changes of residence from one city or state to another is never regarded as unusual—all this must make escape easier than in thinly populated countries. We think that an inquiry of the proportion in Canada would show that in three-fourths of the cases where murder occurs there are hangings following in due course. Not having any lynchings, we do not count any in this calculation.

REPORTS OF CASES.

Recent Decisions Not Previously Reported.

Ontario Cases.

Spence v. G. T. R. Co.—The Divisional Court.—Before Falconbridge and Street, JJ.—The 22nd April.—Law Courts Act, 1895—Law Courts Act, 1896—Application for leave to appeal.—Judgment on application by plaintiff for leave to appeal to the Court of Appeal from order of Divisional Court of 16th March, 1896, dismissing plaintiff's appeal from judgment of Meredith, C.J., dismissing action, but upon different grounds. The plaintiff had the option of appealing either to the Court of Appeal or a Divisional Court, and chose the latter. As the law stood on 16th March, 1896, there was no further appeal : Jud. Act, 1895, sec. 73, sub-sec. 2. But by the Law Courts Act, 1896, assented

to 7th April, a discretion was given to a Divisional Court to allow in certain cases a further appeal to the Court of Appeal. Notice of this application was served on the 4th April, 1896, and it was heard on 13th April. Held, that the amendment of sec. 73 of the Judicature Act, 1895, enacted by paragraph 7 of the schedule to the Law Courts Act, 1896, being matter of procedure, applies to pending actions. Watton v. Watton, L. R. I. P. and M. 227, followed. 2. That at the time the amending statute was passed the action was still pending, the judgment of the Court, though pronounced, not having been entered: Holland v. Fox, 3 E. & B. 977, and In re Clagett's Estate, 20 Chy. D. 637, followed. 3. That the discretion of the Court should be exercised in granting leave to appeal, no lapse of time having occurred to prejudice plaintiff's claim to consideration, a question of law being involved as to which there were differences of opinion on the part of the judges before whom the case had come, and the injury sustained by plaintiff being a serious one. Order made giving plaintiff leave to appeal upon his giving security to defendants for costs of the appeal according to the former practice. Costs of appellant to be costs in the appeal. If security not given within a month, motion dismissed with costs. J. J. Maclaren, Q.C., for plaintiff. W. M. Douglas for defendants the G. T. R. Co. W. Nesbitt for defendants the C. P. R. Co.

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Regina v. Rees.—Before Meredith, C.J., Rose and MacMahon, JJ.—22nd April.—Conviction for passing toll-gate without paying toll—Quashing same—Bona fide belief of defendant as to right to pass.—This was a judgment on motion to make absolute a rule nisi to quash conviction of defendant for passing a toll-gate upon a road in the Township of Kingston without paying toll, on the ground that defendant did the act complained of under the bona fide claim that he had a right to do so, and that complainant had not authority to collect tolls on the road in question. The Court are of opinion that the defendant acted bona fide, and therefore magistrate had no jurisdiction. Rule absolute, quashing conviction without costs. Aylesworth, Q.C., for motion. No one contra.

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Faulkner v. Clifford.--Meredith, C.J., Rose and MacMahon, JJ.—The 22nd April.—Master and servant—Injury in course of service—Question of liability where there has been sub-letting.—McBrayne (Hamilton), for plaintiff, moved to set aside judgment of nonsuit entered by Street, J., as against defendant Onderdonk. The action is by the representative of a deceased workman who was employed by defendant Clifford. The defendant Onderdonk has a contract to build the tunnel where the accident happened with the Dominion Construction Company. He contracted with Clifford for the excavation work of the tunnel by the latter. During the excavating work the deceased was killed by the caving in of the earth. Counsel rested plaintiff's case on alleged liability of defendant Onderdonk at common law, whose duty he contended it was to shore and brace the sides of the excavation during the progress and after the completion of the work. D. W. Saunders, for defendant Onder-

donk, contra. The Court were of opinion that the injury did not arise from neglect of any duty cast on defendant Onderdonk by the nature of the work itself or by the contract between the parties. Clifford could not recover from Onderdonk, nor therefore could his employee. Motion dismissed with costs.

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Clarkson v. Stark.—Before Meredith. C.J., and MacMahon, J. —Chattel mortgage—Sale by mortgagee without leave—Order for the return of the goods.—C. Elliott, for defendant Charlotte H. Stark, appealed from judgment of Meredith, J., directing the recovery of the goods in question from this defendant by the plaintiff, the liquidator of the Charles Stark Company. The liquidator sold the stock of goods of the company to Charles Stark, and took back a mortgage on them for balance of purchase money. Afterwards Charles Stark sold $3,000 worth of goods to his daughter, this defendant, which were separated from the rest of the stock and placed in a room in the building where the business was carried on. The moneys paid for the goods represented moneys which, it was contended, were paid by the defendant C. H. Stark to her co-defendant, and by him paid to the liquidator. Counsel contended that such a sale was not contrary to the terms of the chattel mortgage, and that chattel mortgage was not valid, and this defendant was entitled as a creditor. J. J. Scott (Hamilton), for plaintiff, contra. Appeal dismissed with costs.

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Martin v. Sampson.—MacMahon, J.—25th April.—Fraudulent conveyance—Chattel mortgage—Defective affidavit of bona fides—Entry into possession since Act of 1892.—Judgment in action tried without a jury at Hamilton. Action by assignee for benefit of creditors of defendant Angus to set aside as fraudulent and void against creditors a chattel mortgage made by defendant Angus when insolvent to defendant Sampson. The mortgage was a valid one between the parties, the amount secured being an advance by way of loan, but the affidavit of bona fides was sworn to five days before the money was actually paid over. There was no written agreement binding the mortgagee to make the advance, the consideration being paid solely on the strength of the mortgage having been executed, and that it was a valid and sufficient security. Held, that the affidavit of bona fides was not true, and the mortgage was thereby rendered invalid. Marthinson v. Patterson, 19 A. R. 188, distinguished. The mortgage, being invalid, could not, since the Act of 1892, be validated by the mortgagee taking possession of the goods: Clarkson v. McMaster, 25 S. C. R. 96. Judgment for plaintiffs without costs for the sum of $1,000 (representing the goods covered by the mortgage), paid into the Bank of Hamilton, with accrued interest, if any. J. J. Scott (Hamilton), for plaintiff. H. Cassels for defendant Sampson. Waddell (Hamilton), for defendant Angus.

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Macdonell v. Hayes.—Before Winchester, Master.—The 28th April.—Judgment debtor—Examination of transferee—Rule 928.—W. C. McCarthy, for plaintiff, moved for order to examine

transferee of judgment debtor. J. S. Denison, for transferee, contra. C. A. Masten for debtor. Held, that if debt or liability were incurred prior to transfer in question, order for examination will go; but if subsequent, application refused with costs: Rule 928, and Blakeley v. Blaase, 12 D. R. 565.

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Re Brower and Coughell.—Before Armour, C.J.—The 29th April. — Arbitration — Setting aside award—Time within which application to be made.—Judgment on motion to set aside award under an agreement providing that submission should be made a rule of the Queen's Bench Division of High Court without notice. The award was made on 29th January, 1896, and published 30th January, 1896, and notice of motion to set it aside was served on 17th April, 1896. The learned Chief Justice is of opinion that the objection that the application is too late as not being within the time formerly constituting Hilary term and before the last day thereof must prevail. Prior to 52 Vic., ch. 13, amending R. S. O. ch. 53, it is quite clear that application would have to be made before the last day of term next after publication of award, and it is difficult to say what is the proper construction of the amending statute: see Re Prittie and City of Toronto, 19 A. R. 503; Baldwin v. Walsh, 20 O. R. 511; and Garson v. North Bay, 16 P. R. 179. Section 6 of the amending Act has not, however, in his opinion, the effect of extending the time. Motion dismissed, but owing to the circumstances of the case, without costs. T. W. Crothers (St. Thomas), for motion. Moss, Q.C., and J. A. McLean (St. Thomas), for Brower.

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Patching v. Smith.—Before Meredith, C.J., Rose and MacMahon, JJ.—30th April.—Landlord and tenant—Covenant not to sub-let without leave—Measure of damages for so doing. —T. T. Macbeth (London), for defendant, appealed from judgment of Boyd, C., in favour of plaintiff. The defendant was lessee of plaintiff on a five years' lease at a rent of $1,800 a year, payable quarterly in advance, and containing a covenant against assignment without leave. On 13th April, 1895, defendant assigned without leave to Martin, and plaintiff re-entered and re-let to a third party on 6th May, 1895. Counsel contended that the measure of damages to which the plaintiff was entitled was not, as found by the trial Judge, the amount of rent from 16th April to date of re-letting on May 6th, but the difference in pecuniary responsibility of lessee and his assignee: Williams v. Earle, K. R. 3 O. B. 739. W. M. Douglas, for plaintiff, contra. Appeal allowed with costs, and upon payment of costs, and plaintiff filing affidavit making prima facie case for reference as to damages, a reference is directed to local Master at London, at risk of plaintiff as to costs thereof. Affidavit to be submitted to Court before order goes.

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Boultbee v. Gzowski.—Before Meredith, J.—30th April.—Judgment in action tried without a jury at Toronto.—Action by Alfred Boultbee to recover from Casimir S. Gzowski the sum of $2,125 and interest, the plaintiff having been compelled to pay

that sum to the liquidators of the Central Bank in respect of twenty shares of the capital stock of the bank held by him on the 22nd October, 1887. The bank suspended payment within one month after that date, and on that date the plaintiff transferred the shares to Robert Cochran. On the 27th October, 1886, Cochran sold the shares to defendant. The plaintiff acquired Cochran's rights by assignment, and brought this action, having been unsuccessful in a former action. (See Boultbee v. Cochran, 17 P. R. 9.) Cochran and the defendant were both stockbrokers. The learned Judge holds that, upon principle and authority, and according to his view of the very truth and right of the matters in controversy, any and all liability of defendant ended when the purchase money was paid and the transfer made from the seller directly to the real purchaser, Henderson, and accepted by him. Action dismissed with costs. If plaintiff desires, proceedings to be stayed for one month. H. J. Scott, Q.C., for plaintiff. Moss, Q.C., for defendant.

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Re Holland and the Town of Port Hope.—Before Armour, J. —The 30th April.—Police Magistrate—Municipality lowering his stipend.—R. S. O. chap. 72, sec. 28—Consent of Lieut.-Governor. —C. J. Holman and Henry F. Holland (Cobourg), for Holland, moved for order quashing By-law 723 of the town of Port Hope, lowering the salary of the police magistrate of the town, because the last census taken by the town assessors showed the population to be under 5,000. Aylesworth, Q.C., for corporation, contra. Held, having regard to sec. 28 of R. S. O. ch. 72, that by-law should have contained a clause providing that it should not go into force until approved of by Lieutenant-Governor in Council. Order made quashing by-law with costs.

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Central Bank v. Ellis.—Armour, C. J., Falconbridge and Street, JJ.—The 30th April.—Equitable execution — Receiver for proceeds of action for libel, in which the debtor is plaintiff.—Judgment on appeal by plaintiffs, judgment creditors, from order of Meredith, J., in court, refusing to continue a receiver by way of equitable execution to receive the possible fruits of an action brought by defendant, the judgment debtor, against the News Printing Company for damages for libel, which action has not yet been tried, and an injunction restraining defendant from assigning or dealing with his claim to the prejudice of the judgment creditors. Held, that the remedy given by way of "equitable execution" is, in fact, equitable relief, and is granted to a creditor upon his making out a proper case showing the debtor entitled to equitable rights which would be subject to ordinary execution if legal instead of equitable in their nature, and the Court of Chancery, when giving relief, removed the obstacles in the way of realization at law or realized the claims through its own process and forms: Holmes v. Millege (1893), 1 Q. B. 551; Harris v. Beauchamp (1894), 1 Q. B. 801; Cadogan v. Lyric Theatre (1894), 3 Chy. 338. The jurisdiction of the High Court and its branches in this respect under the Judicature Act is precisely that formerly exercised by the Court of

Chancery, and nothing further has been brought within reach of a creditor by the receivership clause in that Act. It is quite plain that the claim in question here could not before the Act be seiezd under execution, either at law or in equity, and an order should not be made enabling the judgment creditors here to realize the claim in its present shape. Appeal dismissed with costs. C. Millar for plaintiffs. Raney for defendant.

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Regina v. Gormally.—Meredith, C.J., Rose and MacMahon, JJ.—The 4th May.—Upsetting conviction — Unlicensed insurance agent—Mutual benefit association—Officer collecting dues. —Masten and C. J. McCabe for defendant, appealed under 55 Vic. ch. 39, sec. 27, sub-sec. 4, as amended by 58 Vic., ch. 34, sec. 5, sub-sec. 9, from conviction of defendant by the Police Magistrate for the city of Toronto for unlawfully collecting premiums for the Catholic Mutual Benefit Association, a friendly insurance society, the defendant not being a licensed insurance agent. The evidence showed that defendant was an officer of the association, and that his sole offence was receiving payment of an assessment upon an existing contract of insurance. G. P. Deacon, for the private executor, contra. Appeal allowed with costs against the private prosecutor, the Court holding that the evidence did not disclose any offence against sec. 38, sub-sec. 4, of 55 Vic. ch. 39.

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Atkinson v. Randall.—Before Meredith, C.J., Rose and MacMahon, JJ.—The 4th May.—Judgment—Foreign action for same cause—Stay of judgment here pending.—W. Nesbitt, for plaintiff, appealed from order or direction of Boyd, C., at the trial at Sandwich, staying the entry of judgment (then pronounced) for the plaintiff in an action upon a promissory note, pending the result of litigation between the parties in the State of Michigan. S. White (Windsor), for defendant, contra. The Court held that there was no power to stay proceedings upon the judgment, but that the defendant should have an opportunity of counter-claiming if he so desires. Order for stay of proceedings set aside. If defendant within ten days files a counter-claim, setting up the matters in question in the Michigan court, judgment for plaintiff to be set aside, and order to go referring the action and counter-claim to the deputy clerk of the Crown at Windsor, under sec. 105 of the Judicature Act, 1895, for inquiry and report with costs to plaintiff in cause unless otherwise ordered. If counter-claim not filed, judgment will be entered for plaintiff with costs.

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Oriental Steam Laundry Co. v. Mountford.—Before Falconbridge, J.—5th May.—Master and servant.—Agreement by servant not to do similar work for others after employment ceases—Injunction.—Judgment in action tried without a jury at Toronto. Action by laundrymen against two persons who formerly drove laundry waggons for them to restrain them from canvassing the plaintiffs' customers in behalf of another laundryman with whom defendants have since engaged. The defendants' contract of hiring with the plaintiffs contained a clause by which the defendants agreed not to drive for any other

laundry for a period of six months after leaving the employment of plaintiffs. It is said that in the laundry business the drivers have a large power of controlling custom, inasmuch as they alone see the customers. The learned Judge holds that, although the agreement seems at first sight hard, and even unconscionable against the defendants and their fellow-employes, a consideration of the circumstances and exigencies of the business shows that it is in truth not so, and at any rate it is one which is strictly enforcable. Judgment for plaintiffs, continuing the interim injunction until the 28th September with costs. F. C. Cooke for plaintiffs. George Lindsey for defendants.

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Re Roddick and Knights of Maccabees of the World.—Before Street, J.—6th May.—Insurance certificate—Contest between beneficiaries named in certificate and creditors—Solvency at date of certificate—Voluntary settlement.—E. J. B. Duncan, for administrator of estate of William Roddick, deceased, moved upon a special case for order for payment out of moneys in Court. J. A. Patterson, for Eliza and Mary Roddick, sisters of deceased, contra. The deceased held a membership certificate for $2,000 in Knights of Maccabees Society, payable to Catharine Roddick, his mother, and by the terms of the certificate it was provided that the benefits should not be made payable to any person other than the insured's wife, children, defendant's father, mother, sister or brother; and that it was not transferable or assignable; and that in case he desired a change of beneficiary he should make a written request therefor, and pay a fee of fifty cents and receive a new certificate; and that in case of his decease without any direction as to payment the claim should be paid to the parties above named, in the order above named. If none of the persons existed at the time for payment the proceeds were to revert to the endowment fund of the association. Catharine Roddick, his mother, died in 1893, and William Roddick himself died in December, 1895, never having been married, and leaving him surviving no near relatives except his two sisters. It was admitted that the estate of deceased, not including the $2,000 in question, was insufficient to pay his debts. Held, that there was nothing to show that the deceased was at the date of the contract upon which the certificate issued unable to make a voluntary settlement upon his sisters. The contract to do so was clearly stated in the conditions indorsed on the application. Such a settlement was validly made. Order made for payment of amount in court to sisters of deceased.

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Rennie v. Frame.—Before Rose, J.—6th May.—Statute of Limitations—Possession by cattle—Produce of land being eaten by the cattle.—Judgment in action brought in November, 1895, by plaintiff as sole devisee of William Rennie, his father, deceased, to recover possession of a farm in the township of Wellesley, in the county of Perth. The learned Judge is of opinion that William Rennie intended to give the farm to his daughter upon her marriage with defendant,

not anticipating her death, but thinking that such marriage would take place shortly after the month of May, 1881, at which time he placed defendant in possession. The cattle of William Rennie, which were on the farm, were put there and kept there as of right by him. The produce of the land which the cattle ate were profits and produce which Rennie took to himself by means of the cattle, and defendant in taking care of the cattle, and permitting them to feed, was rendering to Rennie the produce of the land; and until the last of the cattle left the land, whether defendant be regarded as caretaker or tenant at will, he cannot be said to have had exclusive possession. There is no difference in principle between defendant allowing Rennie's cattle to eat the produce of the farm and in that sense crop it, and taking off crop by scythe or otherwise. This is in accordance with the principle which may be drawn from reading the statute of limitations and Darby and Bosanquet on limitations, 2nd ed., pp. 286-7, 505, and 300-1. Acting upon plaintiff's offer, with a view to prevent further litigation, and without any finding of fact in favour of defendant as to the value of alleged improvements, judgment is to be entered for possession of the land, and, upon plaintiff consenting, for payment by plaintiff to defendant of $500, less any and all costs incurred by plaintiff in the prosecution of this action. Entry of judgment stayed for two weeks from 11th May. Aylesworth, Q.C., and W. Miller (New Hamburg), for plaintiff. E. P. Clement (Berlin) for defendant.

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County Court, County of York. —Henry A. King & Co. v. J. Dawes.—The particulars of this case are as follows : The defendant went to the plaintiffs, who are grain and stock brokers in the City of Toronto, and requested them to purchase for him in Chicago 10,000 bushels of wheat, upon which he agreed to pay them a commission of ⅛ per cent. for purchasing the said wheat and ⅛ per cent. for selling the same. The transaction was a bucket shop transaction, there being no bona fide intention on the part of either of the parties that the wheat should be delivered. The defendant refused to pay the plaintiffs their commission, as agreed, and the plaintiffs thereupon sued him for it. The defendant set up that the transaction was illegal and contrary to public policy and morality. It was illegal inasmuch as it was contrary to the provisions of the Statutes of Canada, 51 Vic. chap. 42, entitled "An Act respecting Gaming in Stocks and Merchandise," and of sec. 201 of the Criminal Code. The case came up for trial before Judge Morgan in the County Court of the County of York on Friday, the 15th of May, 1896, when judgment was given for the plaintiffs on the ground that the parties were pari delicto. The Judge held that from the evidence it could not be said that it was a bucket shop transaction. No written judgment was given. C. Millar & Co. for the plaintiffs. R. C. Levesconte for the defendant.

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English Cases.

Trevor v. Hutchins.—100 L. T. 536; 40 S. J. 403; 31 L. J. 241.—Administrator — Retainer.—The Cout of Appeal affirmed the decision of Stirling, J. (ante, p. 62). So that money in Court will not be paid out to a personal repre-

sentative, so as to allow him to retain a statute barred debt.

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Liddell v. Liddell.—100 L. T. 417.—Effect of Codicil.—If a testator devises his realty in trust for his brother for life with remainder to the four sons of the brother in tail made in succession, and directs his personalty to be held upon such trusts as would best correspond with the trusts of the realty; and by a codicil testator directs that his widow shall have power by appointment to alter the order of succession of the four sons; and the widow makes a will altering the order of succession to the real estate—what is the effect as regards the personalty? Held, that the power of appointment given by the codicil included the personal estate, and that the widow's appointment applied to both the personalty and realty. (House of Lords, affirming 73 L. T. Rep. 363.)

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Hood Barrs v. Heriot.—31 L. J. 230.—Restraint on anticipation.—A restraint on anticipation attached to a gift to a married woman ceases to affect income as soon as such income has accrued due, although such income has not actually been paid over to the woman by the trustees. Consequently a judgment creditor of the woman can attach such income if still in the hands of the trustees. (House of Lords, reversing Court of Appeal, both in this case and in Pillers v. Edwards.)

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Lyon v. Wilkins.—100 L. T. 419; 31 L. J. 146.—Interlocutory injunction.—An interlocutory injunction can be had to restrain a person (e. g., secretary of a trade union) from maliciously inducing persons not to enter into contracts with an employer of labour. (North, J.) (See paper by G. G. S. Lindsey, ante, p. 123.)

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Powell v. Birmingham Vinegar Brewery Co.—W. N. 42; 100 L. T. 537; 40 S. J. 401; 31 L. J. 242.—Trade name.—P. had for 34 years manufactured and sold a sauce as "Yorkshire Relish," the composition of which was a trade secret. In 1893 B. commenced to manufacture a somewhat different sauce, and put it on the market as Yorkshire Relish. Held, that P. was entitled to an injunction to restrain B. from using the words "Yorkshire Relish" as a description of his sauce until B. in some way clearly distinguished his sauce from P.'s so that intending buyers could not be misled. (Court of Appeal, affirming Stirling, J.)

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Hindson v. Ashby.—100 L. T. 537; 31 L. J. 242.—Riparian ownership.—The question whether a piece of land is part of the bed of a river at a given place and time is one of fact to be decided by regarding all material facts, e.g., past and present fluctuations of the river and the nature, growth and user of the land. A. owned land on one bank of the Thames in Buckinghamshire; B. owned adjoining lands on the same bank, and also the fishing and the bed of the river from bank to bank. In 1866 B. made a ditch seven inches deep at the bottom of A.'s land and planted trees there. In 1893 B. covered the ditch with a concrete path. A. claimed the site of the path, on the ground of accretion, as the river had gradually altered its bed, though even now the path is under water during some months of the year. Held, that the site of the path had not yet ceased to form

part of the bed of the river, and did not belong to A. (Court of Appeal, reversing Romer, J.)

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The Commissioners, etc., of the Metropolis v. Cartman.—Case stated by Metropolitan Police Magistrate. — Licensing Act — Offences—Supplying liquor to drunken persons—Liability for acts of manager, etc.—The owner of licensed premises is liable to conviction where his manager, contrary to express general instructions, supplies liquor to a drunken person. (Q. B. D., 21st April, 1896.)

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In Our Boys' Clothing Co. v. Holborn Viaduct Land Co. (Ltd.). Chancery Division (Romer, J.).—April 24th, 1896.—Landlord and tenant — Covenant — Alleged breach—Exhibiting large advertisement—Annoyance or grievance.—In this case the plaintiffs occupied the first, third and fourth floors of 26 Holborn Viaduct under two leases, of which they are assignees, and one of the leases (the one relating to the first floor) contained a covenant that the lessees will not do anything which may grow to the injury, annoyance, disturbance or inconvenience of the lessors or their other tenants or neighbors. The lessors were the defendant company. The plaintiffs have an annual summer clearance or stock-taking sale, and in 1895 it was arranged that this should commence on July 8th. The plaintiffs caused a large advertisement announcing the sale to be put up across the front of the premises. The words of the advertisement were as follows: "An eccentric and startling stock-taking sale for 14 days—to commence Monday, July 8th." The defendants, after objecting to the advertisement and threatening to remove it, carried out their threats by pulling it down on July 12th. The plaintiffs brought an action to restrain the defendants from removing or interfering with any advertisement or trade announcement of the plaintiffs, and the defendants counterclaimed for an injunction to restrain the plaintiffs from exhibiting advertisements so as to be or grow to be an injury, annoyance, disturbance or inconvenience to the defendants or their other tenants or neighbors. Romer, J., said: "That what the plaintiffs did in putting up the advertisement complained of was not a breach of their covenant. Covenants of this kind must be construed reasonably, and with a regard to the special circumstances of the case. The plaintiffs had an ordinary summer sale and put up, as almost all persons in their position did, an attractive advertisement, calling special attention to the fact. The question was whether this was a breach of the covenant which entitled the defendants to pull the advertisement down. Putting up this advertisement was not a thing which might grow to the injury, annoyance, inconvenience or disturbance of the defendants or their tenants or neighbors. As pointed out by Lord Justice Cotton in Todd-Heatly v. Benham, L. R. 40, Chy. D. 93, the Judges must not take that to be an annoyance or grievance which would only be so to some sensitive person. They must decide, not upon what their own individual thoughts are, but on what, in their opinion, and upon the evidence before them, would be an annoyance or grievance to reasonable, sensible people. The neighborhood was a purely business neighborhood, all the lower portions of the houses being let

out as shops, and it was not of such a character as to entitle people to object to an ordinary business being carried on in the ordinary way. One witness described the advertisement as big, ugly, common, obtrusive ,and vulgar, but he admitted that most advertisements might be truly described in the same language. The defendants were in the wrong, and must pay the costs of the action, and it must be declared that what the plaintiffs have done was not a breach of their covenant."

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The Rockingham Railway Co. et al. v. Allen.—Q. B. D., April 24th, 1896.—Matthew, J.—Trade mark—Selling goods under special description — Injunction —Redaway v. Benham followed. —This was an action for an injunction to restrain the defendant from selling timber under the description of "Jarrahdale Jarrah"; the defendant said: "Jarrahdale Jarrah" had no special meaning in the trade, and claimed the right to describe in that way timber other than that imported by the plaintiffs. Mr. Justice Matthew, in giving judgment, said: The plaintiffs said that "Jarrahdale Jarrah" had acquired in the trade the meaning of wood imported from their estate, and complained that the defendant had usurped that name for wood other than that imported by them, and said he was entitled to so use it. The law was clear, and it was not necessary to discuss it at length. The recent case in the House of Lords of Redaway v. Benham (reported in 12 T. L. R. page 295), a copy of the judgment in which he had been furnished with, was a complete summary of the law. That case was distinctly applicable to this case. The question he had to determine was one of facts, viz., whether "Jarrahdale Jarrah" was the special description in the trade of wood imported by the plaintiffs. The plaintiffs had made out that "Jarrahdale Jarrah" had the special signification in the trade of timber imported from their estate, and were entitled to an injunction to restrain the defendant from selling as "Jarrahdale Jarrah" any timber not so imported by them. (Judgment accordingly.)

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Gardner v. Hart.—Q. B. D., April 27th, 1896.—The Lord Chief Justice.—Mischievous animals—Dogs—Liability for injuries to cattle—Owner—Who deemed to be—Innkeeper—Liability for dog of guest.—This was an appeal from the Leicester County Court. The question was whether an innkeeper could be deemed to be the owner of a dog so as to be held liable for an injury done by it. Section 2 of 28 & 29 Vic. c. 60, provides that "The owner of any house or premises where any dog is kept or permitted to live or remain at the time of such injury shall be deemed to be the owner of such dog, and shall be liable as such; unless the said occupier can prove that he was not the owner of such dog at the time the injury complained of was committed, and that such dog was kept or permitted to live or remain in the said house or premises without his sanction or knowledge; provided always, that where there are more occupiers than one in any house or premises let in separate apartments or lodgings, or otherwise, the occupier of that particular

part of the premises in which such dog shall have been kept or permitted to live or remain at the time of such injury shall be deemed to be the owner of such dog." The dog in question belonged to a gentleman named Nett, who lived at the defendant's hotel. Mr. Nett, on leaving for London, left the dog in charge of his friend Mr. Newton, who was also living at the hotel; the dog used to sleep in Mr. Newton's room. One day Mr. Newton, the defendant, and two other gentlemen went out for a drive in a cab, taking the dog with them. On getting out of their cab the dog flew at and bit the horse; the cab driver proceeded against the defendant and recovered damages. The Court held, that the action justified the Judge in holding the defendant liable.

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Cunningham v. Philp.—Q. B. D., April 28th, 1896.—Cave, J., and a jury.—Innkeeper—Temperance hotel—Liability—Loss of guests' property.—In this case the plaintiff claimed damages from the defendant for the loss of a trunk and wearing apparel which had been lost on the defendant's premises, on the ground that the defendant was an innkeeper, or alternatively on the ground of the defendant's or her servants' negligence. The defendant denied that she was an innkeeper, denied negligence, and pleaded that the plaintiff had been guilty of contributory negligence. The case was of interest, as it raised the question as to whether a temperance hotelkeeper was an innkeeper. The jury found that the defendant, who kept a temperance hotel, was an innkeeper.

United States Supreme Court Cases.

Telephone Companies—Public stations — Notifying patrons.—The Appellate Court of Indiana has laid down several very interesting rules of law in regard to the liability of a telephone company for damages caused by its failure to notify a person that he was wanted, holding (1) That it is the duty of a telephone company which maintains a line between different cities and towns, with stations in such towns for the use of the public on payment of tolls, to furnish a suitable messenger service for the purpose of notifying persons, within a reasonable distance, when its patrons at other stations desire to communicate with them; and that it is responsible, within proper limits, for the neglect or omission of these messengers; (2) That though a telephone company has the right to adopt reasonable rules, a regulation that it will not be responsible for the negligence of messengers sent from its stations, who are necessarily selected by it and under its control, but that they shall be deemed the agents of the patron at whose instance they are sent, is void; and (3) That when, by reason of the delay of a telephone company in calling a veterinary surgeon to its station, as it undertook to do, he lost several hours in reaching a horse which he was called to attend, and the animal died in the meantime, the value of the horse cannot be considered as an element of damages in an action by its owner against the telephone company for negligence in failing to sooner place him in communication with the surgeon; the question as to whether the horse

would have been saved had the messenger taken the call at once being entirely a matter of speculation: Central Union Tel. Co. v. Swoveland, 42 N. E. Rep. 1035.

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Not long ago the Supreme Court of California reversed a case upon the ground of undue interference by the trial Judge with the verdict of the jury. Mahoney v. San Francisco & San Mateo Ry. Co., 42 Pac. Rep. 969. The error consisted in language used by the Court in the course of supplementary instructions to the jury which in effect compelled them to agree to a verdict. The recent case of State v. Kelley, 24 S. E. Rep. 45, was reversed by the Supreme Court of South Carolina upon the ground that the verdict was obtained through duress on the part of the Court. It appeared that a jury in a prosecution for assault with intent to kill retired about 4 o'clock p.m., with the usual instructions about bringing in a sealed verdict. They were furnished with supper, and with breakfast the next morning. The sheriff was then instructed to give them nothing more to eat, and they remained in the room until about 7 o'clock p.m. of the same day. Then they came in at the direction of the Judge, who, learning that their disagreement was one of fact, sent them back to the jury room, and some time during the night they rendered a sealed verdict. Before retiring the second time, the foreman said: "We have been in the room twenty-four hours and can't agree." It also appeared that on three separate occasions the jury had attempted, through the officer in charge, to communicate to the Judge that they could not agree, and wished to be discharged. The recalcitrant member or members of the jury, under such duress of starvation, not unnaturally finally consented to a verdict, and the Appellate Court very properly holds, not only that the jurors themselves had good grounds for complaint, but that a verdict rendered under such circumstances must be set aside and a new trial ordered.

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In the case of Bogert v. City of Indianapolis, 13 Ind. 134, there is a curious dictum to the effect that the bodies of the dead belong, as property, to the surviving relatives in the order of inheritance, and that they have the right to dispose of them as such. Nowhere else has the law relating to dead bodies assumed quite so commercial a character. To regard a corpse as a piece of property shocks the sensibilities of the average man. The common law did not regard it as such, nor is it generally so regarded to-day. Yet that the surviving relatives, before burial of the body, have a right of some sort which the law will protect, is undeniable.

The novel question of a wife's right to recover damages for the unlawful dissection of her husband's body before burial arose, for the first time, in Larson v. Chase, 47 Minn. 307, commented on in 5 Harvard Law Review, 285. The same question recently came before the Supreme Court of New York in Foley v. Phelps, 37 N. Y. Supp. 471. In both cases it was very justly held that the wife could recover. The only difficulty arises in determining the nature of the right that has been infringed. In Pierce v.

Proprietors of Swan Point Cemetery, 10 R. I. 227, it was denominated a quasi-property right. This, of course, does not solve the difficulty. In Foley v. Phelps, supra, a more exact definition was attempted. The Court, following substantially the doctrine of Larson v. Chase, supra, declared that a surviving wife is entitled to the possession of the body of her deceased husband, in the same condition as when death occurred, for the purposes of giving it proper care and burial. This right of undisturbed possession which vests in the husband or wife or next of kin of the deceased is clearly one that the law can protect, and the decision of the New York Court in sustaining an action for its violation seems entirely sound. Even if so clearly defined a legal right does not exist, the courts would probably have no trouble in supporting an action of this sort on some broader ground. It is one of those instances where failure of justice would involve such a shock to every feeling of decency and propriety that the law positively must disclose a principle to cover it. The development in recent times of such rights as the right to privacy shows that the common law is ever ready to expand in response to demands of that nature.

SIR WILLIAM RALPH MEREDITH.

Chief Justice Meredith, we notice, is among those who were the recipients of birthday honours at the Queen's favour. Sir William Ralph Meredith was born on March 31st, 1842, and is now fifty-four years of age. He was born near London, Ont. His father was John Cooke Meredith, a native of Ireland and a graduate of Trinity College, Dublin. Sir William as a boy, it is said, did not give evidence of those marvellous traits of character which foretell a distinguished career. As a boy the Chief Justice was open-hearted, manly and a lover of sport, and was very popular with his companions. He was educated at the old London Grammar School, and afterwards entered the law office of Thomas Scatcherd, of London, an able office lawyer and local Reform politician. Under Mr. Scatcherd's able tuition, Sir William obtained a good general training on legal principles and practice. In 1859 he entered Toronto University, and in 1861 he was called to the Bar. He graduated as LL.B. in 1863, and holds the honorary degree of LL.D. from the Provincial University, and was for years an honorary lecturer in the university. Shortly before his graduation he married Mary, the only daughter of Mr. Marcus Holmes, of London. Mr. Meredith, in the University Senate elections, has almost always headed the poll. After his marriage Mr. Meredith entered out on his great career. He was studious, painstaking, and utterly conscientious, and to these qualities he added a prepossessing appearance and a charming personality. With experience, he obtained control of that forceful and dignified eloquence

which has given him so high a position as a pleader. He possesses the analytical faculty to a most unusual degree, and his great powers in cross-examination, combined with the convincing earnestness of his language, soon became widely recognized among the members of the Ontario Bar. He was made a Queen's Counsel by the Ontario Government in 1875, and subsequently by the Dominion Government. He did not move to this city, however, until 1888, when he replaced Mr. W. A. Foster, Q.C., in the firm of Foster, Clarke and Bowes, the name being changed to Meredith, Clarke, Bowes and Hilton. During his professional career he has been engaged in many important cases, both criminal and civil, notably the mysterious Biddulph murder case and the McCabe poisoning case, in both of which he won fresh laurels for himself, and added to his already rapidly growing reputation. He was also for many years city solicitor of London, and afterwards gave such great satisfaction as Toronto's city solicitor.

Mr. Meredith was first elected to the Provincial Legislature in 1872, succeeding Mr. (now Sir) John Carling, who chose rather to retain his Ottawa seat when dual representation was abolished. He immediately became a power in the House, and took a firm stand on the side of the workingmen. He was one of the first advocates of manhood suffrage, which he took up in 1875; his name was also identified with the legislation by which wages to the amount of $25 was exempted from seizure, with the Mechanics' Lien Act, with the Workingmen's Compensation for Injuries Act, and other measures of a similar character. He was elected leader of the Opposition in 1878, when the late Sir Matthew Crooks Cameron was raised to the Bench. His promotion had long been a foregone conclusion, as his colleagues recognized his great strength in the country, and his accurate knowledge of political affairs. Not long after he had taken the leadership the boundary award was made, and the agitation which immediately arose rendered his task a difficult one. The discussion between the parties was a heated one, and it was endeavored to cast upon Mr. Meredith the onus of having supported the claims of the Dominion as against those of his native province. He insisted, after the rejection of the award by the Dominion Parliament, that the question be submitted to the Privy Council, and the event ultimately proved his contention to have been correct, and the course he had proposed the only safe one that could have been taken.

In the disallowance agitation of 1882 he again appeared to be on the unpopular side. He, however, did not hesitate to affirm the conviction that a strong central Government was vitally necessary to a strong Confederation, and to deprecate any efforts on the part of Provincial Governments to weaken it for selfish ends. Throughout the reverses he has met at the polls he has never abandoned this principle. He has also taken strong ground on the question of education. He has enunciated the principle that to place a political head over the Education Department is to make it a political machine, and so greatly lessen its influence for good. During his last campaign he, on many occasions, expressed his views

on this matter. He fought for a ballot in the Separate Schools, and against the exercising of undue clerical influence in educational matters. His newspaper discussion with Archbishop Cleary attracted wide attention, and, to a great extent, defined the line of cleavage between the parties. His opinions in this connection are too well known to need repetition here. The last session he passed in the Legislature was marked by a number of stirring debates, during which Mr. Meredith often displayed an intimacy with the smallest details of departmental expenditure, and at the same time a comprehensive grasp of the legislation before the House, which astonished even his intimate friends.

His appointment to his present position on the Bench left a void in the ranks of the provincial legislators. No other man in the House worked so hard as he, nor so faithfully. Much of the most beneficial legislation that was enacted during the twenty odd years of his public life bore the marks of his intelligent criticism and amendment, and it is not too much to say that to no other man does Ontario owe more that is good in its laws than to Sir William Ralph Meredith.

ONTARIO JUDICATURE ACT, 1896.

An Act to amend The Judicature Act, 1895, and the Law relating to the Superior Courts.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as The Law Courts Act, 1896.

2.—(1) The Acts and parts of Acts mentioned in the schedule to this Act are hereby amended in the manner mentioned in the last column of the said schedule.

3. The clauses numbered (1) and (2) in section 71 of The Judicature Act, 1895, are hereby repealed, and appeals in the cases in said clauses referred to shall be prosecuted in the manner provided in respect to such cases before the passing of the said Act, provided that appeals pending in such cases at the time when this Act comes into force shall be continued as if this Act had not been passed.

4.—(1) The High Court may remove an executor or administrator upon the same grounds as such Court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed.

(2) The order may be made upon the application of any executor or administrator desiring to be relieved from the duties of the office, or of any executor or administrator complaining of the conduct of a co-executor or co-administrator, or of any person interested in the estate of the deceased.

(3) Subject to any rules to be made under The Judicature Act, 1895, the practice in force for the removal of any other trustee shall be applicable to proceedings to be taken in the High Court under this section.

(4) Where the executor or administrator removed is not a sole executor or administrator the Court need not, unless it sees fit, appoint any person to act in the room of the person removed, and if no such appointment is made the rights and estate of the executor or administrator removed shall pass to the remaining executor or administrator as if the person so removed had died.

(5) The executor of any person appointed an executor under this Act shall not by virtue of such executorship be an executor of the estate of which his testator was appointed executor under this Act, whether such person acted alone or was the last survivor of several executors.

(6) A certified copy of the order of removal shall be filed with the Surrogate clerk and another copy with the registrar of the Surrogate Court by which probate or administration was granted, and such officers shall at or upon the entry of the grant in the registers in their respective offices make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where such grant is indexed.

5. All actions against municipal corporations for damages in respect of injuries sustained through non-repair of streets, roads or sidewalks, shall hereafter be tried by a Judge without a jury, and the trial shall take place in the county in which the road, street or sidewalk is situated.

6. Section 5 of The Evidence Act is repealed, and the following substituted therefor:—

5. Subject to section 9 of this Act, nothing herein contained shall render any person compellable to answer any question tending to subject him to criminal proceedings or to subject him to prosecution for any penalty.

7. Every officer or person against whom an action or other legal proceeding is brought or shall hereafter be brought, in respect of any cause of action to which the provisions of the Act to protect Justices of the Peace and others from Vexatious Actions are applicable, shall have the same right to security for costs as a police magistrate has; and the proceedings shall be the same, as nearly as may be, as where security is applied for by a police magistrate or other justice of the peace under The Act to provide for Security for Costs in certain Actions against Justices of the Peace. This section shall apply to any action or legal proceeding now pending or hereafter brought.

8. The fees payable to the Crown in stamps or otherwise in respect of proceedings in any of the Courts of this Province, are hereby set apart towards paying the expenses of the due administration of justice in the said Courts, and shall not be applicable to any other purpose whatever.

9. The seal heretofore, from time to time, in use in and for the High Court, shall be deemed to have been the proper seal of the High Court, and shall so continue until another seal is authorized by the Lieutenant-Governor in Council; and any seal so authorized by the Lieutenant-Governor in Council may be afterwards changed by the Lieutenant-Governor in Council; and so from time to time the seal authorized by the Lieutenant-Governor in Council for the time being shall be the seal of the High Court.

10. Notwithstanding anything in the 15th section of The Law Courts Act, 1895, if from illness or other unavoidable cause a third Judge cannot be obtained, a Divisional Court of the High Court may be composed of two members, provided that in case of divided opinion upon any matter argued the same shall at the election of either party be re-argued before a Court of three members.

11. Subject to the rules of Court made under the Judicature Act, 1895, or under the Acts consolidated therein, and subject to the express provisions of any statute whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the Supreme Court shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and to what extent such costs are to be paid.

12. To remove doubt, it is hereby declared and enacted that, notwithstanding anything contained in section 44 of The Law Courts Act, 1895, an appeal lies from any order of a County Court made after the 1st January, 1896, on any motion made or assumed to be made before said date or at the sittings of the County Court holden in January, 1896, under clause 2 or clause 3 of section 41 of The County Courts Act repealed by said section 44, but such appeal lies to a Divisional Court of the High Court, instead of as provided in section 41; provided that an appeal in any such case shall be commenced not later than one month from the date of the passing of this Act, and shall be prosecuted in the same manner as other appeals in County Court cases to a Divisional Court.

(2) Where an appeal in any such case has heretofore been held not to lie the same may be brought on and prosecuted again after the passing of this Act.

(3) Where an appeal in any such case has already been commenced and is being prosecuted either in the Court of Appeal or a Divisional Court the same need not be re-commenced after the passing of this Act, but may be proceeded with, and if necessary transferred without order to and set down for argument before any Divisional Court which commences its sittings within one month from the passing of this Act.

13. To remove doubt it is hereby declared and enacted that notwithstanding anything contained in The Law Courts Act, 1895, an appeal lies to the Court of Appeal from any judgment or order of a Judge of the High Court in Court, and the Court of Appeal has, and notwithstanding the said Act has had, jurisdiction to entertain such an appeal.

14. The rules of practice heretofore prepared and approved under section 42 of The Law Courts Act, 1895, are hereby declared to be and to have been as valid as if contained in an Act of Parliament.

15. In preparing the Revised and Consolidated Rules of Practice, the commissioners who have been appointed for that purpose, under the 42nd section of The Law Courts Act, 1895 (by commission bearing date the 23rd of May, 1895), may incorporate in such revision and consolidation any statutory provisions relating to practice and procedure, with such amendments and additions to such Rules of Practice and statutory provisions as to them may seem expe-

dient; and the rules prepared by said commissioners on being approved under the said section by the Judges of the Supreme Court, or by the Lieutenant-Governor in Council, shall be, and are hereby declared to be, as valid as if contained in an Act of Parliament; and nothing in the said rules shall be open to any question as to the jurisdiction to make, approve and authorize the same under the said section or otherwise, but the same shall be subject to be varied or repealed from time to time by the same authority and in the same manner as other Rules of Court.

THE TORONTO POLICE COURT.

We strolled the other day into the Toronto Police Court. Deputy Magistrates R. E. Kingsford and Millar sat on the bench. Inspector Archibald and other notables were there, as was also Crown Attorney Curry.

Various minor cases were disposed of in racy style. It was evident that Barristers have no rights in this Court from the general tone of the proceedings. The officers and officials, without being sworn in the usual manner, were giving evidence openly in Court, and interjecting remarks intended to be received, and which were in fact received, as evidence, much to the disgust of the prisoners and counsel. This manner of doing business may be suited to a J.P.'s Court on a back township sideline, but for the Toronto Bar to have to put up with the taunts and insults of the police is not to be tolerated much longer. Surely the magistrates know, or are supposed to know, the law, and we hope they will put a stop to this "bear garden, Russian" way of doing business. The members of the profession and prisoners, it is to be hoped, have a few rights left. Several judgments of the High Court have referred to the unbusiness-like and grossly irregular way of proceeding in our Police Court.

In our younger days we have all played "Billy, Billy Button" —and were kept busy locating the whereabouts of the aforesaid button—but this was an easy game compared to the task of ascertaining the practice and procedure of administering justice (?) at headquarters.

We have yet to learn why the Toronto Police Court should be the only Court of its kind in the province where a law student, or other legal agent, is not allowed to plead for a prisoner. Students can appear as counsel in all Division Courts, and in all County Court and High Court Chamber practice, and in all other magistrates' Courts of the province.

OSGOODE HALL—NOTES, Etc.

The following have applied for admission as students-at-law as of Easter Term, 1896 :—E. S. Benyon, Brampton; Charles W. Bell, Hamilton; J. C. Brown, Arthur R. Clute, John D. Falconbridge, Toronto; George A. Ferguson, Kingston; Charles Gar-

row, Goderich; M. G. V. Gould, Oshawa; John Jennings, West Toronto Junction; F. H. Johnston, Toronto; Louis G. D. Legault, Ottawa; F. J. S. Martin, Hamilton; William B. Munro, Almonte; James G. Merrick, Toronto; Charles W. Moore, Brampton; John C. Milligen, Cannington; R. F. McWilliams, Peterboro; Martin W. McEwen, Brantford; Edward B. McMaster, Henry C. Osborne, Toronto; F. B. Proctor, Ottawa; J. A. Peel, Lindsay; Fred. C. Ridley, Ottawa; F. G. S. Stanbury, Bayfield; William E. N. Sinclair, Whitby; Anson Spotton, Gorrie; Robert Irwin Towers, Sarnia; Hugh A. Tibbets, Port Dover; William Thomas White, William R. Wadsworth, William Ernest Burns (late notice), Toronto.

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The following have given notice for call to the Bar:—Messrs. J. K. Arnott, E. J. Butler, A. T. Boles, W. P. Bull, James Cashman. E. J. Deacon, G. D. Graham, T. B. German, J. E. Island, A. B. Klein, J. Kilgour, E. F. Lazier, O. A. Langley, S. S. Martin, A. F. R. Martin, J. E. McMullen, J. E. McPherson, D. A. McDonald, J. L. McDougall, P. E. Mackenzie, M. J. O'Reilly, C. Pratt, J. W. Payne, J. D. Phillips, A. B. Pottenger, J. D. Shaw, J. P. Smith, G. L. Smith, M. A. Secord, F. W. Tiffin, G. H. Thompson.

Late notices—H. H. Bicknell, Norman Poucher, F. W. Thistlewaite.

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Two hundred and thirty-five wrote out the Law School examinations this year. The results will be announced on June 3rd.

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The lecturers and examiners of the Law School will be appointed for the next three years at the annual meeting of Convocation.

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It will be noticed that a large number of the class of '96 of Trinity and 'Varsity have given notice for admission.

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The Law School will re-open on Monday, September 21st.

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The lawn in front of the Hall is looking fine at this period of the year. The grounds never looked better than at present.

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Most of the students of the Law School have left for home. Many of them propose taking a hand in the Dominion elections at home.

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The present sittings of the Court of Appeal opened on Tuesday, May 12th. There are 112 cases on the list.

THE JURY SYSTEM.

In our opinion there is a great deal of the illegal argument indulged in by counsel in jury addresses. And it is becoming a serious duty on the part of trial Courts to consider how far these methods of counsel should be dealt with. It is a well-known fact to both Bench and Bar that many verdicts are improperly obtained by intemperate and excessive arguments which counsel are permitted to indulge in when addressing the jury. These un-

just and prejudiced statements are most frequently indulged in by counsel for the plaintiff when opening his case. At this period of the trial no evidence has been submitted and no limit appears to be laid down within which counsel can be confined. It is improper for counsel to comment upon evidence which may be ruled out. Yet the almost invariable practice is for counsel to not only refer to, but enlarge upon all evidence which he intends to submit, whether it is as a matter of law admissible or not.

This is the period of the case when the jury is keenest and most susceptible of impression. As every student knows, during the opening of a case 24 ears and as many eyes are intently turned upon the opening counsel.

We have often seen a juryman after listening attentively to the opening address of counsel sit back in his chair with his mind made up. During which interval the Judge not unfrequently leaves the bench, and the opposing counsel remains utterly powerless, as he cannot very well state what the plaintiff's evidence will not prove. The argument of counsel is indispensably an integral part of an ordinary trial, and no just treatment of the facts can take place without a legitimate argument addressed to either Court or jury, as the case may be.

As an evidence of the fact that counsel resort to illegitimate and extravagant arguments in addressing the jury, how often do we not hear the statement from the Court at a non-jury trial: "Now, Mr. ———,' there is no jury in this case?" Why should counsel when addressing a jury, which is more susceptible of improper impressions than the Court, be permitted to trespass on forbidden ground? To what extent should the misconduct of counsel in this regard be treated as a sufficient cause for setting aside the verdict? If we admit the principle, the difficulty appears to be where to draw the line in the degree of misconduct and its supposed influence on the jury.

At a recent meeting of the Illinois State Bar Association, at which both Bench and Bar were present, it was broadly stated and concurred in, "That no jury verdict should be permitted to stand which had been unfairly won by illegitimate and unfair argument, and that the sooner the word goes out to the Bar that such verdicts are won at the risk of having them swiftly vacated, the better it will be for the administration of justice."

We thoroughly concur in this principle. Wrapt up with this subject is the now frequently discussed subject of the abolition of juries in civil cases. How often do we not hear solicitors when discussing their cases say: "Well, I feel pretty shaky in this case and I will serve a jury notice?" Or again, even before the issuing of the writ, especially in regard to a claim for damages, a client is advised, "Well, Mr. ———, I think we had better go ahead; it will cost you so much to bring the case before the jury, and so much for a counsel fee, and the chances are you will get a large verdict; of course you may not get anything." Does not this all point to the ultimate abolition of the jury in civil cases? As an evidence of the growth of public sentiment on this subject we refer to 59 Victoria, chapter 18, in another column.

BOOK REVIEWS.

Howell's Admiralty Practice.

This work is a treatise on the Admiralty Law of Canada, with the Rules, 1893, annotated, with forms, tables of fees and statutes. It also includes a treatise on the matters subject to the jurisdiction of the Admiralty Courts in Canada. The author is Mr. Alfred Howell, Barrister-at-law, author of Naturalization in Canada, Surrogate Court Practice and other works. Since the coming into force of the Admiralty Act, 1891 (Canada), a work on Admiralty Practice was deemed a necessity by the profession.

The Carswell Co. (Ltd.) deserve credit for placing such an excellent treatise on the market. The book contains the rules, statutes (both Imperial and Canadian) as are material, the recent decisions of the House of Lords, the Privy Council, the High Court of Admiralty, the Admiralty Division of the High Court of Justice, England, and of the Supreme and Exchequer Courts of Canada relating to the jurisdiction and practice in question.

Part I. of the work contains a treatise on the Admiralty Act, 1891, the general rules and orders, with notes of cases, English and Canadian, on practice, and side notes to rules; forms and tables of fees, orders in council and the Colonial Courts of Admiralty Act, 1890 (Imp.).

Part II. deals with the Admiralty Courts Act of 1861, and other Imperial Statutes in force in Canada.

Part III. contains an admirable treatise on Admiralty Jurisdiction generally—including Salvage, Damage, Bottomry, Seaman's Wages, Ownership, Mortgage, Pilotage, Towage, Necessaries, Matters Arising Incidentally, Accounts, Foreign Ships, Sales by Marshal, Ranking of Claims, etc.

The author refers constantly to the practice of the Admiralty Division of the High Court of Justice in England. The work as a whole is being appreciated by the profession, as it thoroughly exhausts the whole subject.

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Ontario Assignments Act, with Notes. By Richard S. Cassels, of Osgoode Hall. The Carswell Co. (Ltd.)

This is a very valuable pocket book on this difficult legal subject. The author has collected the statute law of the province, with all amendments to date, and has given an annotation of the same. The leading cases are noted in full, and all the case law generally on the subject is dealt with. The result of the decisions is also a feature of the work, and a few forms have been added and some cases relating to composition agreements. These and other features contribute to make the book of much practical utility.

COUNTY COURTS ACT, 1896.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Section 18 of chapter 47 of the Revised Statutes of Ontario is hereby repealed, and the following substituted therefor:—

18. Except in the cases of actions in which by section 20 of this Act or by any other Act jurisdiction is conferred upon County Courts or a Judge thereof, the said Courts shall not have cognizance of any action:—

(1) In which the title to land of a greater value than $200 is brought in question.

(2) In which the validity of any devise, bequest or limitation exceeding $200 under any will or settlement is disputed, nor where the assets of the estate or fund out of which the amount in question is payable exceeds $1,000.

(3) For libel and slander.

(4) For criminal conversation or seduction.

(5) Against a justice of the peace for anything done by him in the execution of his office if he objects thereto.

2. Sub-section 2 of section 19 of the said Act is amended by substituting the figures "$600" for "$400" where the latter appears in such sub-section.

3. Section 19 of chapter 47 of the Revised Statutes of Ontario is hereby amended by adding thereto the following sub-sections:—

(7) In any cause or action relating to debt, covenant and contract where the amount is liquidated or ascertained by the act of the parties or by the signature of the defendant, when the plaintiff and defendant, before the issue of the writ, agree by memorandum in writing signed by them and filed upon the application for the writ, that the Court shall have power to try the action.

(8) In actions for the recovery of or for trespass or injury to land where the value of the land does not exceed $200.

(9) In actions by persons entitled to and seeking an account of the dealings and transactions of a partnership, the joint stock or capital not having been over $1,000, whether such account is sought by claim or counter claim.

(10) In actions by a legatee under the will of any deceased person, such legatee seeking payment or delivery of his legacy not exceeding $200 in amount or value out of such deceased person's estate not exceeding $1,000.

(11) In actions by a legal or equitable mortgagee whose mortgage has been created by some instrument in writing, or a judgment creditor, or a person entitled to a lien or security for a debt, seeking foreclosure or sale, or otherwise, to enforce his security, where the sum claimed as due does not exceed $200.

(12) In actions by a person entitled to redeem any legal or equitable mortgage or any charge or lien, and seeking to redeem the same, where the sum actually remaining due does not exceed $200.

(13) In actions by any person seeking equitable relief in respect of any matter whatsoever, where the subject matter involved does not exceed $200.

(14) Every action or contestation to establish the right of a creditor to rank upon an insolvent estate where the amount of such claim does not exceed $400.

Section 4 deals with the transfer of actions found not to be within the jurisdiction, and provides when the action may be continued in the County Court notwithstanding excess of jurisdiction.

Section 5 deals with abandonment of claim for amount in excess of jurisdiction.

Section 6 deals with relief granted by County Courts.

Section 7 amends section 34 of R. S. O. c. 34, and gives definition of "master."

Section 8 provides for costs of reference.

Section 9 repeals section 23 of c. 47, and lays down the law when the title to land beyond the value of $200 is called in question.

Section 10 provides for venue for certain actions.

Section 11 repeals section 27 of R. S. O., 1887, c. 47, and deals with the plea of "want of jurisdiction."

Section 12 goes into the question of taking issue on pleading want of jurisdiction.

Section 13 provides for similar application of rules, orders and forms of High Court to that of County Courts.

Section 14 amends s. 42 of R. S. O., 1887, c. 47.

Section 15 provides that only one Judge shall be appointed where the population of the county does not exceed 80,000.

Section 16 provides that this Act shall be read as part of the County Courts Act (R. S. O. c. 47.)

RAMBLES THROUGH OLD REPORTS.

Macbeth v. Smart, 14 Grant, 289.

The case of Macbeth v. Smart, decided in 1868, and reported in 14 Grant, 289, is a striking example of the long conflict waged in this province in days gone by between Courts of Law and Equity. It also illustrates the very great delay in delivering the judgments of the Court, and the carelessness with which cases were then reported.

At that time all the Judges of the Superior Courts of Law and Equity in the province sat "in Appeal." The Court on this occasion consisted of the Hon. the Chief Justice of Upper Canada (Sir John Beverley Robinson, Bart.), the Hon. the Chancellor (Vankoughnet), the Hon. the Chief Justice of the Common Pleas (Draper), the Hon. Vice-Chancellor Spragge, the Hon. Mr. Justice Hagarty, the Hon. Mr. Justice Morrison, the Hon. Mr. Justice Adam Wilson, the Hon. Mr. Justice John Wilson, and the Hon. Vice-Chancellor Mowat. The appeal was from a judgment, or rather a decree of the Hon. Vice-Chancellor Esten, and the head-note of the case is as follows: Public Company—Set-off. The Act respecting Railways declared a shareholder liable to judgment creditors of the company for "an amount equal to the amount unpaid on the stock held by him."

Held (reversing a decree of the late V. C. Esten), that a shareholder in an action against him by a judgment creditor of the company could not set-off, in Equity, a debt due to him by the company before the judgment was recovered (Vankoughnet, C., and Spragge and Mowat, V.CC., dissenting). It will be seen at the outset that the four Equity Judges dissented from all the Common Law Judges, but the latter being more numerous outvoted their Chancery brethren. The following vigorous consenting judgment was delivered oral-

ly by the Chancellor (Vankoughnet):

"Mr. Smart having obtained judgment against the Niagara and Detroit Rivers Railway Company, and having issued execution and procured a return of 'nulla bona,' proceeded against the plaintiff, a shareholder in the company, by force of the 80th section of c. 66 of the C. S. Canada, for the recovery of an amount equal to what remained unpaid on his stock. The plaintiff had previously, and while he was indebted to the company in £875 on his stock, and also, as was alleged, liable to the company as surety in a bond for Mr. Morton for a very large amount, accepted certain bills drawn upon him by Mr. Smart, as secretary of the company, and also paid moneys for the company. He attempted a set-off at law, but failed; and he instituted this suit in order to obtain in effect the same benefit."

Vankoughnet, C., (whose opinion was delivered orally said): "Shortly after this case was argued and more than two years ago, I prepared a written judgment, which for some cause or other was not allowed to be read during my absence in England; and changes since in the personnel of the Court rendered a second argument necessary. That judgment has been mislaid after having passed through several hands, and having been once rejected I am not inclined to write another. I think it unnecessary to discuss the vexed question of equitable set-off, so much debated in this case, for, in my opinion, on a very plain principle every day recognized in Courts of Equity, the plaintiff is entitled to succeed. That principle is, the right to retain in his own pocket for payment of his own debt money already there, and which another creditor in no better position than himself seeks to extract from it. I need only refer to one case in my memory at the moment, Cherry v. Boultbee, as illustrative of the doctrine, which without authority, however, is so plainly dictated by common sense that it could scarcely escape adoption.

"It is every day's practice to allow executors to retain out of the testator's assets debts due to themselves in preference to other creditors. What better right than Macbeth has Smart to be paid with Macbeth's money? The statute puts all creditors on an equal footing, and in the eye of a Court of Equity it can make no difference whether their position is or is not ascertained or confirmed by a judgment. The creditor is required to obtain a judgment, and exhaust against the company the process of execution at law, before he can call on an individual shareholder to pay. Then what do we see here? Smart, the plaintiff at law, tells us that he has exhausted this legal process, that the company is bankrupt; and that therefore the individual shareholders are responsible; and he calls on Macbeth to pay. Is not the position of Macbeth impregnable when he says to Smart, "You show a state of things in which I, equally with yourself, am entitled to be paid by the individual shareholders. I am a creditor—I cannot issue execution against myself, and I need not obtain a return of nulla bona to an execution against the company to test their solvency, because you have done this; but I have in my pocket money which as a shareholder I am liable to pay to the company, and out of which I will now, under the state of circumstances you show, re-

tain to pay myself. Surely, on every principle of justice and equity, he has a right to say this. If the forms of proceedings in the Common Law Courts stand in the way, no such difficulties exist here. And is a man to be mocked at and robbed merely because he cannot issue an execution against himself? I am afraid this view of the respondent's rights has not engaged the attention of those members of the Bench who, not familiar with the doctrines of Courts of Equity, propose now to overrule the opinions of four Judges of that Court."

Following the Chancellor's judgment the report goes on to say: "Spragge, V.C., read a judgment dissenting from the views of the majority of the Court, which has since been mislaid or lost. If found at a future time it will be printed." As there does not appear to be any further report of the case, it is safe to assume that the judgment which was "lost, stolen, strayed or mislaid" has not yet turned up. At the conclusion of the report the following note appears:

"Note.—Morrison, J., was not present at the argument of this case. His name was erroneously inserted as being one of the Judges before whom the appeal was argued."

The report of the case occupies about 50 pages of the Reports. Over 100 authorities are referred to. Most of the leading counsel of the day appeared in the case. Amongst others, Mr. Strong, Q.C., now Sir Henry Strong, Chief Justice of the Supreme Court of Canada.

LEGAL MAXIMS.

For the convenience of the profession we have procured what we think to be a very complete collection of legal maxims, and we print them hereunder in the original Latin, with a translation in each case. From what we are able to observe, a lawyer is likely to get rusty on his classics, just like any ordinary person, and we think that these maxims, so often used in practice, and so often used by the Bench in written judgments, in the alphabetically arranged form that we present them, will be found very handy and often save much labour to the practitioner.

1. Accessorium non ducit, sed sequitur, suum principale. (The accessory does not lead, but follows its principal.)

2. Acta extoriora indicant interiora secreta. (Overt acts proclaim a man's intentions and motives.)

3. Actio personalis moritur cum persona. (A personal right of action ceases at death.)

4. Actus Dei nomini facit injuriam. (The act of God does injury to no man.)

5. Benigne faciende sunt interpretationes propter simplicitatem laicorum, ut res magis valeat quam pereat. (Instrument ought to be construed leniently, with allowance made for the ignorance of people who are not lawyers, so that the transaction may be supported and not rendered nugatory.)

6. Caveat emptor. (The buyer must look after himself.)

7. Cessante ratione, cessat lex. (When a reason for law ceases to exist, so also does the law itself.)

8. Contemporanea expositio est optima et fortissima in lege. (The best way of getting at the meaning of an instrument, is to ascertain when and under what circumstances it was made.)

9. Cuilibet in sua arte perito credendum est. (Every man is an expert in the particular branch of business he is familiar with.)

10. Delegatus non potest delegare. (One with authority from another cannot bestow it on a third party.)

11. De minimis non curat lex. (The law does not trouble itself about trifles.)

12. Domus sua est cuique tutissimum refugium. (A man's house is his safest retreat.)

13. Ex nudo pacto non oritur actio. (A contract without consideration is not actionable.)

14. Expedit reipublicæ nequis re male utatur. (The good of the State requires a man not to injure his own property.)

15. Expressum facit cessare tacitum. (When all terms are expressed nothing can be implied.)

16. Ex turpi causa non oritur actio. (Where the cause is immoral no action can be grounded.)

17. Id certum est quod certum reddi potest. (What can be reduced to a certainty is already a certainty.)

18. Ignorantia facti excusat, ignorantia juris non excusat. (Not knowing the fact is excusable, but ignorance of the law is no excuse.)

19. In contractibus tacite insunt quæ sunt moris et consuetudinis. (Persons are presumed to contract with reference to habits and customs.)

20. In jure non remota sed proxima spectatur. (The law looks at the immediate cause, not the remote.)

21. Interest reipublicæ ut sit finis litium. (It is the interest of the state that litigation should cease.)

22. Judicis est jus dicere non dere. (A Judge should administer the law as he finds it and not make it himself.)

(To be continued.)

MISCELLANEOUS.

How Thurman Won a Case.

The late Allen G. Thurman used to tell many an amusing story of his early practice. He went everywhere he was called, and tried every case that was presented to him. He related an anecdote of one case which was pending before a justice of the peace. This justice abode some twelve miles from Chillicothe, and had a distinctly bad reputation. Thurman, when retained, told his client—who, by the way, was the defendant—that he would be beaten.

"All we can do," said Thurman, "is to drive out and hear what the other side has in the way of evidence. This old Dutch rascal is bound to beat you; he'll give a judgment against you, and we'll put in an appeal, and take it to a higher Court. There we will get a fair trial, and, from what you say, we will win the case."

"On the day of the hearing," said Thurman afterwards when relating the story, "my client and I drove over to the scene of trial. The court-room was crowded with farmers and people of the neighborhood, who were there to look on. The plaintiff put on three or four witnesses, but one after another, as they testified, it was plain and clear that they knew nothing of the merits of the controversy. The plaintiff's testimony in no sense established the case, and the old Dutch justice was desperate. The plaintiff had no lawyer, and the Dutch justice conducted that side of the case pretty much himself. But ask what questions he might of the plaintiff and his witnesses, he couldn't bring out the testimony necessary to found the case. After the plaintiff's testimony was practically all in, the old Dutch juctice looked at me and remarked, as if experimenting to see if I would make any objection:

"'While it is onusual for a gourt to give destimony in a gase vhich pends before it, I know a good deal about dis gontroversy myseluf. If dere is no objection by the defendant, I will swear myseluf und gife my evidence.'

"I made no objection, as I was curious to see what the old Dutch rascal would do. Inferring consent from my silence, our judge gravely arose, and, holding up his right hand, at his own hoarse command he administered the usual oath to tell the truth, the whole truth, and nothing but the truth, in the case then and there being tried. After this very comfortable arrangement he sat down, and proceeded to relate a story which entirely picked up all of the plaintiff's dropped stitches, and made, indeed, a perfect case against my client. While the justice was glibly giving his evidence a farmer who stood just behind my chair whispered to me:

"'Just hear that old rascal lie, and the beauty of it all is there isn't a man in the room who'd believe him under oath.'

"This gave me an idea, and I thought I might as well have a little fun out of the situation while drifting to a judgment against my client. I asked the farmer in a whisper if he were willing to take the stand and testify that the old Dutch justice's reputation for truth and veracity was bad. He said that he would, and that a dozen more in the room would be perfectly willing to do the same.

"'Ferry vell,' remarked His Honor, 'produce your vitnesses.'

"One after the other six gentlemen whose names I called arose and were sworn. One after the other got up on the stand and testified that they had long known the Dutch justice, giving his name; that they knew his reputation for truth and veracity in the community where he resided; that it was bad, and that from that reputation they would not believe him under oath. At this point I rested, and informed His Honor that I had nothing further to present. Throughout the testimony impeaching him of untruth he had preserved an air of mild indifference. One would never have known by looking at him that he was the party under discussion at all. When I told him that my evidence was all in, he braced up to decide the case.

"'Der blaintiff, mit his first four vitnesses, vitch includes himself,' said His Honor, 'makes nodings out of his side of der

case. Vas dat all his destimony dis gourt must gife judgment for der defendant, but dere vas one odder vitness who makes of himseluf a volunteer, and who gifs his destimony, vitch completely covers der controversy in all its barts. Upon his destimony'—and he had named himself as this witness—'if it were uncontradicted and unimpeached, I could gife judgment for der blaintiff. But such is not the gase. Vhile the destimony of this vitness'—naming himself—'is not contradicted, yet now gomes six reputable vitnesses already, who climbs one after de odder to der vitness chair, and says dot dey know dis man'—naming himself—'dot he is a liar where he lives; dot his destimony is lies, und dot his vord ist not good. Dis is vhat dey call in der law imbeaching a vitness. Generally it is a mighty hard ding to to do, but in dis gase I must say dot I regard der vitness as very successfully imbeached. Derefore, as it isn't vhat I dink of him myseluf, but vhat der evidence in der case makes of him dat I must go by, I trow out dis vitness' destimony altogether. So der gourt is left again mit nothing but der blaintiff und dose odder people who svore, vitch, as I hafe already said, know nodings of his business. Under such circumstances der gourt can make no finding for blaintiff. Derefore der gourt finds for der defendant, mit judgment against der blaintiff for costs.'

"It was the best thing," concluded Thurman, "that the old Dutchman ever did. It established his reputation as an honest man far and near, and from that time until his death, if anybody had made an effort to impeach his evidence given in a case, he would have failed. The whole neighbourhood looked on him as a second Daniel from that time forward."—American Lawyer, March, 1896.

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The late Sir Matthew Crooks Cameron was possessed of a great strength of character, and in private life was irreproachable. He was a great man as an advocate, a judge, and as a statesman. He distinguished himself as an advocate at the Common Law Bar. Before a jury he had no peer; his strength of character created a lasting impression on a jury; he always impressed them with being in earnest. The same old story is often told of Sir James Scarlett, who was often, when at the Bar, opposed by Lord Brougham. A juryman, as he left the jury box, was heard one day to exclaim: "That fellow Brougham is a very clever man, but, you see, Scarlett he's always on the right side." The story is told that Scarlett considered this the greatest compliment ever paid him as an advocate. Sir M. C. Cameron possessed this faculty in a less degree; with juries and on the platform in elections he was an effective speaker, and thoroughly impressed all with his earnestness.